

	:	BEFORE THE SCHOOL
GEORGE W. FISHER	:	ETHICS COMMISSION
	:	
v.	:	
	:	
RONALD F. TOLA,	:	
HAMILTON TOWNSHIP	:	
BOARD OF EDUCATION	:	Docket No. C51-11
MERCER COUNTY	:	PROBABLE CAUSE
	:	NOTICE

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 5, 2011 by George W. Fisher alleging that Ronald F. Tola, a member of the Hamilton Township Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24(c). After obtaining an extension for good cause shown, on January 17, 2012, a Motion to Dismiss was filed on behalf of the respondent, which included an allegation that the complaint was frivolous. On February 6, 2012, the complainant filed a reply to the Motion to Dismiss and the allegation of frivolousness. N.J.A.C. 6A:28-8.2(a). By letter dated January 25, 2012, the Commission notified the complainant and respondent that this matter was scheduled for discussion by the Commission at its meeting on February 28, 2012 in order to make a determination regarding the respondent’s Motion to Dismiss and allegation of frivolousness. At its meeting on February 28, 2012, the Commission voted to deny the respondent’s Motion to Dismiss the complaint and further found that the complaint is not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. The respondent was directed to file an answer to the complaint.

An Answer was filed on behalf of the respondent on April 17, 2012. This matter was placed on the agenda for discussion at the Commission’s meeting on May 29, 2012. At that meeting, the Commission voted to find no probable cause to credit the allegation that the respondent violated the Act.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

In Count 1 of the complaint, the complainant alleges that the respondent was advised by the School Ethics Commission, pursuant to an advisory opinion, that he may not participate in the search, the discussions, or the votes regarding the selection of a new Superintendent. According to the complainant, a special meeting of the Board was held on June 9, 2011, the sole purpose of which was completion of the search process and selection of the next Superintendent. The respondent was present for the meeting and remained seated with the Board during the duration of the public meeting. A motion was made to go into closed session to discuss matters relating to the appointment of the next Superintendent. According to the complainant, the respondent voted in favor of the motion. The complainant states, “it is unknown whether

Respondent Tola did attend and/or participate in this closed session.” (Complaint at p. 3) Upon return to open session, the President of the Board announced that, based upon an occurrence in closed session, no formal action would be taken. The complainant contends that the respondent’s participation in the Board’s June 9th meeting was a violation of N.J.S.A. 18A:12-24(c).

In Count 2 of the complaint, the complainant alleges that on June 15, 2011, the Board recessed into closed session to discuss the Superintendent’s search, as well as a possible new search for an Interim Superintendent. According to the complainant, the respondent voted to enter into closed session and, “upon information and belief,” the respondent attended the closed portion of the meeting at which time the search was discussed. Upon return to the public session, the Board voted to close the initial Superintendent’s search. The respondent sat with the Board for the vote, although he abstained from voting. (Id. at p. 6) The complainant contends that the respondent’s participation in the Board’s June 15th meeting was a violation of N.J.S.A. 18A:12-24(c).

In his Answer, the respondent admits that the Commission issued Advisory Opinion A12-10, wherein it advised that because the Director of Student Services was a candidate for the position of Superintendent and the Director is familiar with the respondent’s daughter, a Special Education assistant in the District, by virtue of both hiring the respondent’s daughter and indirectly supervising the respondent’s daughter, it would be a violation of N.J.S.A. 18A:12-24(c) for the respondent to participate in the search for the new Superintendent, the interview process for the potential candidates and the hiring of the new Superintendent.

With respect to Count 1, the respondent admits that he was present on June 9, 2011 and sat on the dais during the public portion of the meeting. The respondent denies that a motion to adjourn to Executive Session was made and carried, although he neither admits nor denies that he voted in favor of the motion. He further denies that he attended the closed session portion of the meeting. (Answer at p. 2)

With respect to Count 2, the respondent admits that the Board considered the Superintendent search at its June 15, 2011 meeting and that the Board recessed to closed session. The respondent admits that he attended the closed session “during which the search for an *Interim* Superintendent was discussed,” but denies that the initial Superintendent search was discussed in closed session on June 15, 2011. He also denies that he “was present in the closed session meeting during which the *initial* Superintendent search may have been discussed.” (Id. at pp. 3-4) The respondent admits that upon the Board’s return to public session, the Board voted to close the initial search for a Superintendent and that he was present and seated on the dais when the Board so voted, although the respondent abstained. (Id. at p. 4)

