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BRUCE FREILICH	:	ETHICS COMMISSION
	:	
v.	:	
	:	
DIANA ACKERMAN, WILLIAM	:	Docket No. C43-05
BACCHA, MICHAEL GUEST, LYN	:	
MURRAY AND AMANDA SOAMES	:	
WASHINGTON TOWNSHIP	:	DECISION
BOARD OF EDUCATION	:	
BURLINGTON COUNTY	:	
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PROCEDURAL HISTORY

This matter arises from a complaint filed on October 19, 2005 by Bruce Freilich, a member of the Washington Township Board of Education (Board) in Burlington County, alleging that Diana Ackerman, William Baccha, Michael Guest, Lyn Murray and Amanda Soames, all members of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, complainant alleges that respondents violated N.J.S.A. 18A:12-24.1(a), (d), (e), (f) and (g) of the Code of Ethics for School Board Members when, at the October 25, 2004 Board meeting, the respondents voted to approve a payment to Dell Computers for computers and a payment to Allus Services, Inc. for installation of the computers.

In accordance with N.J.S.A. 18A:12-29(b), the respondents were given 20 days of receipt of the Commission’s correspondence, dated October 24, 2005, to provide a written response under oath. Ms. Murray filed a timely answer in which she responded that the complainant failed to state an ethical claim against her upon which relief may be granted. She also argued that the complainant is attempting to micro-manage the purchasing action of the District’s Qualified Purchasing Agent. She asks that the Commission dismiss the complaint and impose the maximum penalty for filing a frivolous complaint. For good cause and with the agreement of the complainant, the remaining respondents were granted an extension of time to file an answer. On December 30, 2005 respondents, Ackerman and Guest, through their attorney, Karl N. McConnell, filed a motion to dismiss the complaint and requested the imposition of sanctions against the complainant. On January 4, 2005, respondents Baccha and Soames, through their attorney, Frank P. Cavallo, Jr., Esquire, filed a motion to dismiss the complaint along with a supporting brief. The respondents also joined co-respondents Ackerman and Guest with respect to their motion for imposition of sanctions against complainant. Respondents Ackerman and Guest also joined co-respondents Baccha and Soames in the legal arguments set forth in the supporting brief.

On January 31, 2006, the complainant filed an answer to the motion to dismiss and amended his complaint to reflect the fact that Ms. Ackerman was on vacation the day of the October 25, 2004 vote. The complainant requested that the Commission hear and decide the complaint on its merits. The complainant argued, “that the main violations of

the ethics code occurred not during the violations of procedure, but rather in the stonewalling after the fact.”

The Commission considered the complaint, answer of respondent Murray, the motions to dismiss with the supporting brief and the response to the motions to dismiss at its February 28, 2006 meeting. During the public portion of the meeting, the Commission granted the motion to dismiss the complaint. 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. In considering whether to grant a motion to dismiss, the Commission reviews the facts in the light most favorable to the complainant.

At all times relevant to the allegations in this complaint, the complainant and the respondents were all members of the Board. Complainant was chair of the Technology Committee. At the October 25, 2004 Board meeting all of the respondents, except Ms. Ackerman who was absent, voted to approve the paying of warrants for bills paid in September 2004 and October 2004. The list of warrants for bills paid in September 2004 and October 2004 included warrants for Allus Services, Inc. for the installation of computers totaling \$5,380 and for Dell Computers for computers totaling \$24,368.

Complainant has certified that neither of these two purchases had been discussed or approved by the Board. At the October 25, 2005 Board meeting, complainant objected to the two warrants and questioned the legality of the un-approved expenditures. There was a discussion and the complainant cautioned the respondents not to vote to approve the warrants because they were for purchases that had never been approved. Complainant certified that Ms. Soames responded that the purchases had been discussed and approved during a summer Board meeting that she claimed complainant missed. Complainant certified that, upon further research, he discovered that he did not miss any meetings during the time period from May 2004 through September 2004. Ms. Murray certified that she did recall that at the May 2004 Board meeting there was a discussion that, if money was available at the end of the year, it would be used for the purchase of computers. Complainant further certified that the details of purchases were well known to respondents, but not to him and fellow Technology Committee member David West. Respondent, Ms. Murray certified that she learned of the proposed warrants at the same time, date and place as the complainant.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of proving factually any violations of the Code of Ethics for School Board Members. The Commission also notes that respondent Ackerman was not at the October 25, 2004 Board meeting, but was on vacation at the time. Therefore,

the Commission grants respondent Ackerman's motion to dismiss the complaint against her.

Complainant alleges that the respondents violated N.J.S.A. 18A:12-24.1(a) of the Code of Ethics for School Board Members when, at the October 25, 2004 Board meeting they voted in the affirmative for the payment of warrants for Allus Services, Inc. and Dell Computers in the absence of a resolution as required by N.J.S.A. 18A:18A-10. N.J.S.A. 18A:12-24.1(a) provides:

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

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

To prove a violation of N.J.S.A. 18A:12-24.1(a), complainant maintains that respondents violated N.J.S.A. 18A:18A-10 when they voted in the affirmative on a matter that did not have prior Board approval. Since the Commission only has jurisdiction over the Act, in order for the Commission to find a violation of N.J.S.A. 18A:18A-10, respondent would have to provide the Commission with a determination from the Commissioner of Education that the respondents violated N.J.S.A. 18A:18A-10. Absent such a determination, the Commission cannot independently find a violation of N.J.S.A. 18A:18A-10. Based on the foregoing, the Commission grants the respondents' motions to dismiss complainant's allegation that respondents violated N.J.S.A. 18A:12-24.1(a).

