

IN THE MATTER OF ALPHONSE A. DeMEO <i>BELLEVILLE BOARD OF</i> <i>EDUCATION</i> <i>WARREN COUNTY</i>	: : : : : : : : :	BEFORE THE SCHOOL ETHICS COMMISSION Docket No. C09-04 DECISION
--	---	---

PROCEDURAL HISTORY

Complainant, Mario J. Pettineo, Jr., filed a complaint against Alphonse A. DeMeo, on February 17, 2004, alleging that Mr. DeMeo violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e) of the School Ethics Act (Act) when he endorsed a candidate for the Belleville Municipal Council through a mailing where the envelopes and letterhead bore his official title as President of the Belleville Board of Education (Board). On April 1, 2004, Greg Vitali, Esq., filed an answer on behalf of Mr. DeMeo after a ten-day extension of the time to file an answer denying any violation of the Act.

On May 18, 2004, the Commission notified both parties that the complaint had been scheduled for a hearing at the June 22, 2004 Commission meeting, and the parties were advised of their right to appear and present witnesses. The Commission heard the complaint at the June 22, 2004 Commission meeting. The complainant did not appear. The respondent appeared with his attorney and testified before the Commission. At the July 22, 2004 meeting, the Commission voted to find probable cause to credit the allegations that Mr. DeMeo violated N.J.S.A. 18A:12-24(b). However, the Commission voted to find no probable cause and dismissed the allegations that Mr. DeMeo violated N.J.S.A. 18A:12-24.1(e).

The Commission found that the material facts were not in dispute with respect to the issue upon which it found probable cause and, therefore, the Commission advised Mr. Vitali that it would decide the matter on the basis of written submissions. Mr. Vitali was invited to provide a written submission to the Commission within 30 days of the date of the probable cause decision to set forth why the Commission should not find Mr. DeMeo in violation of N.J.S.A. 18A:12-24(b) for mailing letters to members of the community endorsing a candidate for the Belleville Municipal Council with letterhead and envelopes that bore his official title as President of the Board in a manner that could mislead the recipients. Mr. Vitali was also told that his written submission should include the respondent's position on an appropriate sanction should the Commission determine that the Act was violated. Mr. Vitali submitted a timely response on August 6, 2004, arguing that Mr. DeMeo did not prepare the envelopes or the return address stamp for the mailings, that the contents of the letter do not suggest that the Board of Education is endorsing Mr. Kennedy, and that the letterhead provided factually accurate information that was not misleading. Since he concluded that Mr. DeMeo should not be found in

violation of N.J.S.A. 18A:12-24(b), he did not provide a position on the appropriate sanction should the Commission determine that the Act was violated.

FACTS

The Commission was able to discern the following facts based on the pleadings, documents submitted, the testimony presented, and the submission of Mr. Vitali in response to the Commission's probable cause determination.

At all times relevant to this complaint, Mr. DeMeo was President of the Board. He served as a Board member for six years and was not reelected to the Board in April 2004. Mr. DeMeo is also a part-time assistant public defender in the Belleville Municipal Court. During the November 2003 elections for the Belleville Municipal Council, Mr. DeMeo publicly endorsed a candidate named Kevin Kennedy through a mailing to the Belleville community. Mr. DeMeo did not prepare the envelopes or the return address stamps. The envelope bore Mr. DeMeo's official title, "President, Board of Education" under his name followed by his law office address. The letterhead of the letter that was sent bore the words "From the Desk of" in a light font. Those words were above and to the left of Mr. DeMeo's name "Alphonse A. DeMeo, Esq." The words "Board of Education President" appeared below the name in a regular size black font similar to the font in the letter. The fourth paragraph in the body of the letter follows:

"As president of the Board of Education, I believe that Kevin will be able to work with the school district to solve some of the common problems shared by the Board of Education and the Council. Over the last year, the working relationship between the Board and the Council has improved dramatically. Based on my conversations and experience with the current candidates, it is my feeling that Kevin is the best candidate to continue this spirit of cooperation, or as Kevin put it '...finding common solutions for common problems'"

During the November 2003 elections, other Board members publicly endorsed the opposition candidate through the mailing of political flyers. On the political flyers, the Board members were listed along with other community leaders as endorsing the opposition candidate. There were also pictures on one of the flyers of two Board members along with four other pictures of various community leaders. The flyers contained short quotes from Board members along with quotes from various community leaders. The Board members' quotes were about the candidate and made no reference to the Board, such as the following quote by a Board member, "Tom Giblein represents the future of Essex County, not only Belleville but all of Essex County will benefit once he is in office."

