

SOPHIA LaPORTE	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
RASHUN STEWART, and	:	Docket No. C26-05
CORNELL DAVIS	:	
ATLANTIC CITY	:	DECISION
BOARD OF EDUCATION	:	
ATLANTIC COUNTY	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on June 7, 2005 by Sophia LaPorte, a member of the Atlantic City Board of Education (Board) alleging that Rashun Stewart, Vice President of the Board, and Cornell Davis, President of the Board, violated the School Ethics Act (Act), at N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that respondents violated N.J.S.A. 18A:12-24.1(b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when, on May 27, 2005, without the authority or consent of the Board, they held a press conference and endorsed the then current Mayor of Atlantic City for his reelection campaign and during the endorsement made several remarks that she found to be offensive.

Both respondents requested and were granted, for good cause, an extension to file their answers. Mr. Stewart submitted an answer by way of counsel, Jonathan E. Diego, Esquire, wherein he denied that he held a press conference to endorse the then current Mayor of Atlantic City. He admitted that he appeared at a press conference at the Mayor’s headquarters and that during the press conference he stated that he supported the Mayor for reelection. He denied that he made any offensive remarks. He answered that he never stated directly, or implied indirectly, that the Board supported the Mayor’s reelection. He further answered that he made it clear that he made his statements as a private citizen. He argued that the Act does not deny school board members their First Amendment rights. He then moved to dismiss the complaint and requested the Commission to find the complaint frivolous and impose a penalty pursuant to N.J.S.A. 18A:12-29(e).

Mr. Davis submitted an answer by way of counsel, Mark Pfeffer, Esquire, wherein he denied that he was present at a press conference for the reelection of the then current Mayor of Atlantic City. He admitted that a statement written by him supporting reelection of the Mayor was read at the press conference by someone else. He argued that the statement did not violate the Act because of his right under the First Amendment to make his voice heard. He further argued that nothing in the statement refers to his position on the Board. He then moved to dismiss the complaint.

The Commission invited, but did not require, the parties to attend its August 23, 2005 meeting. The parties were advised of their right to bring counsel and witnesses.

Mr. Stewart's attorney, Mr. Diego, Esq. appeared before the Commission. Neither complainant nor respondents appeared. At its public meeting on August 23, 2005, the Commission voted to find no probable cause that respondents violated N.J.S.A. 18A:12-24.1(b), (c), (d), (e) or (f) of the Code of Ethics. The Commission also voted to find that the complaint was not frivolous.

## **FACTS**

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

At all times relevant to this complaint, complainant was a member of the Board, Mr. Stewart was Vice-President of the Board and Mr. Davis was President of the Board.

On May 27, 2005, the then current Mayor of Atlantic City held a press conference, which Mr. Stewart attended. Mr. Davis did not attend the press conference. At the press conference, Mr. Stewart read a statement signed by Mr. Davis that supported the reelection of the then current Mayor. Mr. Stewart did not identify himself as a Board member and did not indicate that he was at the press conference in his role as a Board member. The statement Mr. Stewart read also did not identify Mr. Davis as a Board member nor did it indicate that the Board supported the reelection of the current Mayor. The statement identified Mr. Davis as a community activist and third ward resident.

## **ANALYSIS**

As an initial matter, the Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members.

Complainant alleges that respondents violated N.J.S.A. 18A:12-24.1(b), (c), (d), (e) and (f) of the Code of Ethics for School Board Members when, on May 27, 2005, without the authority or consent of the Board, they held a press conference and endorsed the then current Mayor of Atlantic City for his reelection campaign and during the endorsement made several remarks that the complainant found to be offensive.

N.J.S.A. 18A:12-24.1(b) provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing.

To prove a violation of N.J.S.A. 18A:12-24.1(b), complainant submits that the offensive remarks made during the May 27, 2005 press conference were inflammatory racially based comments that were detrimental to the education of all children, regardless of racial or ethnic background. The Commission cannot find any evidence that, in

making the remarks, the respondents failed to make decisions in terms of the educational welfare of children or failed to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing. The evidence shows that the respondents' involvement in the press conference was not related to their role or duties as Board members. The evidence shows that the respondents were involved in the press conference in their roles as private citizens. Mr. Stewart did not identify himself as a Board member or state that he was at the press conference to represent the Board. Mr. Davis did not identify himself as a Board member in his statement that was read by Mr. Stewart; instead, he identified himself as a community activist and resident of the third ward.