The complainant alleges that respondents violated N.J.S.A. 18A:12-24.1(d) because all the respondents knew intimately of the computer purchase and installation, but the information was withheld from respondent and fellow Technology Committee member Mr. West. 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.

To prove a violation of N.J.S.A. 18A:12-24.1(d), complainant alleges that the respondents did not work together with their fellow Board members because the respondents were all aware of the computer purchases and installation while the complainant and Mr. West were not. However, Ms. Murray certified that, similar to the respondent, she was also not aware of the computer purchases and installation until the October 25, 2005 Board meeting. The complainant has failed to provide any factual evidence to support his conclusion that all the respondents had intimate knowledge of the computer purchases and installation. The complainant has also failed to provide any factual evidence to support his conclusion that the respondents failed to work together with the complainant with regards to the purchases in question. Complainant's certification shows that when the warrants came up for a vote, there was a discussion

during which the complainant made known his concerns regarding the warrants. Thus, the respondents worked together with the complainant in discussing the warrants prior to the vote. Based on the foregoing, the Commission grants the respondents' motions to dismiss complainant's allegation that respondents violated N.J.S.A. 18A:12-24.1(d) because they did not work together with their fellow Board members.

The complainant also alleges that the respondents violated N.J.S.A. 18A:12-24.1(d) because they condoned the shoddy business practices utilized by the business office and because they failed to perform their responsibility of oversight. The Commission notes that it is the responsibility of Board members to refer all complaints to the chief administrative officer and act on the complaints at a public meeting only after failure of an administrative solution. N.J.S.A. 18A:12-24.1(j). Therefore, if any of the Board members, including complainant, had any complaints about the business practices of the business office, they should have taken those complaints to the chief administrative officer. It is not the role of a Board member to take any action against the business office because the Board member believes that their practices are shoddy. The Commission notes that a Board member must confine Board action to policy making, planning and appraisal and must not administer the schools. N.J.S.A. 18A:12-24.1(d) and (e). Based on the foregoing, the Commission grants the respondents' motions to dismiss the allegation that respondents violated N.J.S.A. 18A:12-24.1(d).

The complainant alleges that the respondents violated N.J.S.A. 18A:12-24.1(e) when they approved the warrants for the computer purchases and installation without the required debate and formal action. 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 maintains that the respondents took private action that harmed the community when they voted to approve warrants for the computer purchases and installation. However, when the respondents voted to approve the warrants they did so as part of their duties as members of the Board. The affirmative vote was not a private action, it was a Board action. Based on the foregoing, the Commission grants the respondents' motions to dismiss complainant's allegation that the respondents violated N.J.S.A. 18A:12-24.1(e).

The complainant alleges that the respondents violated N.J.S.A. 18A:12-24.1(f) when they surrendered their independent judgment and allowed the business office and administration to purchase the computers without prior approval. 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.

The Commission notes that Dell Computers and Allus Services, Inc. are businesses and are not part of any special interest group or partisan political group. The complainant has provided no factual evidence to show that any of the respondents have a personal interest in or friendship with either Dell Computers or Allus Services, Inc. Therefore, the Commission grants the respondents' motions to dismiss the allegation that the respondents violated N.J.S.A. 18A:12-24.1(f).

The complainant alleges that respondent Soames violated N.J.S.A. 18A:12-24.1(g) when, at the October 25, 2005 Board meeting, she stated that complainant had not attended every Board meeting in the summer and when she stated that the computer purchase had been approved at a summer Board meeting when it had not. N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

To prove a violation of N.J.S.A. 18A:12-24.1(g) complainant maintains that respondent Soames did not provide accurate information at the October 25, 2005 meeting. The Commission notes that respondent Murray certified that she did recall that at the May 2004 Board meeting there was a discussion that, if money was available at the end of the year, it would be used for the purchase of computers. Therefore, Ms. Soames' contention that the computer purchase had been discussed at a summer Board meeting may have been accurate. When Ms. Soames made the statement that complainant had not attended the summer Board meeting at which the computer purchase had been discussed, her statement may have been inaccurate; however, the inaccurate information that she provided in these circumstances does not rise to the level of a violation of N.J.S.A. 18A:12-24.1(g). The Commission notes that the respondent was not certain whether he had attended all of the summer Board meetings. He had to do research in order to make sure that he had attended all Board meetings from May 2004 through September 2004. The Commission cannot find that a Board member provides inaccurate information when the Board member is merely mistaken about statements such as other Board members' attendance at meetings. Therefore, the Commission grants the respondents' motions to dismiss the allegation that respondents violated N.J.S.A. 18A:12-24.1(g).

DECISION

For the reasons expressed above, the Commission grants the respondents' motions to dismiss the complaint.

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]

The Commission can find no evidence that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. Mr. McConnell argues that the inclusion of respondent Ackerman showed the bad faith of the complainant because she was not at the meeting in question and documents submitted by the complainant shows that she did not vote on the bills in issue. However, the Commission believes that the complainant was mistaken since he immediately amended his complaint to note that respondent Ackerman was on vacation at the time of the meeting in question when it was called to his attention. The Commission finds that this mistake on complainant's part does not rise to the level of bad faith. The fact that the complainant was censured as a result of a complaint filed by two of the respondents does not prove that complainant filed this complaint in bad faith. Due to the extensive documentation provided by the complainant, it is clear to the Commission that the complainant believed that there was a reasonable basis in law for the complaint. There is no information to show that he should have known otherwise. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's 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 – C43-05

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 grants the respondents, motions to dismiss the complaint; 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 grant the respondent's motion 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 March 28, 2006.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C43-05