Pursuant to its authority under N.J.S.A. 18A:12-28(b), the Commission also reviewed the documents included with the respondent’s prior Motion to Dismiss, *i.e.*, the minutes of the special meeting held by the Hamilton Township Board of Education held on June 9, 2011, the

minutes of the Hamilton Township Board of Education held on June 15, 2011, the affidavit of the respondent and the affidavit of Patricia DelGiudice, Board President.¹

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 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.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(c), which provides:

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 respondent's daughter is a teaching staff member. The Act defines "member of the immediate family" as the spouse or dependent child of a school official residing in the same household. Therefore, the respondent's daughter is not a member of the immediate family, but rather a "relative," defined by the Act as a spouse, natural or adopted child, parent or sibling of a school official. Nevertheless, the Commission has applied this provision to situations where Board members voted on, or were otherwise involved in, matters pertaining to their relatives. See, I/M/O James Russo and Thomas Scarano, Woodbridge Twp. Bd. of Ed., Middlesex County, C12-97 (January 27, 1998) Commissioner of Education Decision No. 22-1/98, decided April 16, 1998; I/M/O Carmelo Garcia, Hoboken Bd. of Ed., Hudson County, C41-05 (October 24, 2006) Commissioner of Education Decision No. 436-06SEC, decided December 8, 2006; I/M/O Dino Pettinelli, Alpha Bd. of Ed., Warren County, C01-04, (July 27, 2004), Commissioner of

¹ The Commission's rules state that, in determining whether to grant a Motion to Dismiss, it shall review the facts in the light most favorable to the complainant and determine whether the allegation(s) set forth in the complaint, if true, could establish a violation of the Act. N.J.A.C. 6A:28-8.3. Thus, a Motion to Dismiss before the Commission is akin to a Motion to Dismiss pursuant to Rule 4:6-2(e). The Courts have determined their inquiry to be "limited to examining the legal sufficiency of the facts alleged *on the face of the complaint.*" DeBenedetto v. Denny's, Inc., 421 N.J.Super. 312, 317 (App. Div. 2010) citing to Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (emphasis added). Where documents outside the pleadings are considered, the motion is treated as a motion for summary judgment. Schulman v. Wolff & Samson, P.C., 410 N.J. Super 467, 474. However, because the Commission's rules do not permit the filing of a Motion for Summary Judgment, the Commission could not consider the respondent's counterstatement of facts and affidavits that were submitted with his prior Motion to Dismiss. In the context of a probable cause review, however, it may consider *any* relevant documents.

Education Decision No. 266-7/04, decided September 8, 2004. Additionally, In Advisory Opinion A23-06, (November 15, 2006), the Commission advised a Board member (identified as “B”) whose mother and brother (both “relatives”) were employed in the district as a full time aide and the Media Services Coordinator, respectively, that s/he may participate in the search for the new Superintendent, the interview process for the potential candidates and the hiring of the new Superintendent *unless* the Board member’s mother or brother had some familiarity with a potential candidate because such candidate worked in the district.

The Commission issued Advisory Opinion A12-10, wherein it advised that because the Director of Student Services was a candidate for the position of Superintendent and the Director is familiar with the respondent’s daughter, a Special Education assistant in the District, by virtue of both hiring the respondent’s daughter and indirectly supervising the respondent’s daughter, it would be a violation of N.J.S.A. 18A:12-24(c) for the respondent to participate in the search for the new Superintendent, the interview process for the potential candidates and the hiring of the new Superintendent.

Count 1

The respondent does not dispute that he was present for the public portion of the meeting on June 9, 2011. The Board’s minutes show that the respondent attended the public portion of the meeting, but did not participate in the closed session discussions regarding the Superintendent Search Process, although he voted in the affirmative for the Board to adjourn to closed session. (Board Minutes, June 9, 2011; Motion to Dismiss at Exhibit B) As to this meeting, the respondent attests:

After the meeting in executive session for approximately one hour on June 9, 2011, the Superintendent Search Committee returned to the public session and indicated that a consensus on the finalist was not reached and in [sic] the search was abandoned.

