
LORI TINDALE

v.

**LEON GOLD, IRENE SOBOLOV,
THOMAS KLUEPFEL, AND JENNIFER EVANS
HOBOKEN BOARD OF EDUCATION,
HUDSON COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C30-16

**DECISION ON
PROBABLE CAUSE**

PROCEDURAL HISTORY

This matter arises from a Complaint filed on August 1, 2016, by Lori Tindale (Complainant), alleging that Leon Gold, Irene Sobolov, Thomas Kluepfel and Jennifer Evans (Respondents), members of the Hoboken Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated August 3, 2016, and subsequent correspondence dated August 19, 2016, August 31, 2016, September 16, 2016, and September 28, 2016, Complainant was notified that her Complaint was deficient and required amendment. On October 11, 2016, Complainant cured all defects and filed an amended Complaint (Complaint) that was deemed compliant with the requirements detailed in N.J.A.C. 6A:38-6.7. The Complaint alleges that Respondents violated N.J.S.A. 18A:12-24(a) and N.J.S.A. 18A:12-24(c) of the Act.

On October 12, 2016, the Complaint was served on Respondents via regular and certified mail, notifying them that charges were filed against them with the School Ethics Commission (Commission), and advising that they had twenty (20) days to answer the Complaint. Upon request, Respondents were provided with an extension of time to file a responsive pleading. Ultimately, Respondents filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss) on November 22, 2016, and also alleged that the Complaint was frivolous. After being provided with two extensions, Complainant filed a response to the Motion to Dismiss, and to the allegation of a frivolous filing, on January 31, 2017. In this filing, and for the very first time, Complainant alleged that Respondents violated N.J.S.A. 18A:12-24.1(a), (d), (e) and (f) of the Code of Ethics for School Board Members (Code).

By correspondence dated March 10, 2017, and regarding the new Code allegations that first appeared in Complainant's response to the Motion to Dismiss, counsel for Complainant was advised that unless consent from each Respondent was secured, or leave to amend sought, the Commission would docket the matter for its meeting on March 28, 2017. When neither counsel for Complainant nor Complainant submitted a written response to this correspondence, the Commission reviewed the matter at its meeting on March 28, 2017, in order to make a determination regarding the Motion to Dismiss.

At its meeting, the Commission voted to grant the Motion to Dismiss, in part, and to deny the Motion to Dismiss, in part. More specifically, the Commission granted the Motion to Dismiss as to the allegation that Respondents violated N.J.S.A. 18A:12-24(a), but denied the

Motion to Dismiss as to the allegation that Respondents violated N.J.S.A. 18A:12-24(c). The Commission additionally dismissed the “new” alleged violations of N.J.S.A. 18A:12-24.1(a), (d), (e) and (f) of the Code because Complainant failed to comply with the Commission’s procedural requirements to obtain consent from her adversary, or to otherwise seek leave to amend her Complaint. Finally, the Commission found the Complaint not frivolous, and directed Respondents to file an Answer within twenty (20) days of its decision (dated April 26, 2017). After being provided with an extension, Respondents filed an Answer to Complaint (Answer) on June 5, 2017.

By correspondence dated June 16, 2017, the Parties were notified that the Commission would review this matter at its meeting on June 27, 2017, in order to make a probable cause determination in accordance with the procedures set forth in N.J.A.C. 6A:28-10.7. At its meeting on June 27, 2017, the Commission was unable to determine whether probable cause existed for the remaining allegation in the Complaint; therefore, by correspondence dated July 17, 2017, the parties were notified that the matter would be discussed, for a second time, at the meeting on July 25, 2017. At its meeting on July 25, 2017, the Commission considered the Complaint and the Answer and, at its meeting on August 22, 2017, the Commission voted to find that probable cause did not exist for the allegation that Respondent violated N.J.S.A. 18A:12-24(c) of the Act and, therefore, to dismiss the matter.

SUMMARY OF THE PLEADINGS

A. The Complaint

Prior to February 9, 2016, the Board appealed to the public to make financial contributions toward its litigation with the New Jersey Department of Education (NJDOE) regarding the request from the Hoboken Dual Language Charter School (HoLa) for an expansion. To this end, the Board created the Hoboken Legal Fund to receive public contributions. Each named Respondent, among others, contributed “significant” personal funds of varying amounts to the Hoboken Legal Fund.

Complainant alleges that Respondents (Board members) failed to recuse themselves on the February 9, 2016, vote on a Resolution regarding whether the Board should continue litigation involving the NJDOE and the request from HoLa for an expansion. According to Complainant, all of the Respondents invested “personal funds” in the litigation and, therefore, should have abstained from voting on this issue.

Based on the above, Complainant alleges that Respondents violated N.J.S.A. 18A:12-24(c) when they voted on the Resolution because they have a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment.

B. Answer to Complaint

In their Answer, Respondents admit that they made various donations to the Hoboken Legal Fund that was authorized by the Board. Respondents neither admit nor deny that their donations constitute “significant amounts,” and deny that their donations created a conflict of

interest in violation of N.J.S.A. 18A:12-24(c). Respondents additionally argue that the act of donating money is protected under the First Amendment of the U.S. Constitution, and that if the Commission finds a violation, it would have a “chilling effect” on the right of board members to donate personal funds for a specifically designated purpose.

