

Superintendent neither has an office in the same building as Mr. Masol, nor does the Superintendent perform evaluations or reviews of the Attendance Officer or negotiate contracts effecting the Attendance Officer's position. All Attendance Officers are evaluated by their respective building principals.

At the Board's December 17, 2001 meeting, Mrs. Masol voted in favor of awarding a merit bonus to the Superintendent. Prior to the Board's vote on the merit bonus to the Superintendent, the Board Secretary asked the Board Solicitor whether a board member could participate in the vote regarding the Superintendent's employment if the board member's spouse was employed by the board as an Attendance Officer. In correspondence dated February 7, 2001, the Solicitor responded to the Board Secretary's inquiry and advised that a board member whose spouse is an Attendance Officer could participate in any employment issues regarding the Superintendent such as performance reviews, contract negotiations or promotions since the Superintendent has no direct supervision over the Attendance Officer. Mrs. Masol's decision to participate in the aforementioned vote was based on the advice of the Board Solicitor.

The superintendent in Barnegat began employment on July 1, 2001. Although complainant alleged that Mrs. Masol and her husband had a personal relationship with the Superintendent before his appointment, the Commission was not able to discern any facts to support that allegation. Similarly, complainant's suggestion that Mrs. Masol voted in favor of the Superintendent's bonus in consideration of the Superintendent's prior recommendation that Mr. Masol be changed from a 10-month to 12-month employee was not supported because the vote to extend Mr. Masol's employment year occurred on August 28, 2000 -- before the current superintendent began employment with the District.

ANALYSIS

Complainant alleges that Mrs. Masol's vote on the merit bonus to the Superintendent violated N.J.S.A. 18A:12-24(c) because her husband is under the supervision of the Superintendent. 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.

The issue is whether Mrs. Masol's participation in the vote on a merit bonus for the Superintendent of the district when her husband is an Attendance Officer in the district, constitutes a matter in which she or her spouse has a "financial involvement" that might reasonably be expected to impair her objectivity or personal involvement that is or creates some benefit to Mrs. Masol or her spouse. The complainant alleges that the Commission prohibited a

board member in similar circumstances from voting in Public Advisory Opinion A10-00 (June 27, 2000). In A10-00, one issue was whether a board member whose spouse is employed in the same school district as a teacher might participate in discussions and votes involving employment issues regarding the superintendent and the other administrators in the district. The Commission advised that there is an opportunity for the spouse's employment to be affected in terms of the way the administrators treat and evaluate the spouse, although perhaps not in terms of affecting the spouse's contractually determined salary. The Commission so concluded because the district was a one building k-8 school district. Thus, the Commission advised that the board member and his spouse would have at least a personal involvement in the employment issues of the supervising administrators that could constitute a benefit to them. The Commission further advised that the board member and the spouse might also have a financial involvement in other issues involving the employment of his spouse's supervisors that might reasonably be expected to impair his or her objectivity if increments are based on performance evaluations. In answering A10-00, the Commission cited to a previous case, School Ethics Commission v. Gunning, C15-93, (September 22, 1994), wherein it concluded that a board member violated N.J.S.A. 18A:12-24(c) of the Act when he voted on the superintendent's raise when his spouse was employed as a confidential secretary to the superintendent.

The facts in A10-00 and Gunning can be distinguished from the present case. The Commission advised that board member could not vote on employment issues involving the superintendent in A10-00 because in a one school k-8 district all of the administrators are the spouse's supervisors and they all know and work with the spouse on a daily basis. In Gunning, the superintendent directly supervised and evaluated the board member's spouse. In the present case, Mr. Masol is not supervised or evaluated by the superintendent and he has no contact with the superintendent because he is located in a different building. Thus, there is no opportunity for Mr. Masol to be treated any more favorably by the superintendent resulting from any vote of Mrs. Masol. Therefore, the Commission cannot discern any financial involvement with the superintendent's merit bonus that might reasonably be expected to impair her objectivity or personal involvement that constitutes a benefit. The Commission therefore finds no probable cause to credit the allegation that Mrs. Masol violated N.J.S.A. 18A:12-24.1(c).

Complainant also alleges that Mrs. Masol and her husband had a relationship with the Superintendent before his appointment. Complainant further suggests that the Superintendent's recommendation that Mr. Masol be changed from a 10-month to 12-month employee was in exchange for Mrs. Masol's vote for the superintendent to receive a merit bonus. The Commission does not find any facts to support these allegations since the Superintendent did not begin his employment with the District until July 1, 2001 and that the Superintendent's recommendation to extend Mr. Masol's employment year took place on August 28, 2000. The Commission therefore finds no probable cause to credit them.

DECISION

For all of the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that Mrs. Masol violated the Act and dismisses the complaint against her.

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 -- C04-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the Commission's investigation; and

Whereas, the Commission found no probable cause to credit the allegations in the complaint; 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.

Paul C. Garbarini, Chairperson

I hereby certify that this decision was duly adopted by the School Ethics Commission at its public meeting on June 25, 2002.

Lisa James-Beavers
Executive Director