During the June 22, 2004 Commission meeting, a Commission member asked Mr. DeMeo to explain his purpose in identifying his official position as Board president in the mailings. Mr. DeMeo responded that after the other Board members endorsed the opposing candidate and stated that they were Board members, Kevin Kennedy came to

him and asked him to issue something in response as a Board member. He issued the mailing upon the request of Mr. Kennedy. Mr. DeMeo also testified that there are two other individuals in Belleville with the same name and he used his official position as Board President to distinguish himself from the other two individuals.

Mr. Kennedy was elected to the Belleville Municipal Council in November 2003. Councilman Fuscaldo proposed an ordinance in December 2003 to raise the salaries of the Assistant Prosecutor, the Public Defender, and the Assistant Public Defender. On January 13, 2004, in the absence of Mr. Fuscaldo, Mr. Escott moved to adopt the salary ordinance and Kevin Kennedy voted in favor of the motion. The motion failed. Mr. Kennedy and Mr. Fuscaldo both certify that Mr. DeMeo never approached them for a raise.

ANALYSIS

The Commission found probable cause that Mr. DeMeo violated N.J.S.A. 18A:12-24(b) of the Act when he mailed letters to members of the community endorsing a candidate for the Belleville Municipal Council with letterhead and envelopes that bore his official title as President of the Board in a manner that could mislead the recipients.

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;

Since the allegations did not involve a situation involving employment or Mr. DeMeo's immediate family, the Commission considered whether Mr. DeMeo used his official position as a Board member to secure unwarranted privileges or advantages for himself or for Mr. Kennedy, the candidate he endorsed. The Commission notes that Mr. Kennedy voted in favor of an ordinance to raise the salary of the Assistant Public Defender, a position held by Mr. DeMeo. However, Mr. Kennedy certified that Mr. DeMeo never approached him for a raise and the motion never passed. Thus, there is no evidence that Mr. DeMeo used his position to secure an unwarranted privilege or advantage for himself. The Commission then considered whether Mr. DeMeo used his official position as a Board member to secure unwarranted privileges or advantages for Mr. Kennedy.

Mr. DeMeo admitted that he endorsed Mr. Kennedy in the November 2003 elections through a mailing to the Belleville community. Mr. Vitali argues, in his response to the Commission's probable cause determination, that Mr. DeMeo's endorsement of a political candidate is clearly an activity protected by the First Amendment of the Constitution. The Commission notes that Mr. DeMeo had a right to endorse Mr. Kennedy. However, in that endorsement, he must abide by the School Ethics Act; N.J.S.A. 18A:12-24(b) restricts a Board member from using his official position to secure unwarranted privileges, advantages or employment for others.

Mr. DeMeo testified that Mr. Kennedy came to him and asked for his endorsement in response to the endorsement of Mr. Kennedy's opponent by two other members of the Board. Mr. DeMeo indicated that he issued his endorsement and used his title as President of the Board in response to Mr. Kennedy's request. The Commission finds that Mr. DeMeo intended to use and did use his official position as President of the Board as a favor to Mr. Kennedy when he endorsed him in the November 2003 elections.

The Commission next determined whether Mr. DeMeo's use of his position through an endorsement secured an unwarranted privilege or advantage for Mr. Kennedy. The endorsement consisted of a mailing that included an envelope with an enclosed letter. The letterhead included the words "From the Desk of," which were aligned to the left and above Mr. DeMeo's name. The words were in a light, mostly white font, which was thinly outlined in black. Those words faded into the background, while the words "Belleville Board of Education President" stood out since they were centered and directly under Mr. DeMeo's name, in black ink and in the same font as the body of the letter. This type of a format, which emphasized Mr. DeMeo's official title of Board President, could reasonably lead a member of the public to believe that Mr. DeMeo was acting in his official position as Board President when he endorsed Mr. Kennedy in the body of the letter, especially given the nature of the endorsement and the return address on the envelope. When Mr. DeMeo in his official capacity as Board President, as opposed to his individual capacity, endorsed Mr. Kennedy, he attempted to use his official position to secure an unwarranted advantage for Mr. Kennedy in the election.

