

JENNIFER DRESSEL	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
AMY SPEIZER	:	Docket No. C10-07
MONROE TOWNSHIP	:	
BOARD OF EDUCATION	:	DECISION
MIDDLESEX COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 5, 2007 by Jennifer Dressel alleging that Amy Speizer, a member of the Monroe Township Board of Education (Board) in Middlesex County, violated N.J.S.A. 18A:12-24(c) of the prohibited acts section of the Act and N.J.S.A. 18A:12-24.1(e) and (g) of the code of ethics for school board members. After the Commission granted her an extension, the respondent, through her attorney, Kerri A. Wright, Esquire, filed an answer. The parties were invited to appear at the Commission’s April 1, 2008 meeting to present testimony. The complainant did not attend the meeting. The respondent attended the meeting with her attorneys, Ms. Wright and Vito A. Gagliardi, Jr., Esquire. The Commission did not have a quorum for the hearing because Commission members Randy Beverly, Sr. and Mark J. Finkelstein recused themselves from the hearing¹. Commission Chairperson, Paul C. Garbarini, appointed a sub-committee consisting of himself and Commission members Robert Bender and Rosalind Frisch to hear testimony. Commission members Randy Beverly Sr. and Mark J. Finkelstein left the room during the testimony. The respondent presented testimony to the sub committee. Upon conclusion of the testimony at the April 1, 2008 meeting, the Commission requested additional documentation from the respondent.

Commission members Robert Copeland and Evern D. Ford who were absent from the April 1, 2008 meeting, and new Commission members Jane Hutchison and Jerome P. Amedeo reviewed audio tapes of the testimony prior to the May 27, 2008 meeting together with all documents submitted. At the May 27, 2008 meeting, the Commission found probable cause to credit the complainant’s allegation in count one that the respondent violated N.J.S.A. 18A:12-24(c). The Commission also found no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24.1(e) and

¹ After a discussion with the Commission, the respondent agreed to present testimony to a sub-committee of the Commission. At the meeting, the Commission called the complainant to discuss the appointment of a sub-committee, but she could not be reached. Two days after the meeting, on April 3, 2008, the Executive Director of the Commission spoke with the complainant and explained that the Commission tried to reach her on April 1, 2008 regarding the appointment of the sub-committee. The Executive Director also explained to her why the sub-committee was necessary. She was informed that other non-conflicted Commission members who were not present at the meeting would be provided with audio tapes of the meeting and that the matter was tabled until the May 2008 Commission meeting.

(g) in counts two and three and dismissed those allegations. On June 18, 2008, the Commission issued its probable cause decision to the respondent who submitted a timely answer through her attorney, Mr. Gagliardi. The Commission considered its probable cause decision and the respondent's answer at its June 22, 2008 meeting and voted to table the matter. At its August 26, 2008 meeting, the Commission voted to find that the respondent's conduct did not violate N.J.S.A. 18A:12-24(c) and adopted this decision.

PLEADINGS

In the first count of the complaint, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24(c) because she engaged the services of the Board attorney to handle her personal legal matters and then did not recuse herself from matters involving the attorney's contract or payments for his services. (Complaint at paragraph 1) The following documents relative to the first count were appended to the complaint: 1) A Mortgage dated December 23, 2005 for the complainant's purchase of property showing she was represented by the Board attorney; 2) A copy of *Advisory Opinion A03-01*, (April 24, 2001); 3) Board minutes for the June 14, 2006 meeting; and 4) A resolution and contract for legal services of the Board attorney. The complainant later submitted the transcript from and minutes for the March 12, 2007 Board meeting.

In the respondent's answer, she admits that she retained the services of the Board attorney for her personal legal matters and that she voted on matters involving the Board's attorney. However, the respondent maintains that this did not impair her objectivity or independence of judgment or create any benefit to her or her immediate family. (Respondent's Answer at paragraph 1) In response to the Commission's request at the April 1, 2008 meeting, the respondent submitted a copy of the June 14, 2006 Board minutes pertaining to the approval of the Board attorney, including attendance sheet, and a copy of the June 13, 2007 Board minutes pertaining to the approval of the Board attorney, including attendance sheet.

