
IN THE MATTER OF	:	BEFORE THE
WILLIAM DEPSEE,	:	SCHOOL ETHICS COMMISSION
WOODLAND PARK BOARD OF	:	
EDUCATION	:	Docket No. C30-09
PASSAIC COUNTY	:	DECISION
	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 13, 2009 by Laura Van Winkle alleging that William Depsee, a member of the Woodland Park Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Despite two notices being sent to the respondent, he did not file an answer.¹ Therefore, pursuant to N.J.A.C. 6A:28-7.3(b), each allegation in the complaint was deemed admitted and the Commission proceeded to a probable cause determination on a summary basis at its meeting on November 24, 2009. The Commission followed procedures for processing complaints alleging both prohibited acts and violations of the Code of Ethics for School Board Members, as set forth at N.J.A.C. 6A:28-10.9. Pursuant to N.J.A.C. 6A:28-10.9(b), the Commission determined that there was probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c), a prohibited act. The Commission then found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members. The complaint was thereafter processed in accordance with procedures set forth at N.J.A.C. 6A:28-10.7.

The Commission adopted its probable cause notice at its meeting on December 15, 2009 and mailed the notice to the respondent, via regular and certified mail, on December 16, 2009.² Pursuant to N.J.A.C. 6A:28-10.7(c)1, the respondent was accorded 20 days from the mailing date to submit a statement setting forth the reasons he should not be found in violation of the Act. Respondent was therein notified that after expiration of the time for submission of his statement, the Commission may make a determination of violation on a summary basis at its meeting on January 26, 2010. On January 13, 2010, Lawrence Tosi, Esq. entered his appearance on the respondent's behalf, filing what purported to be a responsive statement. Counsel noted in his cover letter that he was "given the matter over the holidays," yet he did not submit a request for additional time for filing a response. Because the January 13th submission was outside of the regulatory time period permitted for filing a response to the Probable Cause Notice, it was not considered by the Commission. At its meeting on January 26, 2010, the Commission found that the respondent violated N.J.S.A. 18A:12-24(c) and recommended a penalty of reprimand. The Commission dismissed the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).

¹ The initial notice, dated July 14, 2009, was sent via certified and regular mail. The second notice was sent by letter dated August 7, 2009, via regular and certified mail. By facsimile dated August 17, 2009, the respondent submitted a request for an extension of time in order to respond so that he could find an attorney to represent him. By letter dated August 17, 2009, the respondent was accorded until September 11, 2009 to submit a response to the complaint. However, no response was filed.

² The "green card" returned to the Commission shows delivery on December 18, 2009.

FINDINGS OF FACT

The following facts are undisputed and, therefore, deemed to be true:

- 1) The respondent is a member of the Woodland Park Board of Education.
- 2) The respondent's wife is employed in the District as a truant officer and reports directly to the Superintendent.
- 3) The salary and position of the respondent's spouse are regulated by the Office of the Superintendent.
- 4) On April 30, 2009, the respondent voted to extend the contract of the Superintendent, Scott Rixford.
- 5) On July 16, 2009, the issue of the Superintendent's contract was put back to a vote. The respondent recused himself from that vote. (Board Minutes for July 16, 2009)
- 6) At the September 10, 2009 workshop meeting of the Board, the Board reconsidered its vote on the Superintendent's contract and reapproved its resolution of April 30, 2009, *nun pro tunc*. The respondent recused himself from that vote. (Board Minutes for September 10, 2009)

ANALYSIS

At its meeting on November 24, 2009, the Commission found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c), which states:

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 School Ethics Act at N.J.S.A. 18A:12-23 defines "member of the immediate family" as the spouse or dependent child of a school official residing in the same household. The Commission's regulations at N.J.A.C. 6A:28-1.2 define "spouse" as "the person to whom the school official is legally married under New Jersey law and also includes a partner in a civil union couple as established in N.J.S.A. 37:1-33.

