

SEC # C12-94
EEC #2458-96
SB # 89-96

SCHOOL ETHICS COMMISSION, :
PETITIONER-RESPONDENT, :
V. : STATE BOARD OF EDUCATION
MICHAEL J. KILMURRAY, : DECISION ON MOTION
RESPONDENT-APPELLANT. :

Decided by the School Ethics Commission, November 26, 1996

For the Petitioner-Respondent, Arlene G. Lutz, Deputy Attorney General
(Peter Verniero, Attorney General of New Jersey)

For the Respondent-Appellant, Lawrence Silver, Esq.

This matter was initiated by an individual who filed a complaint with the School Ethics Commission alleging that Michael J. Kilmurray (hereinafter "respondent") had violated the School Ethics Act. The Ethics Commission determined that there was probable cause to credit certain of the allegations in the complaint and transmitted the matter to the Office of Administrative Law for hearing. Respondent moved to dismiss, challenging the Ethics Commission's authority to prosecute the case. Although the Administrative Law Judge ("ALJ") did not grant dismissal, she agreed that the Commission did not have the authority to prosecute the underlying matter, finding that only the individual who filed the complaint could prosecute. Consequently, she directed his reinstatement as the complainant.

The Deputy Attorney General assigned to prosecute the matter on behalf of the Ethics Commission sought interlocutory review by the Commission. The Commission granted such review and rejected the ALJ's determination, finding that it had the implied power under the statutory framework to prosecute such matters following its investigation of the allegations set forth in the complaint and a probable cause determination. Respondent has now filed a motion with the State Board seeking leave to file an appeal from the Commission's interlocutory determination.

After reviewing respondent's arguments, the State Board of Education denies his motion for leave to appeal. The effect of our decision is that the Commission's determination will govern further proceedings in the matter. We stress, however, that the Commission's determination may be subject to review by the State Board in the event of an appeal from the final decision disposing of the merits of the case. N.J.A.C. 1:1-14.10.

February 5, 1997

Date of mailing _____