
DONNA HERRSCHAFT

v.

BARBARA CIANCAGLINI
FRANKLIN TOWNSHIP
BOARD OF EDUCATION
GLOUCESTER COUNTY

BEFORE THE
SCHOOL ETHICS COMMISSION

Docket No. C18-08
PROBABLE CAUSE NOTICE

This matter arises from a complaint initially filed on May 14, 2008 by Donna Herrschaft, which was rejected as being outside of the jurisdiction of the School Ethics Commission. The complainant filed an amended complaint on June 2, 2008, alleging that Barbara Ciancaglini, a member of the Franklin Township Board of Education, Gloucester County (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* An Answer was filed on behalf of the respondent on July 11, 2008. The matter was scheduled for a probable cause determination by the Commission on June 23, 2009, at which time the Commission voted to find no probable cause and to dismiss the complaint.¹

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant asserts that the respondent has a conflict of interest in violation of the Act because she was elected to be Board President and is also an employee of the Department of Education, working as a Child Study Supervisor in Special Education. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(c). (Complaint at paragraph 1) The complainant further asserts that respondent's financial disclosure statement filed in 2008 should state the name and address of each source of income, as well as the school official's position, as per N.J.S.A. 18A:12-26 and that the failure to do so violates N.J.S.A. 18A:12-24.1(g).

Appended to the complaint were the following documents: (1) the respondent's personal/relative disclosure statements filed in 2008; (2) a list of committee assignment for the Board dated May 2008 through April 2009 showing that the respondent was on the Personnel, Policy and Negotiations Committees; (3) a document entitled "Office of Special Education Programs County Supervisors of Child Study" showing the respondent as the Supervisor of Child Study for Salem County; and (4) an undated newspaper article entitled "School Board Minutes are Questioned."

In her Answer, the respondent acknowledges that she is a County Supervisor of Child Study for Salem and Cumberland Counties, pursuant to N.J.S.A. 18A:46-3. She affirms that she

¹ On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed on June 2, 2008, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

does not have supervisory authority over any school district personnel as a State employee. Rather, the respondent states that her “primary job function is to review programs and approve grant applications.” (Answer at page 3) Respondent continues:

What authority I have does not extend to Franklin Township in Gloucester County. If I have an out-of-district placement in Gloucester County, the County Office of Special Education Programs is not involved, directly or indirectly, in any of the finances of that placement. (Id.)

As to the second allegation in the complaint, the respondent contends that she followed the instructions on the disclosure form provided by the Commission, which did not require that she specify her position. Consequently, the omission of that information is not in violation of N.J.S.A. 18A:12-26. Moreover, the respondent asserts that the information provided is accurate and the complainant has asserted no facts to support her allegation that there is an inaccuracy in violation of N.J.S.A. 18A:12-24.1(g). (Id. at page 4)

The Commission invited the parties to attend its meeting on June 23, 2009 to aid in its investigation. The complainant attended; the respondent also attended with counsel, Jane Capasso, Esq.

The complainant asserted that the respondent violated N.J.S.A. 18A:12-24(c) because she was employed by the Department of Education while serving on the Board. The complainant reasoned that if a teacher must give up her teaching position in order to be seated on a board of education, then the respondent should have to do the same. She questioned how the respondent could be president of the Board and put herself on committees when she was not objective. The complainant testified that because the curriculum “is all coming from the State,” it is a conflict of interest for a supervisor from the Department of Education to be running the local board.

The complainant further asserted that when the respondent filled out her financial disclosure form in 2008, she made it appear that she was receiving Social Security benefits, rather than being employed by the Department of Education. The complainant alternatively claimed that the respondent made it appear that she had been retired since 2007, when, in fact, she retired in 2008. The complainant disseminated documentation from the New Jersey Department of Treasury dated March 1, 2007 and April 3, 2008. Respondent’s name appears on the former list with an effective retirement date of “7-01-2007.” Respondent’s name also appears on the latter list with an effective retirement date of “8-01-08.”

