
THOMAS TAYLOR

v.

**LINDA MITCHELL,
BARNEGAT BOARD OF EDUCATION
OCEAN COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

**Docket No. C27-08
PROBABLE CAUSE NOTICE**

This matter arises from a complaint filed on July 21, 2008 by Thomas Taylor alleging that the respondent, Linda Mitchell, a member of the Barnegat Board of Education, Ocean 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 September 30, 2008. The matter was scheduled for a probable cause determination by the Commission on November 24, 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 at a meeting on September 26, 2007, Board members negotiated with the municipal township committee for the cost of school resource officers (SROs). According to the complaint, on October 1, 2007, the respondent attended a municipal committee meeting wherein the subject of SROs was discussed and she negotiated for these positions and salaries although her husband is a police officer and serves as the SRO and Drug Abuse Resistance Education (D.A.R.E.) officer in the District. According to the complainant, the Board pays half of his salary and the township pays the other half. (Complaint at paragraphs 1-9) The complainant asserts that the respondent's conduct violated N.J.S.A. 18A:12-24.1(a), (e) and (f) as well as N.J.S.A. 18A:12-24(a), (b), (c), (d) and (g).

The complainant further asserts that at the Board's April 21, 2008 reorganization meeting, the respondent brought to the floor a resolution on bank depositories and voted "yes" on the resolution which included her current employer, Commerce Bank (now known as "TD Bank") as the main depository for the District. She then changed her vote to an abstention. (Complaint at paragraphs 10-14) The complainant asserts that the respondent's conduct violated N.J.S.A. 18A:12-24.1(a), (e) and (f) as well as N.J.S.A. 18A:12-24(a), (b), (c), (d) and (g).

In her answer, the respondent acknowledges that she attended a public meeting of the committee of the Township of Barnegat on October 1, 2007 and that the funding of the high school's resource officer was discussed. The respondent asserts that she was concerned with the

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 before May 18, 2009, 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.

potential elimination of the position because she believed it was an important one to the school. However, the respondent contends that contrary to the complainant's assertion, there was no discussion of the D.A.R.E. position, to which her husband had been assigned. (Answer at paragraphs 2-3)

According to the respondent, the assignments of any police officer, including SROs, is made by the Chief of Police. The respondent asserts that her husband, a police detective, was assigned by the Chief of Police as a D.A.R.E. officer/SRO at the elementary and middle schools. The Board paid the base salary of a police officer at the first step of the salary guide and the Township paid the remaining salary and benefits. Respondent asserts that at the Township meeting, she suggested that the Board and Township meet to discuss the funding for a new SRO position at the high school, which was not her husband's assignment. The Township agreed to assign an officer as the high school SRO and the Board would pay his salary. The person assigned was Mr. Tatur, a Barnegat police officer. (Id. at paragraphs 5-8)

The respondent acknowledges that she attended the April 21, 2008 reorganization meeting. She affirms that she had been Board President until that meeting. Because it was the reorganization meeting, the Board Secretary opened the meeting and conducted the meeting until the vote for Board President. One of the items on the agenda was a resolution to appoint bank depositories; Commerce Bank was among the banks on the resolution and it had been the bank depository for several years. The respondent acknowledges that she made the motion to adopt the resolution; she further acknowledges that she was employed by Commerce Bank, and "everyone on the Board knew it." Respondent explains, "I initially voted to adopt this resolution but immediately recognized that there was a potential conflict of interest. Based on that concern, I changed my vote to an abstention and it was so recorded as such." (Id. at paragraphs 10-12).

The Commission invited the parties to attend its meeting on November 24, 2009 to aid in its investigation of this complaint. The complainant, Thomas Taylor attended the meeting, as did the respondent Linda Mitchell, along with counsel, David Corrigan, Esq.

Thomas Taylor testified that, at the Township meeting, there was a question of how the SRO was to be funded and the respondent should not have been involved in that discussion. He referenced Exhibit B of his complaint, which included partial minutes of the meeting when the respondent spoke. As to the second allegation in the complaint, the complainant asserted that the respondent made the motion to appoint Commerce Bank as the depository, initially voted yes, then she changed her vote to an abstention.

Ms. Mitchell testified that the salary at issue during the Township meeting in October 2007 was the salary for the high school's SRO; her husband was the D.A.R.E. officer/SRO for the elementary and middle schools. The respondent stated that her husband has been a police officer for 21 ½ years and that if neither the middle school nor the high school SRO position was funded, he would still be a township police officer. She explained that, at the time, there was an interlocal agreement between the Board and the Township to hire her husband as the D.A.R.E. officer/SRO through June 30, 2008. The respondent further explained that if her husband were to return to being solely a patrolman, he would actually bring in more money for the family since he was always eligible for overtime as a full-time police officer. The respondent

stated that her husband was not present at the Township meeting. Officer Tabur, who was assigned as the SRO for the high school was there. Ms. Mitchell acknowledged that the Police Chief actually controls the assignment of police officers to the District. The funding is through the Township committee.

Ms. Mitchell further testified that the Board had been dealing with Commerce Bank for 7-10 years. At the reorganization meeting of 2008, she explained that she probably moved about 90% of the resolutions because there were many new Board members.

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.

When making a probable cause determination, the Commission reviews the complaint and answer provided by the complainant and respondent, together with any relevant documentation. N.J.A.C. 6A:28-6.7(d)6. Additionally, in order to carry out the Commission's responsibilities under the School Ethics Act to determine whether probable cause exists, the Commission is authorized to conduct investigations, hold hearings, compel the attendance of witnesses and the production of documents and examine such witnesses under oath. N.J.S.A. 18A:12-28(b).

