

TED DOTY	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
MICHAEL FRIEDBERGER, MICHAEL	:	Docket Number C22-03
PUZIO, STEVE HODES, FRANK	:	
GIARRATANO, ERIC SMITH, SUSAN	:	
SALNY and THOMAS PARCIAK,	:	
<i>ROCKAWAY TOWNSHIP BOARD</i>	:	
<i>OF EDUCATION,</i>	:	
<i>MORRIS COUNTY</i>	:	DECISION
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on April 25, 2003, alleging that Respondents, the Superintendent and six members of the Rockaway Township Park Board of Education (“Board”), violated N.J.S.A. 18A:12-24(b) and (g) of the School Ethics Act (“Act”), for allowing the Rockaway Township Education Association (“RTEA”) to post campaign lawn signs endorsing Board candidates on school-owned property and for failing to have such signs removed.

In their joint answer filed on June 20, 2003, Respondents initially set forth that Dr. Steven Hodes is no longer a party to this matter in that he resigned from the school board on May 15, 2003. Respondents deny that they granted permission for the campaign signs to be placed on school property and attach individual affidavits to corroborate this denial. Further, those Respondents that were notified that the campaign signs were on Board property claim they immediately directed the Board Secretary to remove the signs upon such notification. Respondents further deny that they violated any provision of the Act and that the pleadings fail to state a violation within the School Ethics Act.

Lastly, Respondents affirmatively set forth that Complainant filed a frivolous complaint and seek to have sanctions imposed against him.

At its public meeting on June 24, 2003, the Commission dismissed the complaint finding no probable cause to credit the allegations set forth at N.J.S.A. 18A:12-24(b) and (g). Further, the Commission determined to fine Complainant \$250 for the filing of a frivolous complaint pursuant to N.J.S.A. 18A:12-29 and N.J.S.A. 2A:15-59.1.

## **FACTS**

The Commission was able to discern the following facts based on the pleadings, documents submitted and testimony.

At all times relevant to this complaint, the respondents were members of the Rockaway Township Board of Education. Thomas Parciak was the Superintendent of Schools. Dr. Hodes has since resigned from the Board but was a member at the time of this alleged violation.

Political signs were posted by the Rockaway Township Education Association in support of candidates for the Board of Education on property located on Fleetwood Drive, Rockaway, NJ, in Morris County. This property is owned by the Rockaway Township Schools.

Neither the Board members nor the Superintendent of Schools granted permission to the RTEA authorizing that the political signs be posted on this property.

On April 9, 2003, Complainant notified the Municipal Clerk and the Assistant to the School Business Administrator, Annette Wells, that these political signs were on school property. Ms. Wells advised Complainant that she had spoken with the Municipal Clerk about the signs and advised him that the signs would be removed. Ms. Wells then called a co-president of the Rockaway Township Education Association and directed her to immediately remove and take down all of the signs on public and board-owned property. She was told that they would be removed. As of the date of the school election, April 15, 2003, the signs remained on the school property.

## **ANALYSIS**

Complainant contends that respondents' action or inaction violated N.J.S.A. 18A:12-24(b), which states:

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.

There is no indication that the signs that were placed by the RTEA were placed with permission from Respondents. In fact, based on the affidavits presented, there is no evidence that the Respondent Board members were even aware the political signs were posted. Further, several Board members were not even aware that the signs were posted on Board-owned property. Therefore, the Commission cannot find that the Respondent board members used their official positions to secure unwarranted privileges or advantages for themselves or others.

Further, the Superintendent certified that he did not authorize the RTEA to post signs on Board property and was not aware that they were posted until the present complaint was filed. Thus, there is insufficient evidence to support a conclusion that the Superintendent used his official position to secure unwarranted privileges for him or others in this matter.

N.J.S.A. 18A:12-24(g) provides, in pertinent part, that:

No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves...

This section deals with representation of a person or business before the Board in any proceeding involving the school district. There is no indication in the facts presented that this provision applies to the present matter.

In sum, the Commission finds the record completely devoid of any evidence whatsoever that the Respondents used their official positions to violate either of the above provisions. Moreover, it was the RTEA that posted the signs on school property so the Commission is without evidence that the Respondents took any action in their official capacities to sanction or post the political signs. In fact, Complainant presents no factual evidence linking the board members or Superintendent to the placement or the removal of the signs. Thus, the Commission finds no probable cause to credit the allegations in this complaint and dismisses the charges against the respondents.