In the respondent's submission in response to the Commission's probable cause decision, through her attorney, she argues that she did not violate the Act because she has no financial involvement in the Board Attorney's law practice and never received nor asked for a discount of any kind. (Respondent's submission, at p. 3) She maintains that in order to find a violation of the Act, the Commission must find a financial "involvement," which is defined as "to draw in as a participant." (Id., at p. 5) She argues that "[i]t would be unreasonable to conclude that a Board member's objectivity or independence of judgment would be impaired just because she has a contractual relationship with a party, unless her vote would be expected to financially benefit her in that contractual relationship." (Id., at p. 5) The respondent further argues that she will derive no benefit, whether personal or financial, from voting to pay the Board attorney's fees and she has no personal stake in seeing him approved as Board attorney. (Id., at p. 6)

EVIDENCE

The respondent testified before the Commission at its April 1, 2008 meeting. The respondent admitted that she engaged the Board attorney for personal business. She stated that she used the Board attorney in 2001 and 2005 and never recused herself from voting on his contract or legal bills.² However, the respondent stated that she specifically asked the Board attorney if it was appropriate for her to engage his services and he told her that it would not be a problem. She stated that she was never advised that this would be a violation of the Act. She also stated that other Board members utilized the Board attorney's services and did not recuse themselves from voting on matters involving the attorney. She testified that she was not present at the Board meeting in 2007 when they voted on the Board attorney's contract, although she admitted that in 2006, she did vote on the Board attorney's contract at a Board meeting. In response to a question, the complainant testified that she also retained the Board attorney's firm in 2006 to handle other legal matters for her. She also stated that she never received a discount in his rate.

FINDINGS OF FACT

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

1. The respondent has been a Board member since 1991.
2. The attorney for the Board was counsel for the Board throughout the years that the respondent sat on the Board.
3. Prior to retaining the Board attorney, the respondent asked him whether it would be appropriate for him to represent her, and the Board attorney responded that there would be no problem with him or his firm representing her personally.
4. The respondent retained the Board attorney's firm in 2006 to handle legal matters for her. She did not receive a discount on the Board attorney's services.
5. In 2006, the respondent voted to approve the Board attorney's contract with the Board.

ANALYSIS

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(c), which provides:

² The Commission will not address the respondent's use of the Board attorney for personal business and her failure to recuse herself from matters regarding the Board attorney in 2001 and 2005 because this conduct falls outside of the requirement at N.J.A.C. 6A:28-6.1(b) that all complaints be filed within one year of notice of the alleged violation.

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has 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 complainant contends that, in failing to abstain from matters involving the Board attorney's contract or payments for his services while she retained his firm as her attorney for personal legal matters, the respondent violated N.J.S.A. 18A:12-24(c). The Commission has addressed this issue previously in an advisory opinion and several decisions. In I/M/O Huber, C19-96 (May 27, 1997), the Commission found that a board member did not violate the Act by voting on the appointment of an attorney as board solicitor when that attorney had prepared closing papers for the board member eleven years earlier. The Commission found the fact that the board solicitor had represented the board member eleven years earlier to be insufficient evidence of a financial or a personal involvement that might reasonably be expected to impair the board member's objectivity or independence of judgment. The Commission noted that even if the representation was closer in time to the hiring of the board solicitor, "...such evidence may not amount to the type of involvement that creates a conflict of interest under the statute." (Id., at p. 4) However, the Commission declined to resolve that question due to the nature of the evidence before it.

