

In Count 2 of the complaint, the complainant asserts that the dinners and drinks at the fundraiser were picked up or “donated” by the political associations who sponsored the dinner. The complainant asserts that this was a violation of N.J.S.A. 18A:12-24(e). (Id. at p. 2)

In Count 3 of the complaint, the complainant asserts that the fundraiser dinner was sponsored by the Korean American Voters’ Council and other Korean Associations. Thus, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(f).¹ (Ibid.)

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. In order to prevail on a Motion to Dismiss, the complainant must allege facts, which if true, would be sufficient to support a finding that the respondent violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members.

In his Motion to Dismiss, the respondent initially notes that the complainant was elected to a position on the Board on April 27, 2011 and was sworn in as a Board member on May 2, 2011. The respondent affirms that he was invited by Peter Suh, an incumbent candidate for the Board to attend a fundraiser to showcase the good job that the administrators were doing. He attended the dinner on March 21, 2011, but avers that he did not do so as a means to secure unwarranted privileges or employment for himself, members of his immediate family or others. (Respondent’s Motion at pp. 3-4) Nor was the respondent promised by Mr. Suh or any other incumbent any privileges, advantages or employment for himself, members of his immediate family or others.

The respondent affirms that he did not make any donations or financial contributions to the election campaign of Mr. Suh or any other individual running for the Board. (Id. at p. 4) The respondent attests that he does not have any direct knowledge of what organization or individuals sponsored the dinner or paid the costs on March 21, 2011. In this connection, he acknowledges that he ate some food and drank a beverage at the event. (Id. at p. 4) He did not solicit any gift, favor, loan, political contribution, service, promise of future employment or other thing of value from Mr. Suh or any other Board member. Neither Mr. Suh nor any other Board member offered the respondent food or beverage at the dinner with the purpose of influencing him in the discharge of his official duties, nor did he accept the same for the purpose of influencing him in the discharge of his official duties. (Ibid.)

The respondent contends that there is no allegation in the complaint that he secured an unwarranted privilege, advantage or employment for himself, members of his immediate family or others by attending the dinner on March 21, 2011. He argues that his attendance and “public encouragement of all eligible to vote in the school board elections does not constitute an attempt

¹ The complainant actually asserts a violation of “18A:12-24. f.” However, the complainant includes the text of the provision which she claims to be violated and that provision is N.J.S.A. 18A:12-24.1(f).

to gain an unwarranted privilege, advantage or employment for himself.” (*Id.* at p. 5) As to his alleged violation of N.J.S.A. 18A:12-24(e), the respondent contends that there is no evidence on this record that he solicited a gift, favor, loan, political contribution, service, a promise of future employment, or other thing of value from Mr. Suh or any other incumbent running for reelection. To the extent the meal and beverages were paid by others and, therefore, were a “gift,” there is no evidence that the food and drinks were offered to him for the purpose of influencing him in the discharge of his duties as Assistant Superintendent. (*Id.* at p. 6) Finally, the respondent argues that N.J.S.A. 18A:12-24.1(f) cannot apply to him as the Assistant Superintendent. (*Id.* at p. 7)

As noted above, the complainant contends that on March 21, 2011, the Superintendent, Respondent Engravalle, the Business Administrator and the School Board President attended a fund-raising dinner as guests for the re-election of incumbents running for the Board. The complainant asserts that they were introduced in their official positions and not as regular citizens. According to the complainant, “[t]he school officials also posed alongside the incumbents in front of [a] sign that read vote for these incumbents.” (Complaint at p. 1) Additionally, the complainant asserts that during a television interview broadcast to 4 million homes, the Superintendent “went on camera encouraging everyone to exercise their right to vote, right after an incumbent went on camera and asked everyone to vote for the incumbents.” (*Id.*) The complainant alleges that the dinners and drinks at the fundraiser were picked up or “donated” by the political associations who sponsored the dinner. According to the complainant, the dinner was sponsored by the Korean American Voters’ Council and other Korean Associations.

The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

In order to credit this allegation, the Commission must find that the within complaint alleges sufficient facts which, if true, could support a finding that the respondent used, or attempted to use, his position to secure some *unwarranted* privilege, advantage or employment for himself, members of his immediate family or others. The Commission has found that a school official has used his/her position in violation of N.J.S.A. 18A:12-24(b) when a Board member released staff email addresses in his campaign literature before the Board discussed and approved releasing them to the public (I/M/O Raymond Bonker, Lenape Valley Regional Bd. of Ed., Sussex County, C11-97 (March 30, 1998), Commissioner of Education Decision No. 225-98SEC, decided May 22, 1998); when a Board member asked the Business Administrator to try to obtain an unsecured loan from the bank that the board used as its depository (I/M/O Lawrence James, Chesilhurst Bd. of Ed., Camden County, C10-98 (December 15, 1998), Commissioner of Education Decision No. 30-99SEC decided February 9, 1999); when a Board member acquired mailing labels containing student information that were used to send mailings for her campaign, (I/M/O Michele Russo, Hoboken Bd. of Ed., Hudson County, C18-01 (February 26, 2002) Commissioner of Education Decision No. 167-02SEC, decided April 18, 2002); when a Board

