

KEVIN J. HANZEL and CHERYL J. HANZEL	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
V.	:	
	:	Docket No.: C10-00
R. GRAY ACHEE,	:	
<i>WOODSTOWN-PILESGROVE REGIONAL,</i>	:	AMENDED DECISION
<i>SALEM COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a Complaint filed by Kevin and Cheryl Hanzel against Woodstown-Pilesgrove Regional Board of Education Member R. Gray Achee for violating the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* Specifically, the complainants allege that Mr. Achee violated N.J.S.A. 18A:12-24(a), (b), (c) and (d) of the School Ethics Act by selling t-shirts through his company to the Woodstown-Pilesgrove Regional Board of Education (Board) and its coaches and staff.

Mr. Achee filed an answer stating that his company, T-Shirt Supply, had sold goods to the Board since 1990. He stated that he ceased all sales to the Board after being informed that the School Ethics Act prohibited such sales, and that he did not participate in discussions or vote on the payment of outstanding invoices. He denied having committed any violation of the Act.

The parties were invited to attend the Commission’s November 28, 2000 meeting at which their case would be discussed. Mr. Achee appeared on his own behalf. At its public meeting, the Commission determined that there was no probable cause and dismissed the Complaint.

STATEMENT OF FACTS

R. Gray Achee is a member of the Woodstown-Pilesgrove Regional Board of Education, having been elected to a three-year term in April 1998. He is the President and majority owner of Jersey National Corporation, T/A T-Shirt Supply, which is a wholesale distributor of blank t-shirts, golf shirts and fleece goods.

T-Shirt Supply has sold goods to the Board since 1990. It also sold goods to 20 other schools in school districts in New Jersey, Pennsylvania and Delaware.

On September 17, 1999, T-Shirt Supply delivered and invoiced 156 printed t-shirts. The order had been placed through T-Shirt Supply’s order entry personnel as is customary. The second order was placed by the Woodstown Director of Athletics (WDA) in

November 1999. He informed Mr. Achee's wife, who works in order entry, that he needed to purchase sport bags for the swim team to use while the locker facilities were being renovated. He said that he had viewed catalogues, but could not find a bag for under \$35.00, which was his limit. The WDA selected a sport bag that cost \$17.90, exclusive of shipping and printing, from a manufacturer with whom the company did not deal on a regular basis. Mr. Achee gave his wife permission to purchase the bags C.O.D. The WDA placed the order for the bags with T-Shirt Supply on November 29, 1999. On November 30, 1999, Mr. Achee sent an employee to Thorofare, New Jersey to purchase and pick up the sport bags from the manufacturer. Mr. Achee had a screen-printing contractor print the bags as instructed by the WDA. Mr. Achee delivered the bags to the Woodstown High School on December 6, 1999. The order was invoiced to the Board on the same date at a price of \$20.00 per bag to cover his costs. The Board presented him with a voucher, which Mr. Achee signed and returned on December 28, 1999.

On December 8, 1999, the Board Business Administrator called Mr. Achee regarding the September invoice. The Business Administrator told Mr. Achee that his interpretation of the School Ethics Act was that a board member could not conduct business with the school district. Mr. Achee told him the reasons that he disagreed. However, at the conclusion of the discussion, Mr. Achee instructed his staff that they could not take any orders placed by a Board school official. Mr. Achee informed the Business Administrator that a second order had been placed and told him that his company would not accept any future orders.

The complaint alleges that Mr. Achee violated the Act in connection with the sale of t-shirts by T-Shirt Supply to the Board and to coaches. The question before the Commission is whether any of the conduct of Mr. Achee violated the School Ethics Act.

ANALYSIS

Complainants allege that Mr. Achee violated N.J.S.A. 18A:12-24(a), (b), (c) and (d) of the School Ethics Act, by virtue of the two sales to the school district. The Commission will discuss these in turn.

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

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

The Commission addressed a similar issue in its April 28, 1998 decision, *I/M/O Larry Martin*, C18-97. Mr. Martin used his company to help his school secure the best price for computers that they intended to purchase. Mr. Martin did not make any profit on the deal and he acted to purchase the computers only when the distributor would not sell the computers directly to the school and the PTA. The Commission concluded that Mr. Martin

did not engage in a business or transaction that was in substantial conflict with the discharge of his duties as a Board member. However, the Commission noted that perceived entanglements that ensue when a board does business with a board member made the board's subsequent decision not to make purchases through a board member again sound judgment. The Commission reasoned that there would always be questions about whether the board member gained financially or otherwise from a transaction with the board, despite his or her good intentions.

Mr. Achee did not offer services or otherwise solicit business from employees of the school district as board member. He priced the items at his cost. Although the total for both transactions was \$1537.08, neither transaction exceeded \$1000.00.

The Commission finds, on the basis of the foregoing facts, that there is insufficient information from which to find probable cause that Mr. Achee engaged in a business or transaction in substantial conflict with the proper discharge of his duties in the public interest in violation of N.J.S.A. 18A:12-24(a).

N.J.S.A. 18A:12-24(b) prohibits a school official from using or attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others. As set forth above, the Commission has not found, and the complainant did not allege, that Mr. Achee in any way used his status as a board member to solicit the business transactions in question. He owned a business that had provided goods to the Board prior to his becoming a board member and the employees of the school district approached him as someone who could quickly and inexpensively provide the goods that they needed. Based on the foregoing, the Commission finds no probable cause that Mr. Achee violated N.J.S.A. 18A:12-24(b).

N.J.S.A. 18A:12-24(c) sets forth:

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 Complainants have not provided any information to show that Mr. Achee acted in his official capacity as a board member with regard to the sales in question. Mr. Achee testified that he had been to the new board member training and believed that he would not be in violation of the Act if he did not act in his official capacity when any matter concerning his business came before the Board. Therefore, he did not participate in discussions or vote on the two invoices when they came before the Board at the January 2000 and February 2000 meetings. Since he did not act in his official capacity regarding

these matters, the Commission finds no probable cause that Mr. Achee violated N.J.S.A. 18A:12-24(c).

Last, the complainants allege that Mr. Achee violated N.J.S.A. 18A:12-24(d). This subsection prohibits a school official from undertaking any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. As set forth above, the Commission discourages school officials from doing any business with the Board that will ultimately require the Board to determine whether to pay the bill for the goods or services of that school official. Therefore, the decision of Mr. Achee to have his company cease all business dealings with the district during his term on the Board is a good one. However, the Commission does not have sufficient information from which to conclude that the goods that Mr. Achee's company provided to the Board prejudiced or could reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. Because Mr. Achee will not be providing goods to the Board in the future, there is no need to determine whether such sales could result in a reasonable expectation that Mr. Achee's independence of judgment might be prejudiced. For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Mr. Achee violated N.J.S.A. 18A:12-24(d).

DECISION

For the foregoing reasons, the School Ethics Commission finds no probable cause to credit the allegations in the complaint and dismisses the charges against Respondent R. Gray Achee.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C10-00

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the testimony of Mr. Achee in executive session; and

Whereas, at its meeting of November 28, 2000, 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 dismisses 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 on December 19, 2000 and directs its staff to notify all parties to this action of the Commission's decision herein.

Now Therefore Be It Further Resolved that the Commission hereby adopts this amended decision after having been notified by the complainant that he had not previously served on the Woodstown-Pilesgrove Regional Board of Education as was previously set forth in the December 19, 2000 decision.

Paul C. Garbarini, Chairperson

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

Lisa James-Beavers
Executive Director