Mr. Vitali argues that the contents of the letter are written in the first person and thus no one could reasonably believe that the Board was endorsing Mr. Kennedy. Given the contents of the body of the letter, even though the letter is written in the first person, someone could reasonably believe that it is written in Mr. DeMeo's capacity as Board President, and in that capacity, he was endorsing Mr. Kennedy.

Mr. Vitali also argues that the letterhead was not misleading since it provided factually accurate information. He further argues that the recipient should not have been misled since Mr. DeMeo signed the letter in his individual capacity with no notable mention of the Belleville Board of Education. The Commission agrees that the information in the letterhead was factually correct. However, the presentation of the information in the letterhead emphasized Mr. DeMeo's role as Board President. That coupled with the content of the letter and the nature of the return address was such that someone reading the letter could reasonably believe that the letter was written in Mr. DeMeo's official capacity as Board President. The fact that there was no notation of the Belleville Board of Education beneath Mr. DeMeo's signature does not compensate for the combined effect of the letterhead, the content of the letter and the nature of the return address on the envelope.

Mr. Vitali argues that, in the body of the letter, Mr. DeMeo identifies himself as the President of the Board for the purpose of informing the reader that he had the opportunity, in his capacity as Board President, to witness Mr. Kennedy in action first

hand. However, the statements in the letter do not provide any information regarding Mr. DeMeo's first hand experience, as Board President, with Mr. Kennedy. In the body of the letter, Mr. DeMeo states that he believes "that Kevin (Mr. Kennedy) will be able to work with the school district to solve some of the common problems shared by the Board of Education and the Council." He goes on to note that the working relationship between the Board and the Council has improved over the last year and that it was his feeling that "Kevin is the best candidate to continue this spirit of cooperation..." These statements relay his belief that Mr. Kennedy would work well with the Board and continue the recently evolved cooperation between the Board and Council. Because these statements refer directly to the Board in relationship to the Council and Mr. Kennedy's abilities in relation to the Board should he become a council member, someone reading the letter could reasonably believe that Mr. DeMeo's comments were made in his official capacity as Board President.

Mr. Vitali further argues that, since Mr. DeMeo did not prepare the envelopes or the return address stamp, he should not be found in violation of the Act on the basis of the actions of others. The envelope contains a return address that identifies Mr. DeMeo as an attorney and under his name the words "President, Board of Education" appear. A general member of the public may be more inclined to open an envelope containing a letter, which indicates that it is from the Board President rather than a political flyer from various community leaders. Even if Mr. DeMeo did not prepare the envelopes or the return address stamp, it was his intention for the endorsement to go out as a mailing. He prepared and signed the letter for the purpose of a mailing. It is immaterial whether he personally inserted the letters into the envelope and affixed the return address.

The totality of the endorsement including the design of the letterhead, the content of the letter, and the nature of the return address on the envelope, could lead someone reading the letter to reasonably assume that the endorsement was made by Mr. DeMeo in his official capacity as President of the Board. Therefore, the Commission finds that Mr. DeMeo attempted to use his position to give Mr. Kennedy an unwarranted privilege and an advantage in the November 2003 elections.

DECISION

For the reasons discussed above, the Commission finds that Alphonse A. DeMeo violated N.J.S.A. 18A:12-24(b) when he endorsed a candidate for the Belleville Municipal Council through a mailing of letters to members of the Belleville community where the letterhead, envelope and contents of the letter could mislead recipients to believe that the endorsement was made in Mr. DeMeo's official capacity as Board President. The Commission recommends that the Commissioner of Education impose a penalty of reprimand.

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 13 days from the date on which the Commission's decision was

mailed to the parties, Mr. Vitali 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.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C09-04

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

Whereas, at its meeting of August 24, 2004 the Commission found that Alphonse A. DeMeo violated N.J.S.A. 18A:12-24(b) of the Act and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, at its meeting of September 30, 2004, the Commission reviewed a draft decision prepared by its staff 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 30, 2004.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C09-04