

<b>THOMAS PETRILLO and</b>	:	<b>BEFORE THE SCHOOL</b>
<b>EILEEN COSTELLO</b>	:	<b>ETHICS COMMISSION</b>
	:	
<b>v.</b>	:	
	:	<b>Docket No.: C02-02</b>
<b>DONALD ALEXANDER,</b>	:	
<b><i>PEMBERTON TWP. BOARD OF ED.</i></b>	:	
<b><i>BURLINGTON COUNTY</i></b>	:	<b>DECISION</b>
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed by Thomas Petrillo and Eileen Costello on March 4, 2002 alleging that Pemberton Township Board of Education member Donald Alexander violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, they allege that Mr. Alexander made remarks that were abusive of the other board members at a public meeting, which violated N.J.S.A. 18A:12-24.1(a) and (g), the Code of Ethics for School Board members.

Mr. Alexander filed an answer pursuant to an extension on May 1, 2002 denying that he committed any violation of the School Ethics Act.

The Commission notified the parties that it would discuss the complaint at its May 28, 2002 meeting and invited the parties to appear. Mr. Petrillo appeared represented by Stan Gregory, Esq. and Mr. Alexander appeared represented by Michael Wietrzychowski, Esq.

At its public meeting on May 28, 2002, the Commission found no probable cause and dismissed the complaint against Mr. Alexander.

**STATEMENT OF FACTS**

The following facts have been discerned from the pleadings, minutes, testimony and the Commission’s investigation.

Mr. Petrillo, Ms. Costello and Mr. Alexander are current members of the Pemberton Township Board of Education. On February 12, 2002, at a public meeting of the Board, the issue was the superintendent’s recommendation to deny tenure to an African-American female who had been employed as a Supervisor in the special education department. The supervisor had received notice from the Board that she was going to be discussed at the meeting. In response, she asked that she be heard in the public meeting rather than in executive session.

During the course of the meeting, many members of the public and several school personnel arose to speak in support of the supervisor. After almost two hours of testimony by character witnesses for the supervisor, the Board President asked board members if they had any questions about the issues raised. After several minutes of questioning, the Board President asked the board members if they had any comments. Mr. Alexander then made known his opposition to the superintendent's recommendation. After Mr. Alexander commented on the many members of the public that came to testify on the supervisor's behalf and challenged the reason given for the failure to offer her tenure, he made the following statement, to which complainants now object:

Board members, I believe it is clear that members of this board see no place for minorities in the senior echelon of this educational community, and we constantly see minorities being turned away.

What is happening here is nothing new. The reason I'm here tonight I believe is because actions being taken tonight lack logical content. And why it lacks logical content is because it's based on misinformation, not the facts.

You know my term. I'm going to use it again. I'm going to use it tonight. Institutional racism. That's what I see here. I see economic venting. You couldn't hang her from a tree, so you are hanging her economically. Hate crime. This is a hate crime that we are involved in tonight, and I swear that we should go into court and we're going to.

One board member then said, "I will not listen to this." Another member called to her to try to keep her from walking out of the meeting. Mr. Alexander continued:

This is why you have to defy logic, and they are based on foundations of hate, revenge and racism, and I recommend an independent evaluator to review this case based on the policies, practices and procedures in accordance with public law.

I apologize to Miss \_\_\_\_\_, and I think she should be compensated for her inconvenience, and I think she will be in front of a judge.

Lastly, I think we should grant her tenure, if she will accept it after being treated so poorly by this district.

Lastly, fellow board members, I take a look at the facts—I recommend that you take a look at the facts and set aside your personal agendas, and I recommend that she receive full tenure.

Several board members, including the complainants, voiced their resentment and objection to Mr. Alexander's statements. A motion to reappoint with tenure was made and the board members voted yes or no, most with explanations of why they were doing so. The motion failed by a vote of three in favor and five against. Another motion was made to have the administration look into creating a position similar to that of an EEO officer directly reportable

to the superintendent to keep track of what is going on with the special education programs. After the discussion of that motion and the unanimous vote in favor of the motion, the meeting concluded.

## ANALYSIS

The issue before the Commission is whether Mr. Alexander violated the School Ethics Act. The complainants have alleged that Mr. Alexander made unsubstantiated and hateful remarks accusing their fellow board members of being racist and voting to satisfy their hidden agendas. They allege that such conduct violates N.J.S.A. 18A:12-24.1(b), (f), and (g). The complainants also referred to provisions of a new code of ethics under consideration, which the Commission cannot consider because it is not part of the Code of Ethics for School Board Members and therefore, not part of the School Ethics Act.

The first allegation is that Mr. Alexander's comments and conduct violated N.J.S.A. 18A:12-24.1(b), which provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

There is no information to suggest that Mr. Alexander's "decision" to support the tenure of the special education supervisor was not in terms of the educational welfare of children. In light of the testimony of the public as to how the supervisor had helped their children, one could argue that Mr. Alexander was indeed seeking to maintain public school that meet the individual needs of all children by his support of the supervisor. Section b of the Code of Ethics does not address the manner by which a board member goes about expressing the reasons for his decision or trying to persuade other board members to vote in the way that he did. Therefore, the provision is inapplicable to the complainants' claim of hateful and unsubstantiated remarks by Mr. Alexander. For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Mr. Alexander violated 18A:12-24.1(b).

