
MAC DARA F.X. LYDEN

V.

**PATRICIA WALSH,
MIDDLETOWN TWP. BOARD OF ED.
MIDDLESEX COUNTY**

:
:
:
:
:
:
:
:
:
:

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No.: C16-01

**DECISION DISMISSING FOR
NONCOMPLIANCE WITH
N.J.S.A. 18A:12-29(a)**

PROCEDURAL HISTORY

This matter arises from a complaint that Middletown Township Board of Education (Board) member Patricia Walsh violated School Ethics Act (Act) N.J.S.A. 18A:12-21 *et seq.*, when she allegedly voted against payment of attorney's fees for Board Member Thomas F. Stokes whom she had charged with simple assault. Complainant also alleges that Ms. Walsh received free legal advice regarding this matter from the Board Attorney whose partners run or operate a special education school to which the district sends students. Complainant further claims that Ms. Walsh received money from an individual who was in litigation against the Board and failed to disclose receipt on her disclosure form. Specifically, Complainant alleges that Ms. Walsh violated N.J.S.A. 18A:12-24(c).

Complainant later informed the School Ethics Commission that he did not file the present action against Ms. Walsh and that Thomas Stokes wrote the complaint and had the complainant sign it.

In her answer, Ms. Walsh asserted that Complainant's action against her is fraudulent and that Mr. Stokes paid Mr. Lyden to file the complaint. Ms. Walsh further argues that this complaint is a bogus attempt by Mr. Stokes to damage her credibility in a pending civil suit that Mr. Stokes brought against her. Ms. Walsh denies having violated any provision of the Act and urges the Commission to sanction Mr. Stokes.

The Commission invited the parties to attend the Commission's meeting on September 25, 2001, to present witnesses and testimony to aid in the Commission's investigation. Ms. Walsh appeared with counsel, David B. Rubin, Esq. Mr. Mac Dara F.X. Lyden did not appear. The Commission also heard testimony from Thomas F. Stokes, at its request.

During its public meeting of September 25, 2001, the Commission voted to table the matter. At its October 23, 2001 public meeting the Commission tabled the matter again. The Commission adopted this decision at its meeting on November 27, 2001, dismissing the complaint for its failure to comply with N.J.S.A. 18A:12-29(a).

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted, testimony and its investigation.

Patricia Walsh has been a member of the Middletown Township Board of Education since 1996 and is currently serving as President of the Board. On or about March 27, 1997, Ms. Walsh filed criminal charges in Little Silver Municipal Court, Monmouth County New Jersey against Mr. Stokes in connection with an incident at a public workshop meeting of the Board. At that time, Mr. Stokes was also a Board Member.

Ms. Walsh contacted the Kalac law firm for assistance in the aforementioned criminal matter. The firm regularly provided legal services to the Board. Ms. Walsh claimed that a conflict of interest was presented by her membership on the Board and the firm referred her to James Fagan, Esq., a criminal law practitioner. Ms. Walsh later retained Mr. Fagan to act as an independent prosecutor. Complainant contends that Ms. Walsh received free legal assistance from the Kalac firm. The Kalac firm owns a special education school to which the district sends students.

The criminal charges against Mr. Stokes were ultimately dismissed. Subsequently, at the Board's August 27, 1997 meeting, Ms. Walsh voted against the approval of a \$36,000.00 bill for attorney's fees, including payment for Mr. Stokes' defense in the criminal matter. Ms. Walsh claimed that it was routine for her to vote against the approval of the Board's attorney fees and that she did not specifically object to payment of defense costs for Mr. Stokes.

Following the dismissal of the above-referenced criminal matter, Mr. Stokes commenced a civil lawsuit against Ms. Walsh. Due to her inability to personally fund her defense, Ms. Walsh accepted at least \$25,000.00 from Cathy J. Sullivan, as of the time the complaint was filed. Ms. Walsh characterized the transaction as a loan from a good friend. Although there was no promissory note written and no interest assessed, Ms. Walsh did not report her receipt of the money on her annual Financial Disclosure Statement.

Complainant filed the present action on March 26, 2001 claiming that Ms. Walsh's conduct constituted a violation of N.J.S.A. 18A:12-24(c) of the Act.

Complainant later wrote to the School Ethics Commission that Mr. Stokes drafted the complaint and that Mr. Stokes paid him to file it.

ANALYSIS

Complainant urges the Commission to find that Ms. Walsh violated N.J.S.A. 18A:12-24(c). N.J.S.A. 18A:12-26(a)(1) is also pertinent to the allegation that Ms. Walsh failed to disclose her receipt of the money that she received from Ms. Sullivan.

While the allegations in the present complaint present interesting issues, the Commission cannot ignore the circumstances in which this matter came before the Commission.

First, Complainant claims that Mr. Stokes wrote the complaint and paid him to file it. During the Commission's hearing of this matter at its September 25, 2001 meeting, Mr. Stokes testified, under oath, that he did not file the complaint because he was advised by his attorney that, because he had a pending civil law suit against Ms. Walsh in the Superior Court of New Jersey - Law Division, he should not sign the complaint. He admits that he asked Mr. Lyden to file the complaint, however, he testified that he gave Mr. Lyden money only to cover the legal fees associated with filing the complaint.

N.J.S.A. 18A:12-29(a) provides in pertinent part:

Any person including a member of the commission, may file a complaint alleging a violation of the provision of this act by submitting it, on a form prescribed by the commission, to the commission. No complaint shall be accepted by the commission unless it has been signed under oath by the complainant...

Pursuant to the foregoing provision, the Commission requires that all complainants sign a certification under oath averring that the facts contained therein are true and based on personal knowledge and belief. Mr. Lyden signed the certification on the complaint in question.

It appears that the present complaint contains the allegations of Mr. Stokes. It was not based on the personal knowledge of the complainant, Mr. Lyden. Accordingly, the complaint before this Commission should be dismissed for failure to provide the proper certification. It is also clear, based on the complainant's submission, that the complainant has no desire to pursue this matter any further. Therefore, the Commission dismisses the complaint as not complying with N.J.S.A. 18A:12-29(a).

DECISION

For the foregoing reasons, the Commission dismisses the complaint against Ms. Walsh for failure to comply with N.J.S.A. 18A:12-29(a).

This decision is a final decision of an administrative agency. Therefore, the parties may appeal only to the Superior Court--Appellate Division.

Paul C. Garbarini, Chairperson

Resolution Adopting Decision – C16-01

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the information obtained from its investigation; and

Whereas, the Commission finds that the complaint did not comply with N.J.S.A. 18A:12-29(a) and therefore dismisses the charges against Ms. Walsh; and

Whereas, the Commission has reviewed the draft decision and agrees with the decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on November 27, 2001.

Lisa James-Beavers
Executive Director