

SEC # 36-01
C # 272-02SEC
SB # 32-02

IN THE MATTER OF EDWARD VICKNER, :
EWING TOWNSHIP BOARD OF : STATE BOARD OF EDUCATION
EDUCATION, MERCER COUNTY. : DECISION ON MOTIONS

Decided by the School Ethics Commission, May 28, 2002

Decided by the Commissioner of Education, July 16, 2002

For the Respondent-Appellant, Edward Vickner, pro se

For the Participant School Ethics Commission, Kimberley M. Lake, Deputy
Attorney General (David Samson, Attorney General of New Jersey)

In a decision rendered on May 28, 2002, the School Ethics Commission (hereinafter "Ethics Commission") concluded that Edward Vickner (hereinafter "respondent"), a member of the Board of Education of the Township of Ewing, had violated the School Ethics Act when he commented during a public budget meeting that the stipend paid to team leaders at the middle school was low. The Commission found that the respondent had a financial involvement that might reasonably be expected to impair his objectivity or independence of judgment since his wife was a team leader at the middle school. The Ethics Commission also found that the respondent had violated the Act when he sought out and disclosed confidential student information to the Ewing Board. The Commission recommended that the respondent be censured as a result of such violations. On July 16, 2002, the Commissioner of Education accepted the Ethics Commission's recommendation and directed that the respondent be censured.

The respondent filed the instant appeal to the State Board. The respondent subsequently filed a motion to compel production of documents and a motion to supplement the record on appeal with copies of the following materials: 1) the respondent's letter dated April 4, 2002 to the School Ethics Commission requesting a copy of Advisory Opinion A15-01 issued by the Commission on November 1, 2001; 2) the complainant's letter dated September 28, 2001 to the Ethics Commission seeking an advisory opinion; 3) Advisory Opinion A15-01 issued by the Ethics Commission on November 1, 2001; 4) Advisory Opinion A18-96 issued by the Ethics Commission on November 27, 1996; 5) N.J.A.C. 6A:28-1.7, "Advisory Opinions"; 6) the respondent's letter dated August 1, 2002 to the Ethics Commission requesting information concerning its investigation in this matter; 7) N.J.S.A. 18A:12-24.1, "Code of Ethics for School Board Members"; and 8) the respondent's letter dated August 14, 2002 to the Ethics Commission requesting a copy of the tape or a transcript of testimony presented at "the 7/23/02 Commission's hearing related to C11-02 and C20-02 (Consolidated)."¹

The School Ethics Commission has filed a motion to participate in this matter.

Initially, we deny the respondent's motion to supplement the record. We find that the respondent has not demonstrated that any of the proposed exhibits are material to the issues on appeal, i.e., whether he violated the School Ethics Act and, if so, the appropriate penalty. N.J.A.C. 6A:4-1.9(b). Nor is it necessary to supplement the record with a statute and regulation. Moreover, N.J.A.C. 6A:28-1.7(d)(2) provides that "[n]o

¹ The papers before us do not identify C11-02 and C20-02. In his brief, the respondent indicates that he had testified before the Ethics Commission on July 23, 2002, subsequent to the Commissioner's decision in this matter, and that he had filed a complaint with the Commission in June 2002 in which he "questioned [the complainant's] entitlement to Advisory opinion A15-01...." Brief in Support of Motion to Supplement, at 2.

information regarding any request for an advisory opinion shall be made public unless the information is incorporated into the advisory opinion and made public in accordance with [subsections (e) and (f) of that regulation].” N.J.S.A. 18A:12-31 provides that “[a]dvisory opinions of the commission shall not be made public, except when the commission, by a vote of at least six members, directs that the opinion be made public.” See also N.J.A.C. 6A:28-1.7(f). The advisory opinion referenced in Item 3 of the respondent’s motion does not indicate that it was made public by the Ethics Commission. Further, although the advisory opinion referenced in Item 4 of the motion does indicate that it was “for public release,” the respondent has only provided the first page of that opinion with his motion. However, as in the case of statutes and regulations, the respondent can reference that opinion in his brief since it is a public document.

We also deny the respondent’s motion to compel production of documents. A review of the respondent’s motion reveals that he is not requesting the production of any existing documents, but, rather, is seeking answers from the Ethics Commission related to their investigation of the complaint filed against him. Again, we find that the respondent has not demonstrated how the information requested is material to the issues on appeal.

Finally, we grant the Ethics Commission’s motion to participate in this matter.

Thelma Napoleon-Smith abstained.

December 4, 2002

Date of mailing _____