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<b>IN THE MATTER</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
<b>OF</b>	:	
	:	<b>Docket No.: C03-01</b>
<b>HUGH GALLAGHER,</b>	:	
<b>KEANSBURG BOARD OF EDUCATION</b>	:	
<b>MONMOUTH COUNTY</b>	:	<b>DECISION</b>

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### PROCEDURAL HISTORY

This matter arises from a complaint that former Keansburg Borough Board of Education (Board) member Hugh Gallagher violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.*, when he and other board members approached an employee of a board vendor and asked him for a \$1,000.00 contribution to a board member's political campaign for borough council. The complainant further alleged that Mr. Gallagher and the other members indicated that all school district vendors were expected to contribute and that there was an implied threat that his company's contract would not be renewed without the contribution.

In his answer, Mr. Gallagher admitted to being present when the complainant was asked to contribute \$1,000.00 to the board member's borough council campaign but denied that the contribution was in any way connected to Aramark Services' contract with the Board. He denied having violated any provision of the Act.

The Commission advised Mr. Gallagher that it would discuss this matter at its meeting of June 26, 2001. He and the other members of the Board who were also named in separate complaints were advised of their right to bring counsel and witnesses. Mr. Gallagher appeared with the four other board members who were alleged to be present at the meeting at which the solicitation took place. The Commission heard testimony from each of the members of the Board. At its public meeting on June 26, 2001, the Commission found probable cause to credit the allegations that Mr. Gallagher violated N.J.S.A. 18A:12-24(b) and (e) of the Act. The Commission found that there were material facts in dispute as to whether the solicitation was related to the Board of Education and whether there was any veiled threat to Aramark Services' contract with the Board and forwarded the matter to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 6A:28-1.12(a).

Administrative Law Judge John Tassini scheduled this matter for a status conference on April 29, 2002. All parties were required to appear or have a representative present. Mr. Gallagher neither appeared nor sent counsel to represent him. Judge Tassini allowed time for Mr. Gallagher to respond as to why he failed to appear, but no explanation was ever received. The Office of Administrative Law returned the file to the Commission for disposition.

On June 25, 2002, the Commission found Mr. Gallagher in violation of N.J.S.A. 18A:12-24(b) and (e) and recommended a penalty of censure in light of the fact that Mr. Gallagher was no longer on the Board and therefore could not be removed from office. The Commission adopted this decision at its meeting on July 23, 2002, finding Mr. Gallagher in violation of N.J.S.A. 18A:12-24(b) and (e) and recommending that the Commissioner of Education impose a penalty of censure.

## **FACTS**

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

In April 2000, Complainant William Noe was an employee of Aramark Services Corporation assigned as Facilities Manager of the custodial, maintenance and grounds crew at the Keansburg School District. The Keansburg Board contracts with Aramark Services to provide custodial, maintenance and grounds work.

On or about April 29, 2000, Mr. Noe was approached on the street by Keansburg Board of Education member Judy Ferraro and invited into an office building. Mr. Noe was with his then eight-year-old son at the time. Once inside, he met with Keansburg Board members Hugh Gallagher, Thomas Keelen and Delores Bartram. Board member William Manoes was also in the building, but was determined not to be within hearing range of the discussion. Keansburg Board member Thomas Keelen asked Mr. Noe for a \$1000.00 contribution for his political campaign in the presence of Board members Gallagher, Ferraro and Bartram. Thomas Keelen was seeking election to borough council in May 2000. At the time of the meeting in question, the board members were in the building working on Mr. Keelen's borough council campaign.

In the presence of and with the tacit approval of Mr. Gallagher, Mr. Keelen told Mr. Noe that he did not care how Mr. Noe got the money and that "things are remembered when your contract comes up," which Mr. Noe felt was a threat that Aramark's contract might not be renewed if Aramark did not donate to the campaign.

Mr. Gallagher and Ms. Ferraro were still Board members as of May 2000. Mr. Keelen served as Board President and opened the reorganization meeting of May 2, 2000.