The complainants next allege that Mr. Alexander's remarks and conduct violated 18A:12-24.1(f), which provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The Commission does not discern the applicability of this section to the facts. There is no allegation that Mr. Alexander was acting other than independently at the board meeting when he made his comments. Similarly, there is no information to show that he was using the schools for personal gain or for the gain of friends. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Alexander violated 18A:12-24.1(f).

Although it was not alleged in the complaint, complainants' attorney at the hearing before the Commission also argued that Mr. Alexander's remarks and conduct violated 18A:12-24.1(g), which provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The complainants allege that Mr. Alexander did not provide accurate information when he stated that institutional racism was behind the recommendation not to reappoint and tenure the supervisor. Complainants' attorney acknowledged that board members, as elected officials, have a first amendment right to speak freely on issues regarding the district. Indeed, they have a duty to do so. The issue is whether Mr. Alexander went too far in his statements to exceed his rights to speak freely. Complainants' attorney likened Mr. Alexander's statements to the person who yells "Fire" in a crowded theatre when there is no fire. No one would dispute that there is no first amendment right to do so where incitement to riot or stampede or other dangers may be the result. The Commission does not find the circumstances to be analogous.

It is clear that some of Mr. Alexander's fellow board members were offended by his remarks, one so much that she walked out of the meeting. However, there is no indication that chaos resulted. Mr. Alexander prefaced his remarks by stating his firm belief that someone with so many years of service should be tenured. He went on to voice his belief that racism was behind the decision not to tenure. The board members spoke in turn in response to the motion to reappoint and Mr. Alexander's comments and refuted his charges of racism being in any way involved in their vote to support the recommendation. Although a frequent attendee of the meetings, who also happens to be employed as a secretary to the supervisor of the employee in question, testified that the Board had lost control, the transcript of the meeting indicates otherwise. The Commission does not doubt that Mr. Alexander's comments made a tense meeting even more tense, but the Board President appears to have kept control and allowed each board member who desired to speak in response to Mr. Alexander to do so. Mr. Alexander was appropriately instructed not to respond to them. There was never a shouting match, a break in the meeting or a call for order. The meeting proceeded to its natural conclusion and even ended in a unanimous motion for the superintendent to investigate the creation of a new position, which the employee in question may be able to fill. Thus, the Commission does not find Mr. Alexander's comments to have been designed to incite riot or chaos as argued.

Although the Commission does not find that Mr. Alexander's comments were the equivalent of yelling "Fire!," it must still address the issue of whether Mr. Alexander violated his duty to "provide accurate information" as set forth in 18A:12-24.1(g). In interpreting the Code of Ethics, the Commission has to be mindful that finding a violation in some circumstances may have a chilling effect on the ability of board members to state their feelings when debating

issues. Was Mr. Alexander purporting to state fact when he called the failure to tenure the supervisor “an economic lynching” or “a hate crime?” The Commission does not believe that he was. While Mr. Alexander did purport to state fact when he said that the failure to tenure was due to institutional racism, the Commission does not know whether the statement was accurate. Mr. Alexander testified that he had raised the issue of a dearth of minorities in supervisory positions in closed session meetings prior to the meeting in question and the issue was not addressed. Mr. Petrillo testified that the Board is ready to adopt a resolution to investigate allegations of racism to determine whether there is any truth to the assertion. Thus, until the completion of the investigation, the Board itself does not know whether the statement had any accuracy. Contrary to the argument of complainants’ counsel, the Commission does not believe that it would have been appropriate for Mr. Alexander to produce statistics or other proof of his assertion at the February meeting, nor was he in a position to do so. Thus, the Commission cannot find that Mr. Alexander violated his duty to provide accurate information under the Code of Ethics.

The Commission concludes that Mr. Alexander had a First Amendment right to voice his concerns and beliefs at the February meeting. Although he could have used less “loaded” language, especially in light of the actual definitions of a “lynching” and “hate crime,” Mr. Alexander’s conduct did not violate 18A:12-24.1(g) of the Code of Ethics. The Commission finds that if it were to so rule, then board members’ debate would be chilled by their not knowing when their statements or opinions might be challenged in another forum when they lack statistical facts to support the statements or opinions. The Commission does not believe that the public would ultimately benefit from finding a violation under these circumstances. Therefore, the Commission finds no probable cause that Mr. Alexander violated 18A:12-24.1(g).

## **DECISION**

For all of the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that Mr. Alexander violated N.J.S.A. 18A:12-24.1(b), (f) or (g) and dismisses the complaint of Mr. Petrillo and Mrs. Costello.

This decision constitutes final agency action and thus is directly appealable to the Appellate Division of the Superior Court.

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision -- C02-02**

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

Whereas, the Commission found no probable cause to credit the allegations in the complaint and directed staff to draft a decision so stating; and

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 decision was duly adopted by the School Ethics Commission at its public meeting on May 28, 2002.

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Lisa James-Beavers  
Executive Director