On June 9, 2011, [Patricia] DelGiudice did not permit me to take part in the decision-making process related to the search for a new Superintendent, and I did not participate in the process. (Tola’s Affidavit at paragraphs 38, 39; Motion to Dismiss at Exhibit D)

Similarly, Ms. DelGiudice attests:

As Board President, I did not permit Ron Tola to take part in any special or executive session meetings in which the Board of Education discussed the search for a new, permanent Superintendent.

At the special meeting of the Board of Education on June 9, 2011, the Board of Education did not select a new Superintendent, and subsequently, the Board embarked upon a search for an Interim

Superintendent. (DelGiudice Affidavit at paragraphs 18, 19; Motion to Dismiss at Exhibit E)

Under these circumstances, the Commission does not find that the respondent participated in the search for the new Superintendent, the interview process for the potential candidates and/or the hiring of the new Superintendent so as to potentially violate N.J.S.A. 18A:12-24(c). Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) by sitting on the dais for the public meeting on June 9, 2011.

Count 2

The respondent acknowledges that the Board considered the Superintendent search at its June 15, 2011 meeting, that the Board recessed to closed session, and that he attended the closed session. The respondent affirms, however, that during the closed session, the search for an *Interim* Superintendent was discussed; he denies that the initial Superintendent search was discussed in closed session on June 15, 2011. The respondent admits that upon the Board's return to public session, the Board voted to close the initial search for a Superintendent and that he was present and seated on the dais when the Board so voted, although the respondent abstained. (Answer at p. 4) As to this meeting, the respondent attests:

At the June 15, 2011 Board meeting, a vote to end the search for a new Superintendent was held in public, in which I abstained.

A new search for an Interim Superintendent began on June 15, 2011, and [Patricia] DelGiudice appointed me as chairperson of the new search committee.

Before the June 15, 2011 regular session of the Board of Education, the [New Jersey School Boards Association] provided a list of 88 persons certified to act as an Interim Superintendent in the State of New Jersey.

In view of the previous Advisory Opinion by the School Ethics Commission and since there were no internal candidates for the position of Interim Superintendent, it was not improper for me to head this new search.

In the event that an internal candidate for Interim Superintendent emerged, I would have recused myself pursuant to the Advisory Opinion. (Tola Affidavit at paragraphs 40-44; Motion to Dismiss at Exhibit D)

Similarly, Ms. DelGiudice attests:

Before the June 15, 2011 regular session of the Board of Education, the [New Jersey School Boards Association] provided a

list of 88 persons certified to act as an Interim Superintendent in the State of New Jersey.

Of the 88 individuals certified to act as an Interim Superintendent, 23 listed Mercer County as an area in which they would consider working.

Prior to the Board's regular meeting on June 15, 2011, the administration was to contact the 23 individuals to inquire if they would be interested in the position of Interim Superintendent in the Hamilton Township. Eight of the individuals expressed interest in the position of Interim Superintendent and were asked to forward a letter of interest, resume, and background information.

Since none of the potential candidates for Interim Superintendent were [sic] employed by the Hamilton Township School District, I appointed Mr. Tola to lead the search for the Interim Superintendent. (DelGiudice Affidavit at paragraphs 20-23; Motion to Dismiss at Exhibit E)

Under these circumstances, the Commission does not find that the respondent participated in the search for the new Superintendent, the interview process for the potential candidates and/or the hiring of the new Superintendent so as to potentially violate N.J.S.A. 18A:12-24(c). Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) on June 15, 2011.

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) and the complaint is, therefore, dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: June 27, 2012

Resolution Adopting Decision – C51-11

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

Whereas, at its meeting on May 29, 2012, the Commission found no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c); and

Whereas, at its meeting on June 26, 2012, the Commission agreed that the within probable cause notice accurately memorializes its findings;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed probable cause notice in this matter and directs its staff to notify all parties to this action of said notice.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on June 26, 2012.

Joanne Boyle, Executive Director
School Ethics Commission