The Commission has advised that a Board member whose spouse works in the District may not participate in discussions and vote on employment issues concerning the employee's

supervisors, including the Superintendent. *Advisory Opinion* A10-00 (June 27, 2000); *Advisory Opinion* A30-05 (March 10, 2006). Additionally, in *School Ethics Commission v. Gunning*, C15-93 (September 22, 1994), the Commission concluded that a board member violated N.J.S.A. 18A:12-24(c), when he voted on the Superintendent's raise when his spouse was employed as a confidential secretary to the Superintendent. The Commission noted that it would be difficult for the board member to be completely objective in acting on the Superintendent's raise since he knew that his spouse worked for the Superintendent. The Commission reasoned that if the Superintendent were displeased with the board member's vote, the employment of the board member's spouse could be negatively impacted and the spouse may be treated poorly on the job or may not be recommended for a raise in the succeeding year.

In the instant matter, there is no dispute that the respondent's wife is employed in the District as a truant officer and reports directly to the Superintendent. On April 30, 2009, the respondent voted to extend the contract of the Superintendent. As such, the Commission finds "there is an opportunity for the spouse's employment to be affected by the [B]oard member's involvement in employment issues related to the Superintendent in terms of the way the administrators treat and evaluate the spouse, even if such impact does not affect the contractually determined salary." *Advisory Opinion* A30-05 (March 10, 2006). Therefore, the Commission finds that the respondent has an indirect financial involvement that might reasonably be expected to impair his objectivity of judgment. Accordingly, the Commission finds that the respondent violated N.J.S.A. 18A:12-24(c).

At its meeting on November 24, 2009, the Commission also found probable cause to credit the 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.

In this review, the Commission is guided by the standard set forth at N.J.A.C. 6A:28-6.4(a)6, which provides:

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.

The Commission initially notes that there is no allegation that the respondent surrendered his independent judgment to special interest or partisan political groups. Therefore, the Commission considers whether this record is sufficient to find that the respondent used the schools in order to acquire some benefit for himself, a member of his immediate family or a

friend.³ In this connection, the Commission again notes the undisputed facts on this record: that the respondent's wife is employed in the District as a truant officer who reports directly to the Superintendent; that the salary and position of the respondent's spouse are regulated by the Office of the Superintendent; and that on April 30, 2009, the respondent voted to extend the contract of the Superintendent.

Upon further review, however, the Commission finds that while these facts are sufficient to establish that the respondent had an indirect financial involvement that might reasonably be expected to impair his objectivity of judgment, this record, developed on a summary basis, does not include facts sufficient to conclude that the respondent, by his April 30th vote, used the schools in order to acquire some benefit for himself or for his spouse. Accordingly, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).

DECISION

For the reasons set forth above, the Commission finds that William Depsee violated N.J.S.A. 18A:12-24(c). The Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).

PENALTY

The Commission recommends a penalty of reprimand. Although the Commission recommended a penalty of censure in the above-referenced matter, School Ethics Commission v. Gunning, C15-93, (September 22, 1994), and the Commissioner concurred with this recommendation, the Commission herein finds that the respondent's subsequent recusal from voting on the renewal of the Superintendent's contract when the issue was brought back before the Board in July and September 2009 may fairly serve to mitigate the recommended penalty in this matter.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

³ Pursuant to N.J.A.C. 6A:28-1.2, "benefit" as used in the Act means advantage, profit, privilege or gain.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert Bender
Chairperson

Mailing Date: January 27, 2010

Resolution Adopting Decision – C30-09

Whereas, the School Ethics Commission has considered the pleadings filed by the complainant which include factual allegations deemed to be true in that the respondent failed to file an answer in accordance with N.J.A.C. 6A:28-7.3(b); and

Whereas, at its meeting of November 24, 2009, the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24.1(f) of the School Ethics Act; and

Whereas, the respondent did not file a timely response to the Commission’s Notice of Probable Cause; and

Whereas, at its meeting on January 26, 2010, the Commission found that the respondent violated N.J.S.A. 18A:12-24(c) and recommended a penalty of reprimand and dismissed the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f);

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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on January 26, 2010.

Joanne Boyle, Executive Director
School Ethics Commission