

<p>IN THE MATTER</p> <p style="text-align: center;">OF</p> <p>PATRICIA HAINES, <i>HADDONFIELD BD. OF EDUCATION</i> <i>CAMDEN COUNTY</i></p>	: : : : : : : : : : : : : :	<p>BEFORE THE</p> <p>SCHOOL ETHICS COMMISSION</p> <p>Docket No.: C07-00</p> <p>DECISION</p>
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PROCEDURAL HISTORY

This matter arises from a Complaint alleging that Haddonfield Board of Education (Board) Member Patricia Haines violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* when she voted on a Board resolution authorizing the issuance and sale of new bonds with Commerce Bank designated as the paying agent and when, as Board President, she named herself as a member of the Board’s Finance Committee. Ms. Haines is a Vice-President of Commerce National Insurance Services, a wholly owned subsidiary of Commerce Bank/North. At its meeting of July 25, 2000, the School Ethics Commission found probable cause to credit the allegations that Ms. Haines violated N.J.S.A. 18A:12-24(c) when she participated in the vote on a Board resolution authorizing the issuance and sale of new bonds with Commerce Bank designated as the paying agent. The Commission did not find probable cause that the above conduct violated N.J.S.A. 18A:12-24(f) or that Ms. Haines’ act of naming herself as a member of the Board’s Finance Committee when she served as Board President violated the Act. It therefore dismissed those allegations.

The Commission found that the material facts were not in dispute. Therefore, the Commission decided to review this matter on the basis of written submissions pursuant to N.J.A.C. 6A:28-1.12. If the Respondent disagreed with the Commission’s recitation of the facts and the determination that the material facts were not in dispute, she was provided the opportunity to set forth the facts with which she disagreed. Respondent submitted a timely written statement agreeing with the stated facts, but arguing that the Commission did not give sufficient weight to them. Respondent also submitted the 1999 Annual Report of Commerce Bancorp to assist the Commission in understanding the relationship between Commerce National Insurance Services and Commerce Bank, N.A.

At its September 27, 2000 meeting, the Commission found that Ms. Haines violated N.J.S.A. 18A:12-24(c) of the Act and recommended a penalty of reprimand.

FACTS

The Commission found the following facts to be undisputed. Patricia Haines is a member of the Haddonfield Board of Education. She is employed as a Vice President of Commerce National Insurance Services, a wholly owned subsidiary of Commerce Bank/North. Prior to December of 1997, Ms. Haines worked for an independent benefit consulting firm that specialized in the design, administration, funding and communication of employee benefits. In December 1997, the firm was acquired by Commerce Bancorp and merged into the existing Commerce National Insurance Services, Inc. division. Ms. Haines' functional title is Director of Consulting Services. She is a salaried employee who has no responsibility to procure new business.

Respondent requested that the Commission add to the facts set forth in the probable cause determination that Commerce Bank/North and Commerce Bank, N.A. are both direct subsidiaries of Commerce Bancorp, the parent company. The two banking entities have different boards of directors and executive officers. In addition, Commerce National Insurance Services has its own executive officers that are separate from those of Commerce Bank, N.A.

At the January 27, 2000 Board meeting, Patricia Haines voted in favor of a resolution authorizing the issuance and sale of new bonds with Commerce Bank, N.A. designated as the paying agent. The minutes of the January 27, 2000 public meeting show that Board member Mr. Katz moved Business and Finance resolutions "A" through "I" and Ms. Hennessy seconded the motion. The minutes also reflect that Board member Ms. Schultz raised questions regarding several of the resolution items. One of those items was Resolution "I," which was the resolution authorizing the issuance and sale of new bonds. The minutes state:

Ms. Schultz also asked if the reason Commerce Bank was designated as the Paying Agent in the Resolution Authorizing the Issuance and Sale of the new bonds was because Commerce Bank currently holds the 1996 Temporary Notes?

Business Administrator/Board Secretary Bryan McGair answered, "that is correct that Commerce holds the Temporary Notes, but according to Bond Counsel, Philip Norcross, they were put out for competitive quotes and Commerce's rate was low." The minutes indicate, and Ms. Haines' answer to the Complaint confirms, that a roll call vote followed the discussion of Business and Finance items. The motion to approve all the resolutions passed by a unanimous vote.

At the next Board meeting on February 10, 2000, Mr. McGair recommended that the Board amend the approved bond resolution to change the paying agent from

Commerce Bank to Summit Bank. Ms. Haines voted in favor of the amendment. The reason given for the change was that Mr. Norcross had not received competitive quotes from other financial institutions. When competitive quotes were received, Summit Bank was more competitive than Commerce Bank.