Allegations that Respondent Violated 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(a), (e) and (f) of the Code of Ethics for School Board Members. N.J.S.A. 18A:12-24.1(a) states:

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

In this connection, a complaint must include:

a copy of a final decision from any court of law or administrative agency of this State that finds the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent[s] brought about changes through illegal or unethical means. N.J.A.C. 6A:28-6.9(b).

The complainant does not provide, or indeed assert that, a final decision has been rendered with respect to this respondent from any court of law or administrative agency of this State finding that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical means. Therefore, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(a).

Next, the complainant alleges 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.

This record does not include any evidence to suggest that the respondent made personal promises or took private action that was of such a nature that it might compromise the Board. First, even assuming that the respondent's attendance at the October 1, 2007 Township meeting was private action, the Commission does not find that it was of such a nature that it may have compromised the Board. Second, there can be no question that her motion and vote at the reorganization meeting were part of her Board duties and, therefore, not "private action."² Consequently, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e).

The complainant further claims 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.

There is no allegation on this record that the respondent was capitulating to special interest or partisan political groups; presumably the complainant believed that the respondent's actions demonstrated that she was using the schools for personal gain. However, the respondent credibly testified that the discussion at the October 1, 2007 Township meeting concerned a SRO for the high school, which was not going to result in any benefit or gain for her husband, or to her by extension. Even assuming, as the complainant argued, that there was the possibility that the funding discussed that evening could have touched upon her husband's elementary and middle school assignment, there is no dispute, and the complainant's exhibits so confirm, that the Chief of Police was solely responsible for making all such assignments of police officers. As to the issue of the respondent's vote at the reorganization meeting in April 2008, the Commission notes that there is no dispute that the respondent immediately recognized that she erred in voting yes and she immediately corrected her vote. (Board Minutes from April 21, 2008 at page 20) Therefore, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).

² "Private action" means action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of a member of a district board of education. N.J.A.C. 6A:28-7.1.

Allegations that the Respondent Engaged in Prohibited Acts

The complainant asserts that the respondent's conduct violated N.J.S.A. 18A:12-24(a), (b), (c), (d) and (g), as set forth below. The Commission first considers N.J.S.A. 18A:12-24(a) and N.J.S.A. 18A:12-24(d), which provide, respectively:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

The Commission notes that "interest" is defined by the Act as the ownership or control of more than 10% of the profits, assets or stock of a business. N.J.S.A. 18A:12-23. This record includes no evidence that the respondent, or a member of her immediate family, had an interest in a business organization which is in substantial conflict with the proper discharge of her duties. To the extent the complainant asserts that the respondent engaged in a "business, transaction, or professional activity" which was in substantial conflict with the proper discharge of her duties, in violation of N.J.S.A. 18A:12-24(a), the Commission does not view the respondent's attendance at, and participation in, the October 1, 2007 Township meeting to be in substantial conflict with the proper discharge of her duties.

Neither can the Commission find that the respondent's employment with Commerce Bank is in substantial conflict with the proper discharge of her duties or that it is an employment which might reasonably be expected to prejudice her independence of judgment in the exercise of his official duties. Rather, the Commission views her employment as one which does not inherently conflict with her Board duties, although the respondent must be careful to abstain on matters concerning the Commerce Bank. Therefore, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(a) and (d).

The Commission next considers N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24(c), which provide, respectively:

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;

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 Commission notes that these provisions concern the use of a school official's position in some manner. However, there is nothing in the record before the Commission to indicate that the respondent's attendance at the October 1, 2007 Township meeting was in furtherance of her official Board member duties or that, once there, she used her status as a Board member to effectuate some personal gain or benefit to herself or a member of her immediate family. Therefore, these provisions are applied only to the allegation that the respondent's motion and vote and the reorganization meeting in April 2008 were improper because she is an employee of Commerce Bank.

First, there is nothing on this record to suggest the respondent's motion and vote was an attempt to use her position to secure an unwarranted privilege, advantage or employment for herself, members of her immediate family or others, so as to implicate N.J.S.A. 18A:12-24(b). (See, I/M/O Doris Graves, Pleasantville Board of Education, C45-07 (May 27, 2008), Commissioner of Education Decision No. 301-08, 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.)

Further, the Commission notes there is no dispute that: (1) the Board had been working with Commerce Bank for several years; (2) the respondent had been Board President until that meeting and she was moving most of the items at the reorganization meeting because there were many new members; and (3) the respondent recognized that that she erred in voting yes and she immediately corrected her vote. Under these particular circumstances, where the respondent recognized her voting error and immediately corrected her vote, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) and (c).

Finally, the Commission considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(g), which provides:

No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

There is nothing in the record before the Commission to indicate that the respondent “represented a person or party other than the school board or school district” by virtue of her attendance at, and participation in, the October 1, 2007 Township meeting, even assuming that this meeting could be viewed as a “cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which she serves.” Further, the Commission finds no reasonable reading of this provision would apply to the issue of the respondent’s motion and vote at the reorganization meeting in April 2008. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(g).

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:12-24.1(a), (e) and (f) or N.J.S.A. 18A:12-24(a), (b), (c), (d) and (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).

Robert W. Bender
Chairperson

Resolution Adopting Decision – C27-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, the testimony presented on November 24, 2009; and

Whereas, at its meeting on November 24, 2009, the Commission found no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24.1(a), (e) and (f) or N.J.S.A. 18A:12-24(a), (b), (c), (d) and (g) of the School Ethics Act; and

Whereas, the Commission dismissed the complaint; and

Whereas, at its meeting on December 15, 2009, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

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.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on December 15, 2009.

Joanne Boyle, Executive Director