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**DEBORAH BOYLE**

v.

**ERNIE “JIM” GIANNAKIS,  
SOUTH PLAINFIELD BOARD OF EDUCATION,  
MIDDLESEX COUNTY**

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**BEFORE THE SCHOOL  
ETHICS COMMISSION**

**Docket No. C01-13**

**PROBABLE CAUSE  
NOTICE**

### **PROCEDURAL HISTORY**

This matter arises from a complaint filed on January 2, 2013 by complainant, Deborah Boyle, alleging that respondent, Ernie “Jim” Giannakis, President of the South Plainfield Board of Education (Board), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 *et seq.* By letters of January 8, 2013, February 6, 2013, March 6, 2013 and March 18, 2013, the complainant was advised that each of her submissions was deficient and that Counts 1, 2, and 3 of her original complaint were out of time. The complainant requested and received additional time to explain why those Counts should be considered in the Commission’s review. On April 8, 2013, the complainant filed an amended complaint, correcting all deficiencies and on April 22, 2013, the complainant submitted her supplemental explanation. The complaint specifically alleged that the respondent violated N.J.S.A. 18A:12-24(a) and (c) of the Act and N.J.S.A. 18A:12-24.1(a) and (g) of the Code of Ethics for School Board Members (Code).

On April 18, 2013, respondent’s new counsel requested and received extensions of time to respond to all Counts of the complaint, and on May 28, 2013, the respondent filed a Motion to Dismiss in lieu of an Answer, alleging that the complaint was frivolous.

By letter dated June 4, 2013, the parties were notified that the Commission would review this matter at its meeting on June 25, 2013 in order to make a determination on respondent’s Motion to Dismiss and his allegation of frivolousness, in accordance with N.J.A.C. 6A:28-8.3. On June 17, 2013, the complainant requested an adjournment of the Commission’s review and an additional opportunity to submit a more extensive explanation in support of the viability of Counts 1 through 3. The complainant was granted the adjournment and given until July 12, 2013 to submit her supplemental explanation. By letter of July 8, 2013, the parties were again notified that the Commission would review the matter on July 30, 2013. On July 11, 2013, the complainant filed a document to explain the reasons why she filed out of time.

At its meeting on July 30, 2013, the Commission voted to grant respondent’s Motion to Dismiss as to Counts 1, 2, and 3 as untimely, denied respondent’s Motion to Dismiss as to Count 4, and found the complaint not frivolous. The Commission also voted to schedule the matter for a probable cause determination at a later date and directed the respondent to file an Answer on Count 4 of the complaint, which alleged that the respondent had violated N.J.S.A. 18A:12-24(a) and (c) of the Act.

The respondent timely filed his Answer on September 20, 2013. By letter of December 6, 2013, the complainant and the respondent were notified that the Commission would review this matter at its meeting on December 19, 2013, in order to make a probable cause determination, in accordance with N.J.A.C. 6A:28-10.9. At its meeting on December 19, 2013, the Commission found no probable cause to credit the allegations of prohibited acts and dismissed the complaint.

## **SUMMARY OF THE PLEADINGS**

The complainant asserts in Count 4 that on August 31, 2012, she was in the Business Office and observed the Sodexo Representative waiting for the Business Administrator(BA). When the BA walked out of his office, the respondent was with him. At complainant's request, the respondent stepped out of the office so that the complainant could discuss her issue with the BA. Later, a Vice President of Sodexo, who represents the custodial services division,<sup>1</sup> arrived to speak with the BA and who, complainant asserts, was carrying a large check from the company. The respondent entered the BA's office along with the Sodexo representative where they remained behind closed doors for the next 20 minutes. The complainant reported her observations to the Superintendent. The complainant contends this to be a violation of N.J.S.A. 18A:12-24(a) and (c).

Respondent maintains that the allegations in Count 4 are without merit since the complainant has no information about the conversation, which took place in the BA's office. Moreover, the BA's certification explains Sodexo was not discussed. The visit was just a courtesy call by the new Sodexo Representative handling the account. Moreover, the Superintendent conducted an investigation and determined that no Sodexo business was conducted in the BA's office. Finally, the respondent represents that when the issue was raised again in public session, the BA reported that no business has been conducted with the Sodexo representative.

## **ANALYSIS**

The complainant alleges that the respondent participated in discussions concerning Sodexo's contract with the Board. Complainant asserts this to be a violation of N.J.S.A. 18A:12-24(a). This subsection of the Act provides:

- a. 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;

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. The complainant has not asserted that the respondent had a "direct or indirect" financial interest nor is there any

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<sup>1</sup> The respondent works for the food service division of Sodexo.

support in her complaint that the respondent has a financial interest in Sodexo within the meaning of the Act. Rather, he certifies that he had been employed by the company for the past seven years in the food services division only. Thus, the record includes no evidence that the respondent, or a member of his immediate family, had an interest in a business organization which is in substantial conflict with the proper discharge of his duties.

Neither can the Commission find on this record that he engaged in some “business transaction or professional activity” which is in *substantial conflict* with the proper discharge of his duties as a Board member. The complainant offers no proof in the record to suggest or support the allegation that the respondent engaged in any business activity during his conversation with the BA and the Sodexo representative. Thus, the Commission finds no cause to credit the allegations in Count 4 that the respondent violated N.J.S.A. 18A:12-24(a).

Likewise, the complainant affirms that this same conversation also violated N.J.S.A. 18A:12-24(c). This subsection of the Act provides:

- c. 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;

In determining whether there is a violation of N.J.S.A. 18A:12-24(c), the Commission must first determine whether the public could reasonably perceive that the respondent’s objectivity or independence of judgment would be impaired because of some benefit that would flow to the respondent or to a member of his immediate family. “Benefit” as used in the Act means advantage, profit, privilege or gain. N.J.A.C. 6A:28-1.2. The record is bereft any intimation that the respondent “benefitted” from this conversation.

The respondent argues no such review is necessary since he never discussed Sodexo business during his conversation that afternoon. In support of his position, the respondent has submitted his certification and that of the BA attesting to the facts as asserted by the respondent, i.e. that he exchanged no more than pleasantries and the meeting was fortuitous and not planned. He further notes that the Superintendent investigated the matter contemporaneously and found nothing untoward. Finally, the respondent avers that when the issue was raised in public session, the BA affirmed that the conversation was casual in nature and that no Sodexo business was ever discussed.

Under these circumstances, the Commission did not find proof that the respondent participated in or engaged in a discussion regarding Sodexo 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(a) or (c).

## DECISION

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 allegations that the respondent violated N.J.S.A. 18A:12-24(a) and (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).

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Robert W. Bender  
Chairperson

Mailing Date: January 29, 2014

## **Resolution Adopting Decision – C01-13**

**Whereas**, the School Ethics Commission has considered the Complaint and the Answer;  
and

**Whereas**, at its meeting on December 19, 2013, the Commission found no probable cause to credit the allegations of prohibited acts and dismissed the complaint; and

**Whereas**, at its meeting on January 28, 2014, 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.

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Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 28, 2014.

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Joanne M. Restivo  
Interim Executive Director  
School Ethics Commission