

SCHOOL ETHICS COMMISSION DKT. NO. C48-10
COMMISSIONER DKT. NO. 5-10/11

IN THE MATTER OF STEPHEN PELLECCCHIA, :
BERKELEY TOWNSHIP BOARD OF : COMMISSIONER OF EDUCATION
EDUCATION, OCEAN COUNTY. : DECISION
_____ :

Decided by the School Ethics Commission, September 27, 2011

For the Respondent-Appellant, Brian Di Stefano, Esq. (Tier & Di Stefano)

For the Petitioner-Respondent, School Ethics Commission, Farha Ahmed, DAG
(Jeffrey Chiesa, Acting Attorney General of New Jersey)

The above-captioned matter came before the Commissioner of Education by way of the October 31, 2011 appeal of Respondent-Appellant Stephen Pelleccchia (hereinafter “respondent”) of the September 28, 2011 decision of the School Ethics Commission (Commission) finding respondent – board member and a part-time seasonal employee of the Board of Elections in Ocean County – in violation of *N.J.S.A. 18A:12-24(c)* of the School Ethics Act¹ for his actions in connection with the return of Mr. Joseph Vicari – who was a member of the Board of Chosen Freeholders, the body that is responsible for approving respondent’s salary as an employee of the Board of Elections – to the District. Specifically, the Commission found that the respondent: 1) participated in Board discussion regarding the possible return of Mr. Vicari as the Interim Superintendent; 2) made a motion at the February 23, 2011 meeting to approve the appointment of Mr. Vicari as the Interim Superintendent; and 3) voted on the

¹ This provision – in pertinent part – specifies: “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....”

appointment of Mr. Vicari at the February 23, 2011 meeting. (Commission's September 27, 2011 decision at 8-9) The Commission recommended a penalty of reprimand for such violation.

Respondent's arguments on appeal mirror those previously advanced before the Commission. Respondent charges that the Commission's finding of violation – notwithstanding his proffered arguments – is attributable to their failure to consider all of the facts in this matter and their misapplication of the relevant law. Respondent's appeal brief additionally now disputes that he was an employee of the Board of Elections in February 2011 – the time period during which he voted to appoint Mr. Vacari as Superintendent of Schools. In reply to this particular argument, the Commission advances:

...it is irrelevant that Respondent was not at that specific time working at the Board of Elections. Respondent has been employed by [sic] as a seasonal employee with the Board of Elections since 2005. He has also worked at the Board of Elections after February 2011, specifically from March through June 2011 and September through November 2011. Respondent has been working at the Board of Elections for approximately six months out of the year, every year since 2005. (Commission's Reply Brief at 7)

Respondent's concludes his appeal by requesting that the charge against him be dismissed or, in the alternative, his penalty be mitigated in light of his obtaining legal opinions from two independent counsel and his reliance on court opinions.

In determining appeals from decisions of the School Ethics Commission, the Commissioner must ascertain whether the decision is supported by sufficient credible evidence in the record. The Commission's decision will not be disturbed unless the appellant has demonstrated that its determination was arbitrary, capricious, inconsistent with the facts, or contrary to law. *N.J.A.C. 6A:4-4.1(a)* Here, full review and consideration of the entire record persuades the Commissioner that the respondent has not met that burden and, therefore, he finds no reason to overturn the Commission's decision. Rather, the Commissioner concurs with the Commission's conclusion that:

[e]ven granting that the respondent is a part-time seasonal employee of the Board of Elections in Ocean County, the Commission finds that this record supports the conclusion that he had an indirect financial involvement with the Board of Chosen Freeholders as the funding source for the Board of Elections in Ocean County and, consequently, with Joseph Vicari, who sits on the Board of Chosen Freeholders. (Commission’s September 27, 2011 decision at 6)

As to the penalty the Commission recommended be imposed upon respondent, pursuant to *N.J.S.A.* 18A:12-29(c), if the Commission finds that a violation has occurred, it “shall, by majority vote, recommend to the commissioner the reprimand, censure, suspension, or removal of the school official found to have violated th[e] act.” Although the Commission’s decision in this matter cited cases where board members have received harsher penalties under analogous circumstances, the Commission took into account all of the mitigating circumstances in this matter and determined to recommend the least severe of the available penalties for violation of the School Ethics Act – specifically, a reprimand. The Commissioner is in full accord with this recommendation.

Accordingly, the Commissioner affirms the decision of the School Ethics Commission finding that respondent Stephen Pellecchia violated *N.J.S.A.* 18A:12-24(c) of the School Ethics Act. Mr. Pellecchia is hereby reprimanded for such violation.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 5, 2012

Date of Mailing: April 9, 2012

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1)