Respondent’s counsel argued that the complainant offered no facts to show a conflict of interest. As to her allegations about Social Security, counsel argued that the respondent clearly identified her husband on the financial disclosure form as the recipient of Social Security benefits. Moreover, counsel argued that the respondent appropriately provided her source of income and the address of her employer. Counsel reminded that “inaccurate information,” pursuant to N.J.S.A. 18A:12-24.1(g), must be more than an opinion.

The respondent testified on the issue of her retirement. She affirmed that she applied for early retirement in 2007; however, as permitted by the State, she later changed her retirement date to 2008. She testified that it was “public knowledge” that she was working for the Department of Education. As to listing her source of income on the financial disclosure form, the respondent stated that it was her understanding that she had to list the source of her income and she never indicated on the form that she was retired.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause. That is, the Commission must determine, based on the documentary and testimonial evidence before it, whether probable cause exists to credit the allegations in the complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. Here, the Commission finds there is insufficient cause to credit the allegation that the respondent violated the Act.

There appears to be no dispute that the respondent, during the period that the complaint was filed, held the position of County Supervisor of Child Study for Salem and Cumberland Counties. The complainant asserts this was a violation of N.J.S.A. 18A:12-24(c), which provides:

c. 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 seems to allege that merely holding this position constitutes a conflict with the respondent’s role as Board member in Franklin Township, Gloucester County. However, the complainant offers no specific facts that might support a violation of N.J.S.A. 18A:12-24(c) in that she does not allege that the respondent has taken action in her official capacity in any matter where she, a member of his immediate family, or a business organization in which she has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Neither does the complainant allege any facts to show that the respondent acted in her official capacity in a matter where she or a member of her immediate family had a personal involvement that is or created some benefit to her or a member of her family. Moreover, as the respondent noted, she was the Supervisor of Child Study for Cumberland and Salem Counties, but she serves as Board member in Gloucester County. Thus, the complainant’s analogy to a teacher having to leave her position in order to

serve on the local Board is misplaced in this instance. Accordingly, the Commission finds no cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(c).²

A copy of the respondent's financial disclosure statement completed in 2008 shows that Section I, question 1 stated:

List the name and address of each source of income, earned or unearned, from which you or a member of your immediate family received in excess of **\$2,000**. If a **publicly traded security** is the source of income, the security need not be reported unless you or a member of your immediate family has an interest in the business organization. If you are a district employee, be sure to list the district board or charter school as a source of income. Client fees received through a business need not be separately reported. **Please note that "N/A" is not an acceptable source of income.** (Emphasis in text)

In response to this instruction, the respondent wrote, "State of NJ, Trenton, NJ --- Self." Underneath this, the respondent wrote: "Social Security – "Frances R. Ciangalini – Husband." The respondent does not indicate on this statement that she is retired. With respect to the contention that the respondent violated N.J.S.A. 18A:12-26 when she failed to identify her position with the State of New Jersey, the Commission acknowledges that the form did not require this information and, therefore, it finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-26.

As for the assertion that the respondent's failure to state her position with the Department of Education on the 2008 financial disclosure statement constituted inaccurate information in violation of N.J.S.A. 18A:12-24.1(g), the Commission notes that this provision states:

g. 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;

Because there is nothing before the Commission that would show that the information on the respondent's 2008 financial disclosure statement was *inaccurate*, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g).

² The Commission herein notes that the complainant originally alleged that the respondent's employment as a State employee constituted an inconsistent interest under N.J.S.A. 18A:12-2. When that complaint was rejected as being outside of the Commission's jurisdiction, the complainant amended her complaint as set forth above.

NOTICE

Pursuant to N.J.S.A. 18A:12-29b, the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c), N.J.S.A. 18A:12-26 or N.J.S.A. 18A:12-24.1(g) of the Act and the Commission dismisses the complaint. 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 – C18-08

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

Whereas, at its meeting of June 23, 2009, the Commission found no probable cause to credit the allegations that the respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against her; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed, and agrees with, the proposed decision;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed decision referenced as its 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on July 28, 2009.

Joanne Boyle, Executive Director
School Ethics Commission