
EDWARD H. VICKNER, JR.

V.

**EDGAR ALDEN DUNHAM, IV,
GARY M. KEEL, MARY LOU KRAMLI,
CANDACE MUELLER, KENNETH
PIESLAK, JONATHAN SAVAGE,
ROBERT SCHROEDER
EWING TOWNSHIP BOARD OF EDUCATION
MERCER COUNTY**

**SCHOOL ETHICS
COMMISSION**

DECISION

DOCKET NO. C18-03

PROCEDURAL HISTORY

This complaint arises from the allegation by Dr. Edward H. Vickner, Jr. that the above-named Board members violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, Dr. Vickner alleges that the above-named Board members violated the Act, N.J.S.A. 18A:12-24(d), and the Code of Ethics for School Board Members (Code of Ethics), N.J.S.A. 18A:12-24.1(f), by voting to permit Vince Ordini to run for election in the Board's April 2003 elections when they had signed a petition of nomination in support of his candidacy.

David P. Schroth, Esquire, filed an answer on behalf of the above-named Board members, with the exception of Edgar Alden Dunham, IV, who filed an answer separately. The above-named Board members assert that pursuant to N.J.S.A. 19:60-7, they were required to act upon Dr. Vickner's objection to Mr. Ordini's petition of nomination. They also assert that they consulted with the Board attorney before deciding to permit Mr. Ordini to run for election to the Board and were advised that there was no law to prohibit his candidacy. The Board members deny that they violated N.J.S.A. 18A:12-24(d) of the Act or N.J.S.A. 18A:12-24.1(f) of the Code of Ethics. Mr. Dunham counterclaims that the complaint is frivolous and requests that the Commission impose a sanction of \$500.00. Mr. Schroth asserts that the complaint is defamatory and motivated by malice. He requests attorney's fees and costs.

The Commission invited the parties to attend its July 22, 2003 meeting to present witnesses and testimony to aid in the Commission's investigation. Mr. Dunham appeared, *pro se*. David Schroth, Esq. represented the other Board members. The Commission also heard testimony from Dr. Faye Ball, member of the Board; and Jeff Belz, Board attorney. After hearing testimony, the Commission voted at its public meeting to find no probable cause to credit the allegation that the above-named Board members violated N.J.S.A. 18A:12-24(d) of the Act. The Commission further found that the Board members did not violate the Code of Ethics N.J.S.A. 18A:12-24.1(f). It did not find that the complaint was frivolous.

FACTS

The Commission found the following facts to be undisputed.

Edgar Alden Dunham, IV, Dr. Gary M. Keel, Mary Lou Kramli, Jonathan Savage, Candace Mueller, Kenneth Pieslak and H. Robert Schroeder were members of the Ewing Township Board of Education at all times relevant to the complaint. Dr. Vickner is a former member of the Board.

In *In the Matter of Vince Ordini*, SEC Docket # C11-02/C20-02 (October 29, 2002) the Commission recommended to the Commissioner of Education that Vince Ordini be removed from the Board for fraudulently obtaining an advisory opinion from the Commission. The Commissioner of Education concurred with the Commission's recommended penalty in his decision of December 3, 2002.

Mr. Ordini filed a petition of nomination for the Board's April 2003 elections. The petition, dated January 28, 2003, was signed by the above-named Board members and indicated at the bottom that it was prepared and filed for the sole purpose of endorsing the candidate in order to secure election as a member of the Board. The Board members signed the petition prior to a Board meeting. On February 27, 2003, Dr. Vickner and Board member, Faye Ball, filed objections to the petition. Upon the advice of the Board attorney, Jeff Belz, Esquire, the Board followed procedure under N.J.S.A. 19:60-7, which provides:

Whenever written objection to a petition of nomination for election to a board of education is made and timely filed with the secretary of the board of education, the board of education shall file its determination of the objection on or before the 44th day preceding the school election.

The 44th day was Saturday, March 1, 2003. On Saturday, March 1, 2003, the Board held a special meeting regarding Mr. Ordini's candidacy for the Board's April 2003 elections. Dr. Vickner attended the meeting and addressed the Board. He questioned whether the Board should be permitted to allow Mr. Ordini to run for re-election when, in his belief, Mr. Ordini's petition was for the un-expired term from which he had been removed by the Commissioner of Education. Dr. Vickner did not challenge the validity of the petition. Mr. Belz advised the Board that there was no legal basis to prohibit Mr. Ordini from running in the election. The Board ultimately denied Dr. Vickner's objection to Mr. Ordini's candidacy and adopted a resolution which set forth the following findings:

A) The Commissioner's decision only requires the removal of Mr. Ordini from the Board as of December 3, 2002 and does not state anything regarding a prohibition against running for his unexpired term or sitting as a member of the Board in the future;

B) There is no basis in statute, case law or other legal authority to reject Mr. Ordini's petition for nomination.