In *Advisory Opinion A03-01* (April 24, 2001), which was appended to the complaint, the Commission advised that a board member would violate the Act if she were to participate in discussions and vote on the reappointment of the board attorney when the attorney had prepared simple wills and powers of attorney for her and her spouse. The Commission distinguished Huber based on the fact that the representation of the board member in *A03-01* occurred while the board member was in office and while the attorney was serving as board attorney. The Commission reasoned that the attorney's representation of the board member in a personal capacity created a personal involvement that constitutes a benefit to the board member because it created a perception that the board member's desire for the attorney's continued appointment as board solicitor was based on the attorney being her personal counselor and, therefore, the board attorney's opinions may be more favorable to the board member's viewpoint.

In I/M/O Jackson and Davis, C08-02 (November 26, 2002), the Commission held that two board members acted in their official capacity in a matter in which they had a personal involvement that constituted a benefit to them when they participated in discussions, made the motions and voted on the appointment of the board solicitor, when that attorney had provided private legal services to the board members. The Commission found that, in their efforts, the two board members had lobbied for the appointment of the board solicitor. Again the Commission reasoned that the benefit for the board members

was derived from the possible perception that when the law is not clear, the two board members would be more likely to receive legal advice that was favorable to their position.

In I/M/O William Patterson, C11-03 (September 23, 2003), a board member's spouse received legal representation from the solicitor's firm. The Commission recognized that the board solicitor and any partners in his firm share monetary interests derived from the legal services provided by the firm. (Id., at p. 5) The Commission found that the relationship between the firm and the board member's spouse clearly created a benefit to the spouse. (Id., at p. 5) The Commission then reasoned that it would be more probable for the board member to receive legal advice that was favorable to the board member's position when legal questions are addressed by the board. However, in Patterson, the Commission found that the board member did not violate the Act because he provided uncontroverted evidence that he had abstained from the vote on the board solicitor. (Id., at p. 6)

The Commission has carefully reviewed these previous decisions and the advisory opinion and recognizes that, based on these precedents, the respondent in this matter has a personal involvement with the board attorney and his firm so as to implicate N.J.S.A. 18A:12-24(c). However, the statute prohibits personal involvement that "is or creates some benefit" to the school official. While in the preceding matters the Commission found that benefit to exist in the potential for favorable legal advice for the board member, it now departs from this reasoning as it is unduly dependent on the prospective conduct of the attorney, over whom the Commission has no jurisdiction. Rather, the Commission now focuses on the school official and queries whether, in the case before it, the board member's relationship with the attorney is, or was, of such a nature that it "is or creates some benefit" either to her or her family. Here, the attorney was already serving as board counsel when the respondent chose to have him represent her on personal matters. The record further shows that the respondent herein did not receive any discount or reduced rate in the board attorney's fees for services rendered.³ On this record, the Commission can discern no benefit to the respondent or her family for having voted to approve the attorney's contract. Accordingly, the Commission finds that Ms. Speizer did not violate N.J.S.A. 18A:12-24(c) when she voted to approve the Board attorney's contract in 2006 when that attorney represented her in personal matters.

DECISION

For the reasons expressed above, the Commission finds that the respondent's conduct did not violate the School Ethics Act and dismisses the allegations against her.

³ Contrast, I/M/O Jackson and Davis, where respondent Jackson asked the attorney to submit his resume to be considered as board solicitor, notwithstanding that firm resumes had not been previously sought for the position of the board solicitor and no request for proposals had been initiated at the time that the attorney's resume was brought to a board meeting and where the Commission found that the same attorney had represented Ms. Jackson in a prior matter before the School Ethics Commission for which he did not charge her. I/M/O Jackson and Davis at pp. 2-4.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C10-07

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, the Commission finds that the respondent's conduct did not violate N.J.S.A. 18A:12-21 et seq.; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision to dismiss as its final 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 August 26, 2008.*

Joanne Boyle, Executive Director

* Commission members Randy Beverly Sr. and Mark J. Finkelstein abstained on this decision.

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