Mr. Noe was told by his superiors at Aramark that Aramark would only give to both sides in the borough council election. Mr. Noe relayed this information in a telephone conversation with Mr. Gallagher that Mr. Noe tape-recorded. Mr. Gallagher refused a donation that would be given to both sides in the borough council election. During the telephone conversation, Mr. Gallagher stated that the requested donation was not for the school board election; however, he also expressed worry that the money was not coming in for Mr. Keelen's borough council election. Mr. Gallagher told Mr. Noe that his political action committee to which the above Board members belong, which supports candidates for borough council and the school board, attaches a dollar amount to every company with whom they do business. He also stated that he did not like vendors to take money from the taxpayers and take it out of town. Aramark did not

have a contract with the borough, only with the School District. Mr. Gallagher admitted that he maintains a list of vendors from whom to seek donations for members of his political action committee.

Mr. Noe filed the present action on February 14, 2001. Aramark assigned Mr. Noe to another location after he filed the School Ethics Commission complaint. Aramark still has a contract with the Keansburg Board of Education.

## **ANALYSIS**

The Commission found probable cause to credit the allegations that the above conduct of Mr. Gallagher violated N.J.S.A. 18A:12-24(b) and (e) of the School Ethics Act.

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.

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

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties.

Mr. Gallagher solicited a donation from a Board vendor for his political action committee to support Mr. Keelen's campaign for borough council while he was still a member of the Board. The Commission believes that the approach of Mr. Gallagher and the other board members was coercive and an abuse of their official position. Mr. Noe's company, Aramark, had a contract with the Board and there were five board members present in the building who were working for the same political action committee when the solicitation was made. Mr. Noe was aware that the five of them could have the power to cancel Aramark's contract and he was therefore justified in feeling threatened. Therefore, the Commission concludes that Mr. Gallagher attempted to use his position to secure unwarranted privileges for himself and for others in violation of N.J.S.A. 18A:12-24(b) of the School Ethics Act.

Regarding the Commission's finding of probable cause that Mr. Gallagher violated N.J.S.A. 18A:12-24(e), the Commission finds that Mr. Gallagher and the other board members

made the solicitation for a campaign donation with an indication that such donations are expected from vendors who do business with the Board. Mr. Gallagher's remarks in the subsequent telephone conversation, while not threatening, made it clear that vendors were expected to donate to campaigns in a way that was commensurate with the amount of money that they made from the District. Mr. Gallagher confirmed in his testimony before the Commission that he attached a dollar figure to the vendors based on the size of their contract with the Board. N.J.S.A. 18A:12-24(e) provides that a solicitation for a contribution to the campaign of an announced candidate for political office is only a violation if the school official has knowledge or reason to believe that the campaign contribution was given with the intent to influence the school official in the discharge of his official duties. In the present case, Mr. Gallagher indicated by his actions with the other board members that his vote with respect to Aramark's contract could be affected by Mr. Noe's response to the solicitation for a donation. The Commission concludes that this is the type of conduct that N.J.S.A. 18A:12-24(e) was designed to prevent.

Mr. Gallagher did not appear at a proceeding before the Office of Administrative Law to contest the Commission's finding of probable cause and therefore the Commission deems the facts in its probable cause decision to be admitted. Thus, the Commission finds that Mr. Gallagher solicited a campaign contribution with the knowledge that it would affect him in his official duties in violation of N.J.S.A. 18A:12-24(e) of the School Ethics Act.

## **DECISION**

For the foregoing reasons, the Commission concludes that Mr. Gallagher attempted to use his position to secure unwarranted privileges for himself and others in violation of N.J.S.A. 18A:12-24(b) and solicited a campaign contribution from a vendor with knowledge that it would affect him in his official duties in violation of N.J.S.A. 18A:12-24(e). The Commission believes that these offenses are serious enough to warrant removal from office; however, Mr. Gallagher is no longer a member of the Board. Therefore, the Commission recommends that the Commissioner of Education impose the highest sanction available against a former Board member, which is a censure. In this way, the public will be informed of his violation by the reading of a public resolution by the Board.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter 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.

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Paul C. Garbarini, Chairperson

### **Resolution Adopting Decision – C03-01**

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 June 25, 2002, the Commission found that Hugh Gallagher violated N.J.S.A. 18A:12-24(b) and (e) of the Act and recommended that the Commissioner of Education impose a sanction of censure; and

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

Whereas, at its meeting of July 23, 2002, the Commission 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 July 23, 2002.

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Lisa James-Beavers  
Executive Director