Respondents also argue that their donations are controlled by N.J.S.A. 18A:18A-15.1, which requires boards of education to honor the stipulations/conditions attached to donated gifts. Therefore, because the funds were dedicated/donated *specifically* to the legal fund, Respondents could not benefit - financially or personally - by voting not to discontinue the litigation against the expansion of HoLa. Further, Respondents did not, and could not, direct the Board on how the funds could be used. Respondents also note that their donations were for a Board approved use, and were made along with other donations from the public. Respondents contend that they did not obtain any personal or financial benefit by supporting the Board’s “well-settled” opposition to the expansion of HoLa.

Respondents additionally argue that their donations did not create a financial involvement that might reasonably be expected to impair their objectivity or judgment. Because the donations had already been made and dedicated to the litigation against HoLa, the vote to continue the litigation could not affect them personally or financially. In addition, the public could not reasonably believe that Respondents’ donations impaired their objectivity because the donations were made to a cause championed by the Board, as evidenced by the litigation and the creation of the Hoboken Legal Fund to support the litigation.

Finally, Respondents also argue that the Complaint is devoid of any facts to support Complainant’s allegation that Respondents stood to benefit personally or financially by voting to continue the litigation.

ANALYSIS

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. That is, the Commission must determine, based on the evidence before it, whether probable cause exists to credit the remaining allegation in the Complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

Complainant alleges that Respondents violated N.J.S.A. 18A:12-24(c) of the Act. Thus, the question before the Commission is whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act has been violated. N.J.A.C. 6A:28-10.7(b).

Remaining Allegation of Prohibited Acts

The remaining count in the Complaint asserts that Respondents violated N.J.S.A. 18A:12-24(c) of the Act. This provision of the Act provides:

- c. No school official shall act in his official capacity in any

matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

In order to credit the allegation of a violation of N.J.S.A. 18A:12-24(c), the Commission must find evidence that Respondents acted in their official capacity in a matter where they, a member of their immediate families, or a business organization in which they have an interest, has a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment, or it must find evidence that Respondents acted in their official capacity in a matter where they or a member of their immediate families had a personal involvement that created some benefit to them or to a member of their immediate families. Complainant alleges that Respondents' vote to continue the HoLa litigation violated N.J.S.A. 18A:12-24(c) because, as a result of their personal monetary contributions to the Hoboken Legal Fund, Respondents had a direct or indirect financial involvement in the continuation of the HoLa litigation that might reasonably be expected to impair their objectivity or independence of judgment. Although Respondents admit that they donated money to the Hoboken Legal Fund as alleged, they deny that their contributions were "significant," and that the donations created a conflict of interest as they could not benefit, financially or personally, by voting to continue the litigation against the expansion of HoLa.

Based on the foregoing, the Commission finds, after review, that there is no information or allegation in the Complaint, or in any other documentation submitted by or relied upon by Complainant, that Respondents violated N.J.S.A. 18A:12-24(c). The Commission agrees with Respondents that because their donations were earmarked for a specific purpose, namely the litigation related to the expansion of HoLa, they could not benefit, personally or financially, from voting to continue the litigation. Further, at the time Respondents made their respective monetary donations, they relinquished control of its use, and also forfeited any right to recoup these monies. As such, no personal or financial benefit could inure to any Respondent by voting to continue the litigation.

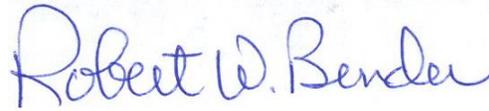
Additionally, the Commission finds compelling the fact that, long before the donations were made by Respondents (and accepted by the Board), the Board vehemently opposed the expansion of HoLa and, in this regard, initially authorized litigation to contest the expansion of HoLa. The interest in the continued litigation was, therefore, the Board's and not any individual Respondent's personal interest. It is also important to note that, prior to making any personal financial contributions to the Hoboken Legal Fund, Respondents were in favor of prosecuting the HoLa litigation. Therefore, the donations could not have impaired their objectivity or independence of judgment because, regardless of the donation, their position was always in support of the litigation.

Accordingly, and for the reasons set forth above, the Commission does not find probable cause to credit the allegation that Respondents violated N.J.S.A. 18A:12-24(c) of the Act.¹ Based on this finding, and because this allegation was the sole remaining count in the Complaint, the matter is now dismissed.

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondents that it does not find probable cause to credit the allegation that Respondents violated N.J.S.A. 18A:12-24(c) of the Act, and dismisses the matter.

This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).



Robert W. Bender
Chairperson

Mailing Date: August 23, 2017

¹ The Commission notes that, although it did not find probable cause under the facts and circumstances alleged, slightly different facts and circumstances, or different allegations, could have resulted in a contrary finding. Therefore, all board members should be mindful of the public's perception of their financial entanglements with the Board on which it sits.

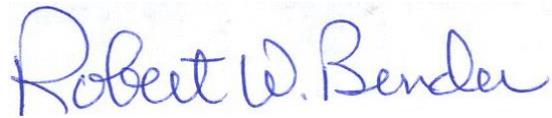
Resolution Adopting Decision – C30-16

Whereas, at its meeting on July 25, 2017, the School Ethics Commission (Commission) considered the Complaint and the documents filed in support thereof, as well as the Answer to Complaint along with its supporting documentation; and

Whereas, at its meeting on August 22, 2017, the Commission voted to find that probable cause did not exist for the allegation that Respondents violated N.J.S.A. 18A:12-24(c) of the Act and, therefore, to dismiss the matter; and

Whereas, at its meeting on August 22, 2017, the Commission voted to approve the within decision; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of its decision herein.



Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 22, 2017.



Kathryn A. Whalen, Director
School Ethics Commission