member endorsed a candidate for the municipal council through a mailing of letters to the community where the letterhead, envelope and contents of the letter could mislead recipients to believe that the endorsement was made in the board member's official capacity as board president (I/M/O Alphonse A. DeMao, Belleville Board of Education, Warren County C09-04, (September 30, 2004), Commissioner Decision No. 464-04SEC, decided November 17, 2004); and where a Board member posted online information about monies owed by a parent to the school district, where the parent was also a political opponent (I/M/O Jose Ybarra, Passaic City Bd. of Ed., Passaic County, C20-09 (October 27, 2009), Commissioner of Education Decision No. 410-09, decided December 14, 2009). However, the Commission has declined to find a violation of N.J.S.A. 18A:12-24(b) where the school official did not use any school property or personnel to carry out her support (Carol Ferguson v. Dr. Janice Fipp, et al., Northfield Board of Education, Atlantic County, C12-09 (March 23, 2010)).

Therefore, even assuming that the respondent was introduced in his official position and posed in pictures with the incumbent candidates, as alleged, the Commission does not find that these facts are sufficient to support a finding that the respondent *used, or attempted to use*, his official position so as to implicate this provision, let alone that the respondent used or attempted to use his official position to secure *unwarranted* privileges, advantages or employment for himself, members of his immediate family or others in violation of N.J.S.A. 18A:12-24(b). (See, I/M/O Doris Graves, Pleasantville Bd. of Ed., Atlantic County, C47-05 (May 27, 2008), Commissioner of Education Decision No. 301-08SEC, decided July 10, 2008, rejecting a claim of violation of N.J.S.A. 18A:12-24(b) because the record did not demonstrate that the respondent Board member's relative did not deserve the continued appointment to the position of head custodian.) Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24(b).

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24(e), which provides:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

The Commission notes that the complaint is devoid of any factual allegations specific to Mr. Engravalle that, if true, would support a finding that, in attending the event on

March 21, 2011, he, a member of his immediate family, or business organization in which he has an interest, solicited or accepted a gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. Even assuming that the food and beverage which the respondent had on March 21, 2011 might be considered a “gift” or “other thing of value,” the complainant sets forth no facts to support a finding that they were accepted by the respondent based upon the understanding that they would influence him in the discharge of his duties.²

In this connection, the Commission finds that the within matter may be analogized to its decision in Sharon Wade Spearman, Esq. v. Audrey Lassiter, Irvington Bd. of Education, Essex County, C24-08 (December 15, 2009). There, the Commission found no probable cause to credit the allegation that the respondent, a Supervisor of Early Childhood Education, violated N.J.S.A. 18A:12-24(b) or (e) by permitting a child development center that contracted with the Board for wrap around services to purchase a \$75 ticket for the respondent to attend a fund-raising event, where there was nothing on the record to suggest that the “gift,” assuming it was one, was based upon an understanding that it was given or offered for the purpose of influencing the respondent, directly or indirectly, in the discharge of her official duties, so as to implicate N.J.S.A. 18A:12-24(e).³ Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24(e).

Finally, the Commission considers the complainant’s allegation that the respondent violated N.J.S.A. 18A:12-24.1(f), which 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 respondent correctly notes that school administrators *are not* subject to the Code of Ethics for School Board Members. See, Lisa A. Doren et al. v. Renae LaPrete, Hazlet Bd. of Ed., Monmouth County, C11-06 (September 26, 2006) finding that a superintendent is not a “board member” subject to the Code of Ethics for School Board Members, although she is an *ex officio* member of the Board. Indeed, the Code of Ethics for School Board Members is a standard of

² Contrast, I/M/O Hugh Gallagher, Keansburg Bd. of Education, Monmouth County, C03-01 (July 23, 2002), Commissioner of Education Decision No. 387-02SEC decided November 6, 2002; I/M/O Judy Ferraro, Keansburg Bd. of Education, Monmouth County, C04-01 (July 23, 2002), Commissioner of Education Decision No. 348-02SEC decided September 23, 2002); I/M/O Thomas Keelen, Keansburg Bd. of Education, Monmouth County, C06-01 (June 24, 2003), Commissioner of Education Decision No. 549-03SEC decided September 22, 2003.

³ See also, Mott v. Frederiks, Allamuchy Bd. of Ed., Warren County, C23-09 (February 23, 2010), where the Commission found no probable cause to credit the allegation that when the respondent Superintendent solicited a charitable donation from the Bank of America, he did so *based upon an understanding* that the contribution was given for the purpose of influencing him, directly or indirectly, in the discharge of his official duties as the Superintendent while the Board was considering the Bank of America as a possible vendor.

conduct to be upheld *as a Board member or charter school trustee*.⁴ Accordingly, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).

REQUEST FOR SANCTIONS

At its meeting on July 26, 2011, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission does not find that the complainant "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainant "knew, or should have known," that the matter "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.A.C. 6A:28-1.2. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: August 24, 2011

⁴ N.J.S.A. 18A:12-24.1 states, "[a] school board member shall abide by the following Code of Ethics for School Board Members."

Resolution Adopting Decision – C19-11

Whereas, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of the respondent; and

Whereas, at its meeting on July 26, 2011, the Commission granted the respondent’s Motion to Dismiss the complaint; and

Whereas, at its meeting on July 26, 2011, the Commission found that the complaint is not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

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

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

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 23, 2011.

Joanne Boyle
Executive Director