## **DECISION ON REQUEST FOR SANCTIONS**

Respondents assert that the complaint is frivolous pursuant to N.J.S.A. 18A:12-29(e), which provides:

If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. The standard for determining whether a complaint is frivolous shall be the same as that provided in... N.J.S.A. 2A:15-59.1.

N.J.S.A. 2A:15-59.1(b) sets forth:

In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing 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 nonprevailing 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.

Pursuant to case law, either prong of section 59.1(b) may be satisfied in order to find that a complaint is frivolous. Fagas v. Scott, 251 N.J. Super 169, 189 (Law Div. 1991). In the present matter, the Commission finds that this complaint meets both prongs of the above test for determining that a complaint is frivolous.

In determining whether a complaint meets the standard set forth at N.J.S.A. 2A:15-59.1(b)(1), the Courts must consider the totality of the circumstances. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 561 (1993); Weed v. Casie Enterprise, 279 N.J. Super. 517, 532 (App. Div. 1995). In considering these circumstances, the Commission does find the allegation was made in bad faith for the purpose of harassment delay or malicious injury, in that the lawn signs were placed by an education association on school property. This action had nothing to do with the Board members or Superintendent named in the complaint. As noted earlier, Complainant was unable to prove that there was any link or permission given by the Board or Superintendent with regard to the signs. Moreover, Complainant has filed seven complaints against various members of the Respondent Board in the past, none of which has resulted in a violation of the Act, and all of which have cost the District time and money to defend. These factors lead to the Commission's conclusion that bad faith is present and Complainant's goal is to harass and injure the Board members and the school administration.

Additionally, with regard to N.J.S.A. 18A:12-24(b) and (g), Complainant knew, or should have known, that the complaint was filed without any reasonable basis in law and could not be supported by a good faith argument for an extension, modification, or reversal of existing law under section 59.1(b)(2). The Act does not govern actions taken by members of local education associations. Thus, complainant presented no basis for naming the Board members and the Superintendent in this matter. He presented no information that the Respondents represented someone before the school district.

Complainant is familiar with the provisions of the School Ethics Act and its procedures. He was advised in two prior decisions, C38-02 and C40-02, that if he continued to file complaints with no merit he could be sanctioned by this Commission. Specifically, in its decision C40-02, the Commission warned that "any further complaint

[Mr. Doty] files will be given greater scrutiny and therefore, he should present more solid evidence if he believes that a violation has been committed.” As noted above, no solid evidence was presented. If anything, Complainant’s prior experience with this Commission means he should have known that there was no reasonable basis for his complaint.

After consideration of the facts and circumstances surrounding this complaint, the Commission determines a fine of \$250.00 to be the appropriate penalty. Mr. Doty was given the opportunity to withdraw his complaint against Respondents at the hearing, when it became obvious to all that the Board members and Superintendent had no involvement with the placement of the signs. The Commission considers seriously all complaints filed before it. The Commission should not, however, be used as a vehicle to make groundless accusations simply to stir up controversy as was done in this instance.

## **DECISION**

Based on the foregoing, the Commission has determined to dismiss this complaint against all Respondents, including Dr. Hodes. Also, for the reasons expressed herein, the Commission finds the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and Orders that the Complainant pay a fine in the amount of \$250.00.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Respectfully submitted,

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Paul C. Garbarini, Chairperson

**Resolution Adopting Decision – C22-03**

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

**Whereas**, at its meeting of July 22, 2003, the Commission found no probable cause to credit the allegations that Michael Friedberger, Michael Puzio, Steven Hodes, Frank Giarratano, Eric Smith, Susan Shanik Salny, and Thomas Parciak violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against them; and

**Whereas**, the Commission finds that the complaint meets the standard set forth in N.J.S.A. 2A:15-59.1 for a frivolous complaint and therefore, believes that a sanction of \$250.00 is appropriate; and

**Whereas**, the Commission directed that its staff prepare a decision consistent with the aforementioned conclusions; and

**Whereas**; the Commission has reviewed the decision and agrees with the decision;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the proposed decision referenced as it decision in this matter and the Complainant is hereby **ORDERED** to pay the Commission a \$250.00 fine for the filing of a frivolous complaint. The Commission 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 it public meeting on August 26, 2003.\*

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Lisa James-Beavers, Executive Director

\*Rosalind Frisch voted No on this decision.

(PCG/LJB/PSC/C22-03)