

<b>JOSEPH C. KOLODZIEJ</b>	:	
V.	:	<b>BEFORE THE SCHOOL ETHICS COMMISSION</b>
	:	
	:	<b>Docket No.: C27-01</b>
<b>KENNETH KURNATH, CLIFTON BOARD OF EDUCATION PASSAIC COUNTY</b>	:	
	:	<b>DECISION</b>
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint that Clifton School Board (Board) member Kenneth Kurnath violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* when he allegedly attended the 2000 New Jersey Education Association (NJEA) convention, without Board authorization and submitted a request for reimbursement of his expenses, but refused to provide receipts. Specifically, complainant alleges that Mr. Kurnath violated N.J.S.A. 18A:12-24(b) and (c).

In his answer, Mr. Kurnath asserted that for the past 12 years he has been a Board representative at the NJEA convention and that over that period the Board reimbursed him for his expenses, without requiring him to receive permission to attend or provide receipts for his expenditures. Mr. Kurnath claimed that the Board has only required him to submit itemized expense reports for such trips. Nonetheless, Mr. Kurnath stated that he returned the aforementioned reimbursement to prevent any further controversy. He denied having violated any provision of the Act.

The Commission invited the parties to attend the Commission’s meeting on August 28, 2001, to present witnesses and testimony to aid in the Commission’s investigation. Both parties were present. Anthony Alfano, Esq., represented Mr. Kurnath and Mr. Kolodziej appeared *pro se*. The Commission also heard testimony from Karen Perkins, Board Business Administrator and Anthony V. D’Elia, Board Attorney.

During its public meeting of September 25, 2001, the Commission voted to find no probable cause to credit the allegation in the complaint. The Commission directed its staff to prepare a decision for adoption at the next meeting. The Commission adopted this decision at its meeting on October 23, 2001.

**FACTS**

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

Kenneth Kurnath has been a board member on the Clifton Board of Education for 13 years. Mr. Kurnath has attended NJEA conventions as a Board representative for 12 years and submitted itemized reports regarding his expenses there. In the past, the Board has approved itemized reports from Mr. Kurnath and has reimbursed him for those expenses, without receipts.

Board policy no. 9250 states that out-of-pocket expenses of Board members must be approved by a motion of the Board and that such expenses must be for the Board member only, and be itemized and documented. Board policy no. 9240 states that the Board may send representatives to educational conventions as they shall decide upon each year.

When Mr. Kurnath attended the N.J.E.A. convention in November 2000, he submitted a request for reimbursement of his expenses upon his return, without providing receipts. Motions to reimburse Mr. Kurnath for his trip were presented to the Board at its December 13, 2000 and January 10, 2001 meetings. The Board ultimately voted to reimburse Mr. Kurnath. Complainant objected to the Board's decision claiming that Board policy requires submission of receipts when requesting reimbursement. Mr. Kurnath abstained from the December 2000 vote and was not present for the January 2001 vote.

After consultation with the Board's attorney, however, Mr. Kurnath returned the money at the Board's February 28, 2001 meeting. Mr. Kurnath further informed the Board that in the future he would submit receipts when requesting reimbursement for expenses.

## **ANALYSIS**

Complainant urges the Commission to find that Mr. Kurnath violated N.J.S.A. 18A:12-24(b) and (c).

N.J.S.A. 18A:12-24 (b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

As a Board member in the Clifton School District, Mr. Kurnath is considered a school official under N.J.S.A. 18A:12-24(b) and prohibited from attempting to obtain unwarranted privileges or advantages for himself using his position as a Board member. Complainant cites two Board policies which demonstrate that Mr. Kurnath received unwarranted privileges in violation of N.J.S.A. 18A:12-24(b).

Board policy 9250 reads:

The members of the Clifton Board of Education shall receive no remuneration from services on the board.

The Board members may receive reimbursement for expenses in accordance with Board policy.

...[The Board] recognizes that from time to time Board members will incur out-of-pocket expenses in the service and at the direction of the Board. Such expenses must be approved by a motion of the Board either in advance or at the meeting immediately following the expenditure or receipt of the bill. Such expenses shall be for the Board member only, and shall be itemized and documented.

While the aforementioned requires documentation of expenses, the Board waived its right to require receipts by its approval of Mr. Kurnath's itemized statement. Complainant voted to approve Mr. Kurnath's itemized statement of expenses in 1999, which was his first year as a Board member. Although complainant explained that he believed that Mr. Kurnath had submitted receipts when he voted in favor of his reimbursement, his approval meant that Mr. Kurnath had no notice that his request for reimbursement would be challenged in 2000.

Board Policy 9240 provides in pertinent part:

...the Board may send representatives to such educational conferences, workshops , conventions and seminars as they shall decide upon each year...The Board member shall be reimbursed for costs of attending such conferences, workshops, seminars, and conventions in accordance with Board Policy 9250.

Board Policy 9240 does not contain specific language which mandates that a Board member's attendance at educational events be pre-approved.

Based on the foregoing information, there are insufficient facts to demonstrate that Mr. Kurnath attempted to use his official position as a Board member to secure unwarranted privileges pursuant to N.J.S.A. 18A:12-24(b). The facts show that Mr. Kurnath adhered to Board practice, if not policy. He went to the NJEA convention as he had over the past 12 years and returned requesting reimbursement, providing an itemized report of his expenses. The Board approved Mr. Kurnath's expense report and granted his request for reimbursement. Further, Mr. Kurnath returned the reimbursement in an attempt to eliminate any appearance of misconduct.

Therefore, the Commission cannot conclude that Mr. Kurnath in any way used his position to secure unwarranted privileges for himself. Thus, it finds no probable cause that Mr. Kurnath violated N.J.S.A. 18A:12-24(b).

Complainant next alleges that Mr. Kurnath violated N.J.S.A. 18A:12-24(c), which provides, in pertinent part:

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.

It is arguable that Mr. Kurnath had a direct or indirect financial involvement in his reimbursement request that might reasonably be expected to impair his objectivity. However, it is clear that Mr. Kurnath never participated in any votes having to do with his reimbursement request. His discussion on the topic was limited to defending himself against complainant's allegation that his conduct in submitting the request for reimbursement was somehow improper. Therefore, the Commission does not find that he acted in a matter in which he had a financial involvement and finds no probable cause that Mr. Kurnath violated N.J.S.A. 18A:12-24(c).

## **DECISION**

For the foregoing reasons, the Commission finds no probable cause that Mr. Kurnath violated the School Ethics Act and dismisses the complaint against him.

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

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision – C27-01**

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, at its meeting of September 25, 2001, the Commission found no probable cause to credit the allegations that Respondent violated the School Ethics Act N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against him; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; 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.

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Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on October 23, 2001.

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Lisa James-Beavers  
Executive Director