At the Board's March 24, 2003 meeting, the above-named Board members voted to permit Mr. Ordini to run for election to the Board.

As of the Commission's hearing of this matter, the Board had not posted minutes from Board meetings where Mr. Ordini was removed, where the resolution of removal was read or the March 1, 2003 meeting where the objections to the petition were discussed.

ANALYSIS

Dr. Vickner alleges that the above-named Board members violated N.J.S.A. 18A:12-24(d) of the Act and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics. Section (d) of the Act provides:

No school official shall undertake 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.

The Commission notes that the Board sought the legal counsel of its attorney, Jeff Belz, Esquire, before voting. Mr. Belz recommended that although Mr. Ordini was removed by the Commissioner of Education in December 2002, there was no legal basis to prohibit Mr. Ordini from running for the Board's April 2003 election. The Board adopted a resolution to that effect. The Commission reaches the same conclusion. There is no language in the Commissioner's decision to indicate that Mr. Ordini could not run in subsequent Board elections. Moreover, there is no information to show that Mr. Ordini failed to meet the statutory requirements for candidacy under N.J.S.A. 18A:12-1. Despite their signing of Mr. Ordini's petition, it is not reasonable to expect that the Board members would be prejudiced in their independence of judgment by approving Mr. Ordini's candidacy, when there is no basis to prohibit him from running. The Commission, therefore, finds that there is no probable cause to credit the allegation that the above-named Board members violated N.J.S.A. 18A:12-24(d).

Complainants also allege that the above-named Board members violated N.J.S.A. 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 notes that when alleging a violation under the Code of Ethics, the complainant has the burden of proving factually that a violation exists pursuant to N.J.S.A. 18A:12-29. For the Commission to find a violation under N.J.S.A. 18A:12-24.1(f), there

must be some evidence that the Board members were biased in their decision. Dr. Vickner argues that the Board members endorsed Mr. Ordini's candidacy and surrendered their independence of judgment when they voted to permit him to run in the Board election. However, there is no information to demonstrate that the Board supported Mr. Ordini beyond signing his petition. It has also been shown that the Board based its decision on the recommendation of the Board attorney, Mr. Belz, who advised the Board that there was no legal basis to deny Mr. Ordini the opportunity to run in the election. There is, therefore, insufficient information to show that the Board members surrendered their independence of judgement or used the schools for the gain of friends.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Edgar Alden Dunham, IV, Dr. Gary M. Keel, Mary Lou Kramli, Jonathan Savage, Candace Mueller, Kenneth Pieslak or H. Robert Schroeder violated N.J.S.A. 18A:12-24(d) of the Act or that they violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics and dismisses the complaint against them.

REQUEST FOR SANCTIONS

Mr. Dunham counterclaimed that the complaint is frivolous and urges the Commission to impose a sanction of \$500.00 upon Dr. Vickner pursuant to N.J.S.A. 18A:12-29(e). Mr. Schroth requests that the Commission impose attorney's fees and costs. Attorney's fees and costs are not available under the School Ethics Act.

The standard for finding a complaint frivolous is as follows:

In order to find that a complaint, counterclaim, cross-claim or defense of the non-prevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The non-prevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

Based on the information, pleadings and testimony provided, the Commission finds that Dr. Vickner had a genuine concern that the above-named Board members had a conflict of interest in signing the petition and then permitting Mr. Ordini to run in the Board elections. Although the Commission did not find probable cause to credit the allegation under N.J.S.A. 18A:12-24(d) of the Act or N.J.S.A. 18A:12-24.1(f) of the Code of Ethics, it cannot find that the allegation in the complaint were made in bad faith, solely for the purpose of harassment, delay or malicious injury. Further, the allegations

did have a reasonable basis in law in that the Board members signing the petition of Mr. Ordini prior to a meeting gave the appearance of favoritism. The Commission also notes the evidence at the hearing showing that the Board had not posted minutes from Board meetings where Mr. Ordini was removed, where the resolution of removal was read or the March 1, 2003 meeting where the objections to the petition were discussed, further leading to the appearance of bias in favor of Mr. Ordini. Therefore, the Commission does not find the complaint to be frivolous and declines to impose sanctions.

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

Paul C. Garbarini, Chairperson

Resolution Adopting Decision – C18-03

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, testimony and the information obtained from its investigation; and

Whereas, at its meeting of July 22, 2003, the Commission found no probable cause to credit the allegation that Edgar Alden Dunham, IV, Dr. Gary M. Keel, Mary Lou Kramli, Jonathan Savage, Candace Mueller, Kenneth Pieslak and H. Robert Schroeder violated N.J.S.A. 18A:12-24(d) or the Code of Ethics for School Board Members N.J.S.A. 18A:12-24.1(f) and therefore dismissed the charges against them; 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 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 Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on August 26, 2003. *

Lisa James-Beavers
Executive Director

*Commissioner Rosalind R. Frisch voted "no" on the decision.