At the May 4, 2000 organization meeting of the Board, Ms. Haines was elected President. When the Board was asked to approve the depositories for school funds, Ms. Haines abstained on the vote since Commerce Bank is the Board's main depository holding all payroll and benefits monies. Ms. Haines also recused herself from voting on the appointment of Philip Norcross as bond counsel. Philip Norcross is brother to George Norcross, III, who is President and Chief Executive Officer of Commerce National Insurance Services, Ms. Haines' employer.

ANALYSIS

The Commission found probable cause that the above conduct violated N.J.S.A. 18A:12-24(c). N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds 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.

Ms. Haines makes several arguments in opposition to the Commission's finding of probable cause. She first argues that the relationship between Commerce National Insurance Services and Commerce Bank, N.A. is so miniscule that her vote to have Commerce Bank serve as paying agent does not constitute a violation of N.J.S.A. 18A:12-24(c).

The Commission understands that Commerce National Insurance Services is only a subsidiary of a sister corporation to Commerce Bank, N.A. and therefore there is no parent/subsidiary relationship between Commerce National Insurance Services and Commerce Bank, N.A., which received the contract. Rather, there is more of a diagonal line linking the two. Nonetheless, the Commission believes that such a relationship is the type of indirect financial involvement that the Legislature contemplated in N.J.S.A. 18A:12-24(c). The Act does not require a direct involvement. The Act requires only a showing of an indirect involvement that might reasonably be expected to impair a school official's objectivity or independence of judgment. In addition, the Legislature's purpose, set forth in N.J.S.A. 18A:12-22(a), makes it clear that the Legislature wanted

the Commission to consider whether the conduct that took place violated the public trust or created an impression that the public trust was being violated. What “might reasonably be expected” is determined by what the reasonable member of the public would believe would impair a school official’s independence of judgment. Where, as here, a board member’s employer shares a parent company with the corporation that seeks to contract with the board, there exists a relationship that indirectly affects the board member. The Commission thus concludes that it creates an indirect financial involvement that might reasonably be expected to impair the board member’s objectivity. Therefore, by voting for the resolution in question, Ms. Haines acted in her official capacity in a matter in which she had an indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c).

Ms. Haines next argues that Commerce Bank, N.A., had been selected as the Board’s primary depository prior to Mrs. Haines becoming a member of the Board. She also states that, prior to her membership on the Board, Commerce Bank, N.A., was the holder of the Board’s temporary notes, which were to be permanently financed by the issuance of its general obligation school bonds pursuant to the January resolution. Thus, she states, the involvement of Commerce Bank, N.A., had nothing to do with her. She also argues that no member of the Board or in the public commented that her vote on the resolution in question was somehow improper.

The Commission did not find probable cause that Respondent used her official position to secure an unwarranted privilege or advantage for the bank as set forth in N.J.S.A. 18A:12-24(b). Rather, the Commission concluded that the vote in question was one from which she should have abstained because she had an indirect financial involvement. The Commission therefore finds that Respondent’s point may mitigate the penalty, but is not persuasive on the question of whether she had an indirect financial involvement with Commerce Bank, N.A. that might reasonably be expected to impair her objectivity. The Commission similarly concludes that the fact that no one, including the Complainant, who was in the audience during the meeting, warned Respondent or stated after the fact, that her vote was improper, is a point to be considered in determining sanction, rather than whether a violation occurred.

CONCLUSION

For all the foregoing reasons, the Commission concludes that Respondent Patricia Haines violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when she voted in favor of Commerce Bank being the paying agent for the bond issue on January 27, 2000.

Regarding the penalty, the Commission considered that the vote did not result in monetary gain to Mrs. Haines, but rather presented an indirect financial involvement that created the appearance that Ms. Haines could not be objective. The Commission also considered the arguments in her written statement: 1) that the nature of her work did not touch upon Commerce Bank, N.A. and the relationship of Commerce Bank to Commerce National Insurance Services was tenuous; 2) that Commerce Bank, N.A. had been the primary depository for Board funds prior to Ms. Haines becoming a board member; and 3) that no one, including the Complainant, ever said that her vote was in violation of the Act prior to the Complaint being filed. Based on the foregoing, the Commission concludes that a reprimand is the appropriate penalty to recommend to the Commissioner of Education.

This decision of the School Ethics Commission, shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C07-00

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the testimony of the parties; and

Whereas, the Commission found probable cause to credit the allegations in the complaint and invited respondent to file a written statement in response; and

Whereas, the Commission has reviewed respondent's written statement and gave it due consideration in determining whether she violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Now Therefore Be It Resolved that the Commission concludes that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommends that the Commissioner of Education impose a penalty of reprimand;

Be it Further Resolved that the Commission authorizes staff to disseminate the decision in this matter.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was authorized by the School Ethics Commission at its public meeting on September 27, 2000. Commissioner Rosalind Frisch voted against this decision.

Lisa James-Beavers, Executive Director