

DR. JOSEPH T. ATALLO,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
V.	:	
	:	Docket No.: C34-03
GREGORY G. JOHNSON, ESQ.	:	
<i>PATERSON BOARD OF EDUCATION,</i>	:	DECISION
<i>PASSAIC COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint alleging that Paterson employee Gregory Johnson violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* when he sent a memorandum to State District Superintendent Dr. Edwin Duroy and all board members except Dr. Atallo regarding the status of a case filed against Dr. Joseph Atallo by Board President Juan Santiago. The memorandum was dated January 21, 2003. Specifically, complainant alleges that the respondent violated N.J.A.C. 6A:28-1.8 regarding the confidentiality of School Ethics Commission proceedings.

Respondent filed an answer stating that he is not a school official subject to the jurisdiction of the School Ethics Commission. Mr. Johnson stated that he was the special counsel working under the direction of Superintendent Duroy when he sent the memorandum in question to the Superintendent and the Board members. He further added that Dr. Atallo filed a complaint against him with the District VII Ethics Committee, Supreme Court of New Jersey.

The parties were advised that the Commission would discuss this matter at its January 27, 2004 meeting to address only the issue of whether Mr. Johnson was a school official subject to the jurisdiction of the School Ethics Commission. However, the January 27, 2004 meeting was canceled due to inclement weather and rescheduled for February 3, 2004. At its public meeting, the Commission found that Mr. Johnson was not a school official at the time that he sent the memorandum and therefore it had no jurisdiction to determine whether the allegations in the complaint constituted a violation of the School Ethics Act. The Commission further determined that the complaint was frivolous. The Commission adopted this decision at its meeting of February 24, 2004.

FACTS

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

At all times relevant to this complaint, Dr. Atallo was a member of the Paterson Board of Education. At all times relevant to this complaint, Mr. Johnson was and still is an attorney at law in the State of New Jersey. Mr. Johnson is currently employed by the

City of Paterson School District as “in house counsel” to the Paterson School District, although he maintains a separate practice in Trenton, New Jersey. At the time of the allegations, January 2003, Mr. Johnson was not yet an employee of the Paterson School District. He was a private attorney serving as special counsel to the District.

ANALYSIS

The Commission is authorized to hear complaints against school officials pursuant to N.J.S.A. 18A:12-29 of the School Ethics Act. Thus, the threshold issue before the Commission is whether Gregory Johnson was a school official subject to the jurisdiction of the Commission at the time of the allegations in the complaint.

The School Ethics Act defines “school official” as “a board member, an employee or officer of the New Jersey School Boards Association (NJSBA)... or an administrator.” The Act defines administrator as “any officer, other than a board member, or employee of a local school district” who fits one of three definitions, the first and third of which require an administrator certificate or a supervisor certificate. Since it is clear that Mr. Johnson holds no position that requires a certificate, there is only one definition that may apply, which is one who “holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district.

As set forth above, Mr. Johnson became an employee of the Paterson School District in July 2003, according to his contract. In January 2003, he was a private attorney serving as special counsel to the Paterson School District. Therefore, he does not meet the first part of the definition of “administrator,” which requires first that Mr. Johnson be an employee of a local school district. Mr. Johnson therefore is not an administrator, nor is he a board member or officer or employee of the NJSBA. For the foregoing reasons, the Commission concludes that Gregory Johnson was not a school official pursuant to N.J.S.A. 18A:12-23 of the Act in January 2003, when he wrote the memorandum to Dr. Duroy and the other board members excluding Dr. Atallo.

DECISION

For the foregoing reasons, the School Ethics Commission finds that it has no jurisdiction to hear the complaint against Mr. Johnson and dismisses the complaint against him.

Mr. Johnson has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). 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. [N.J.S.A. 2A:15-59.1]

The Commission is aware of the ongoing disputes between Dr. Atallo and Mr. Johnson, but has insufficient information from which to conclude that the complaint was commenced and continued in bad faith to harass or injure Mr. Johnson. However, the Commission finds that Dr. Atallo knew or should have known that the complaint was without any reasonable basis in law and could not be supported by a good faith argument for extension of existing law. First, when Dr. Atallo filed his complaint against Mr. Johnson with the Commission on October 7, 2003, he was told that board attorneys are generally not school officials and he was asked to justify why the Commission should exercise jurisdiction over Mr. Johnson by letter of October 14, 2003. Dr. Atallo responded by letter of October 30, 2003 that Mr. Johnson is clearly an employee and an administrator covered by the statute. Nevertheless, he proceeded to file a complaint with the District VII Ethics Committee, Supreme Court of New Jersey in December 2003, thus recognizing that the ethical conduct of attorneys is governed by the Supreme Court of New Jersey. When Dr. Atallo filed his complaint with the School Ethics Commission, he had to certify under oath as follows:

3) This matter is not pending in any other court of law or administrative agency. I will advise the School Ethics Commission if I subsequently become aware that any other action is pending.

Dr. Atallo never advised the School Ethics Commission that he had filed such a complaint and was subsequently advised by Mr. Johnson. Dr. Atallo raised the same issues before the District VII Ethics Committee that he did with the Commission. He had certified that he would inform the Commission and he failed to do so. In addition, he never set forth any provision of the School Ethics Act that was violated by Mr. Johnson's conduct. Therefore, Dr. Atallo should have known that there was no reasonable basis in law for an ethics complaint and there was no good faith argument that could be made to support an extension of existing law.

Based on the foregoing, the Commission finds Dr. Atallo's complaint to be frivolous and imposes a sanction of \$250.00.

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 - C34-03

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

Whereas, at its meeting of February 3, 2004, the Commission concluded that it had no jurisdiction to consider the allegations that Respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against him; and

Whereas, the Commission determined at that time that the complaint was frivolous; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; 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 its decision in this matter on February 24, 2004 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 adopted by the School Ethics Commission at its public meeting on February 24, 2004.

Lisa James-Beavers
Executive Director