The Commission notes that the right to engage in political activity is a right protected by the First Amendment. See Petition of Soto, 236 N.J. Super. 303, 314 (1989). The New Jersey Supreme Court said in In re Gaulkin, 69 N.J. 185, 191 (1976) that “[i]t goes without saying that our system of government is predicated upon the premise that every citizen shall have the right to engage in political activity. It is a basic freedom enshrined in the First Amendment.” In Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, (1968), the United States Supreme Court stated that a public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment. While the respondents are not employees of the government, they serve the government as Board members. Here, the respondents were exercising their First Amendment right to engage in political activity and were involved in the press conference in their role as private citizens. Based on the foregoing, the Commission finds no probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24.1(b) when they participated in the May 27, 2005 press conference.

N.J.S.A. 18A:12-24.1(c) provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission can find no evidence to show that respondents' involvement in the May 27, 2005 press conference was in any way related to their role as members of the Board. As noted above, the evidence shows that the respondents' involvement in the press conference was in their role as private citizens and, thus, did not constitute Board action. The Commission can find no evidence to show that the respondents represented that their involvement in the press conference was indicative of the Board's support of the reelection campaign. Therefore, the Commission finds no probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24.1(c) when they participated in the May 27, 2005 press conference.

N.J.S.A. 18A:12-24.1(d) provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

The complainant failed to provide any evidence to show that respondents' involvement in the May 27, 2005 press conference was in any way administering the schools. The press conference was not at the school and respondents were not involved in the day-to-day activities of the school when they participated in the press conference. Therefore, the Commission finds no probable cause to credit the allegation that respondents administered the schools or failed to see that they are well run by participating in the press conference.

N.J.S.A. 18A:12-24.1(e) provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

To prove a violation of N.J.S.A. 18A:12-24.1(e), the complainant submitted that the racially charged remarks made at the May 27, 2005 press conference reflected poorly on the entire Board and tainted the Board with a sense of racism. However, as noted above, the evidence shows that the respondents' involvement in the press conference was in their capacity as private citizens and not in their capacity as members of the Board. There is no evidence to show that respondents put forward that they were involved in the press conference on behalf of the Board. Since respondents participated in the press conference in their role as private citizens, their involvement does not reflect the opinion of the entire Board and could not have compromised the Board. There is no evidence to show that the respondents failed to recognize that authority rests with the Board or that respondents took personal promises or private action that may compromise the Board. Therefore, the Commission finds no probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24.1(e) when they participated in the May 27, 2005 press conference.

N.J.S.A. 18A:12-24.1(f) 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.

As noted above, the respondents were exercising their First Amendment right to engage in political activity and were involved in the press conference in their role as private citizens. While the respondents did engage in political activity by endorsing a candidate for Mayor, this action was unrelated to their roles as Board members and does

not show that their independent judgment regarding Board actions was surrendered to a partisan political group. Furthermore, since their involvement was as private citizens and not as Board members, the Commission cannot find that they used the schools for the gain of friends. Therefore the Commission finds no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24.1(f) when they participated in the May 27, 2005 press conference.

The complainant also argued that it is unethical and a conflict of interest for any Board member to offer an endorsement in a municipal election. However, the complainant did not specify what provision of the Act would be violated by such conduct. The Commission merely reiterates that respondents have a First Amendment right to engage in political activity and were exercising such right when they participated in the press conference.

## **DECISION**

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondents violated the School Ethics Act and dismisses the allegations against them.

## **REQUEST FOR SANCTIONS**

Respondent 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 Commission must 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]

Based on the pleadings, it is clear that the Complainant believed that it is unethical and a conflict of interest for any Board member to offer an endorsement in a municipal election. The Commission can find no evidence that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. Further, the complainant believed that there was a reasonable basis for the complaint because the complainant thought that the respondents' involvement in the press conference implied Board action to the public. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondents' request for sanctions against the complainant.

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 – C26-05**

**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 no probable cause to credit the allegations that Respondents violated 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.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 27, 2005.

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Lisa James-Beavers  
Executive Director

PCG/LJB/MET/ethics/decisions/C26-05