

Mr. Le Munyon testified that later that day, he was approached by Brian Matthews, Supervisor of the Water and Sewer Department for the City of Cape May Public Works, who told the complainant that Mr. Smith had inquired about the alleged plumbing work that had been done at the elementary school. Mr. Matthews said he was not aware of any such work, but would check into the allegation. Mr. Matthews then asked the plumber, who indicated that although he looked at the problem, no work had been done. Mr. Le Munyon said he was “shocked and dismayed” that the respondent did not come to him before contacting his employer.

In addition to his testimony, the complainant provided affidavits from three persons:²

- (1) Brian Matthews, the Supervisor of the Water and Sewer Department for the City of Cape May Public Works, affirmed that he was approached by Robert Smith on May 12, 2008 who asked him if any men had performed work at the Cape May City Elementary School. He responded that he did not know. Mr. Matthews further attested that, upon inquiry, Rich Baggett, the plumber, told him that the complainant had asked him for his opinion on a drain problem and he went with Mr. Le Munyon to the school one morning on his coffee break, but no work was done.
- (2) Rich Baggett, a civil service plumber for the Water and Sewer Department for the City of Cape May Public Works, affirmed that Brian Matthews asked him about whether any work had been done at the City of Cape May Elementary School under the complainant’s direction. Mr. Baggett attested that although he looked at the drain problem upon the complainant’s request and told Mr. Le Munyon how the problem could be fixed, he did not perform any work.
- (3) Len Bensted, Assistant Supervisor of Buildings and Grounds for the City of Cape May Public Works, affirmed that on May 12, 2008, Mr. Smith approached the complainant and informed him that he had received a call from Linda Loughlin who was upset about a plumbing issue. At that point, Mr. Smith and the complainant left the room to talk.

Linda Loughlin testified that she had been reelected Board president at the Board’s April 2008 reorganization meeting. Although the complainant had been a longstanding member of the facilities committee, he was not reappointed to that committee. At the May 2008 meeting, the committee chairpersons were giving reports; the facilities chair noted her concern with the drain in the District’s pool. The Board had been aware of this problem and it had been addressed in its Long Range Facilities Plan. At that meeting, the complainant told the Board that he brought a plumber from the City of Cape May to look at the pool drain.

² The respondent did not object to these affidavits being accepted as evidence by the Commission, although she noted that she did not personally speak with any of the affiants.

Ms. Loughlin testified that after Mr. Le Munyon's statement at the May 2008 Board meeting, she conferred with the business administrator and the chief school administrator (CSA) and determined that neither had asked Mr. Le Munyon look into the pool problem. The CSA checked with the head custodian the next day to make sure that he had not called for shared services work to be done and to remind him that requests for the same should be made through Robert Smith. The respondent explained that a "shared services request" was a request for district services that would be made to, and performed by, the City of Cape May. In those instances, the custodian would ordinarily inform the CSA of the need for services and a request for services would be made through the District's administration.

According to the respondent, the CSA asked her to check with Mr. Smith because the business administrator was concerned about whether the plumber was licensed. The respondent testified that, in her role as Board President, she called Mr. Smith, who initially was not in. The respondent spoke with Joe Pickard; she asked him to verify that no work was done. In both her conversations with Mr. Pickard and, later, with Mr. Smith, the respondent affirmed that she never mentioned anything about reprimanding the complainant, as alleged in the complaint. Rather, she informed both Mr. Pickard and Mr. Smith that Mr. Le Munyon was no longer on the facilities committee and that any requests for shared services would be handled through Mr. Smith. Ms. Loughlin further testified that neither Mr. Le Munyon nor the plumber had signed in upon their arrival at the District, which is in violation of the Board's visitors' policy.³

FINDINGS OF FACT

The Commission was able to discern the following facts based on the testimony, pleadings and all documents submitted:

1. At all times relevant to this complaint, both the complainant and the respondent were members of the Board.
2. The complainant is an employee for Public Works for the City of Cape May.
3. The complainant asked Mr. Baggett, a plumber with the City of Cape May, to look at a drain problem that existed with the District's outside pool.
4. The complainant accompanied Mr. Baggett to look at the pool.
5. No work was performed by the plumber.
6. The complainant informed the Board at its May 2008 meeting that he and a plumber from the City of Cape May looked at the plumbing problem with the pool.
7. No one from the District's administration authorized that any work with the pool be performed by way of shared services with the City of Cape May Public Works.

³ To the extent the respondent alleges that the complainant violated local board policy, the Commission notes its jurisdiction is limited to matters arising under the School Ethics Act.

8. The respondent contacted Robert Smith, the Superintendent of Public Works for Cape May, who is the complainant's supervisor, to confirm that no work had been done, and to emphasize that all requests for shared services must be directed to him.
9. The respondent did not request that the complainant be reprimanded for inviting the plumber to come to the school.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29b, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. The complainant asserts that the respondent's conduct violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members.

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

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 respondent credibly testified that the issue of the pool drain had been addressed in the Board's Long Range Facilities Plan and was also under review by the Board's facilities committee. Thus, the problem can fairly be considered a Board issue. Moreover, at the time, the respondent was the Board president. The Commission finds that contacting the complainant's employer, in this instance, was not outside the scope of the respondent's duties as the Board president. The Commission further finds that such action is indeed related to the respondent's planning function, in that the Board had included this problem in its Long Range Facilities Plan. Accordingly, the Commission therefore finds that the complainant has not shown that the respondent's actions violated N.J.S.A. 18A:12-24.1(c).

The complainant next contends 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.

"Private action" means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1. It is noted, however, that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action *and* private action. Conversely, if a board member's action is found to be private action it cannot constitute board action. Having found, above, that respondent's action in contacting the complainant's employer was reasonably within her duties as a board member, such action cannot also be considered "private." However, even assuming that the respondent's contacting of the complainant's supervisor was private action, the complainant has presented no

evidence that this action was of such a nature that it could have compromised the Board. Therefore, the Commission finds that the complainants have failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

DECISION

Based on the testimonial and documentary evidence, the Commission finds that the complainants failed to prove that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) 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).

Paul C. Garbarini,
Chairperson

Resolution Adopting Decision – C23-08

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

Whereas, at its meeting of April 28, 2009, the Commission found that the complainant had not established that Linda Loughlin 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 within decision and directs its staff to notify all parties to this action of the decision.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on May 27, 2009.

Joanne Boyle, Executive Director