



However, no additional papers were filed. At its meeting on June 28, 2011, the Commission voted to dismiss the complaint.

## **SUMMARY OF THE RECORD**

The complainant alleges that on November 24, 2010, the respondent sent letters to two newspapers discussing her views regarding Governor Christie's position on capping Superintendents' salaries, yet she did not identify herself as a member of the Board. The complainant alleges that because the Board was involved in contract discussions, the respondent's actions placed the Board at risk. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(e) and (f). Copies of the letters were appended to the complaint.

In her answer, the respondent acknowledges that she wrote the letters to the editor, but contends that she should not be found in violation of the Act. The respondent refers to the Commission's prior decision in the matter entitled Amie Rukenstein v. Judy Karp, Hopewell Valley Bd. of Ed., Mercer County, C13-08 (July 22, 2008) to support her position that identifying herself as a Board member was not necessary, under these circumstances. (Answer at pp. 3-5)

## **FINDINGS OF FACT**

The Commission finds the following to be undisputed facts:

1. The respondent is a member of the River Dell Regional Board of Education.
2. The respondent wrote a letter to the editor dated December 5, 2010 which speaks against the Governor's capping of Superintendents' salaries. It makes no mention of any past, current or future action(s) of the Board.
3. The respondent wrote a letter to the editor dated December 9, 2010 which speaks against the Governor's capping of Superintendents' salaries. It makes no mention of any past, current or future action(s) of the Board.

## **ANALYSIS**

The complainant has the burden to prove factually a violation under the Code of Ethics for School Board Members as provided by N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e), which 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.

The Commission's regulations state:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The Commission may fairly conclude under the above facts that the respondent's actions in writing the letters to the editor were "private," *i.e.*, outside of the scope of her duties as a Board member. In this connection, the Commission has advised that a Board member would not violate the Act by sending a letter to the editor expressing her opinion about the budget as long as, in the letter, that person (1) identified herself as a board member; (2) indicated that the letter is not authorized by or written on behalf of the board; (3) provided accurate information that is not confidential; (4) and ensured that her private action does not compromise the board. *Advisory Opinion A03-07* (April 2, 2007). The Commission has applied this standard to topics other than the school budget. See, Rukenstein, *supra*. However, the Commission also clarified in Rukenstein that the advice provided in A03-07 applies only to letters to the editor written by Board members *on matters that have been before the Board for consideration*. The Commission notes that the respondent's letters herein make no reference whatsoever to any actions pending before the Board. Rather, they merely take a position on a matter of State wide importance. Consequently, even assuming that this was private action, the Commission cannot find that these writings were of such a nature that they had the potential to compromise the Board. As such, the Commission finds that the complainant has not factually established that the respondent violated N.J.S.A. 18A:12-24.1(e).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f), which states:

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's regulations state:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

The complainant has alleged no facts whatsoever that show the respondent, by writing the letters to the editor, took action on behalf of, or at the request of, a special interest or partisan political group or used the schools in order to acquire some benefit for herself, a member of her

immediate family or a friend. As such, the Commission finds that the complainant has not factually established that the respondent violated N.J.S.A. 18A:12-24.1(f).

## **DECISION**

The Commission finds that the complainant did not factually establish that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. 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).

Robert W. Bender  
Chairperson

Mailing Date: July 27, 2011

**Resolution Adopting Decision – C03-11**

**Whereas**, the School Ethics Commission has considered the documents filed by the parties; and

**Whereas**, at its meeting of June 28, 2011, the Commission found that the complainant had not established that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members and therefore dismissed the complaint; and

**Whereas**, the Commission has reviewed and approved the decision memorializing said action;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

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Robert Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on July 26, 2011.

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Joanne Boyle, Executive Director