
JASON MROCZKA

V.

DENISE PAVONE-WILSON,
CENTRAL REGIONAL
BOARD OF EDUCATION,
OCEAN COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

DOCKET NO. C06-16

DECISION ON
PROBABLE CAUSE

PROCEDURAL HISTORY

This matter arises from a Complaint filed with the School Ethics Commission (Commission) on January 22, 2016 by Jason Mroczka, alleging that Denise Pavone-Wilson, a member of the Central Regional Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24(c) of the Act.

On January 27, 2016, the Complaint was sent to the Respondent, notifying her that charges were filed against her with the Commission, and advising her that she had twenty (20) days to answer the Complaint. Through counsel, Respondent was provided with an extension of time to file a responsive pleading. On March 11, 2016, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response on April 11, 2016, pursuant to N.J.A.C. 6A:28-8.2.

By letter dated April 5, 2016, the Parties were advised that the Commission would review this matter at its meeting on April 26, 2016 in order to make a determination regarding Respondent's Motion to Dismiss. At its meetings on April 26, 2016, May 24, 2016, and June 21, 2016, the Commission considered the pleadings and, on June 21, 2016, voted to deny Respondent's Motion to Dismiss. As a result, the Respondent was directed to file an Answer, which was received on July 12, 2016.

By correspondence dated July 13, 2016, the Parties were notified that the Commission would review this matter at its meeting on July 26, 2016 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9. At its July meeting, the Commission reviewed the matter and voted to find that there was no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(c) of the Act. Accordingly, the Commission voted to dismiss the Complaint in its entirety for failure to provide sufficient facts to support a finding of probable cause, pursuant to N.J.A.C. 6A:28-10.7(d).

SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant asserts that Respondent, an employee of the Seaside Heights Board of Education, violated N.J.S.A. 18A:12-24(c) and ignored the advice of the Commission issued in

Advisory Opinion A11-13 (A11-13) when, on January 7, 2016, she took the oath of office and accepted a seat on the Board. Respondent's swearing-in followed her successful election in November, 2015.

According to Complainant, Respondent has a "direct" conflict of interest because her current employer (the Seaside Heights Board of Education) has a Shared Services Agreement with the Board for a number of services, including Superintendent. Complainant contends that as a result of this conflict, Respondent is ineligible to serve on the Board. Complainant relies on the Commission's advice in A11-13, which cautioned that it would be a violation of the Act for a seated board member to become employed by a district which shares services or a Superintendent with the board on which she/he is a member.

B. Answer to Complaint

Respondent admits that she is currently employed by the Seaside Heights Board of Education as the secretary to the principal of the elementary school, and avers that this employment preceded her membership on the Board. She also admits that following her election in November, 2015, she was sworn-in as a member of the Board on January 7, 2016. Respondent additionally admits that the Board and the Seaside Heights Board of Education have a Shared Services Agreement. However, Respondent denies that she violated N.J.S.A. 18A:12-24(c), argues that A11-13 is overbroad, and argues that the Commission does not have the authority to create a *per se* wholly disqualifying condition for board membership.

ANALYSIS

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. 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.

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(c) of the Act. Thus, the question before the Commission is whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act has been violated. N.J.A.C. 6A:28-10.7(b).

Allegation that Respondent Engage in a Prohibited Act

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24(c) of the Act, which 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 order to credit the allegation of a violation of N.J.S.A. 18A:12-24(c), the Commission must find evidence that Respondent had either: 1) taken action in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment; or 2) acted in her official capacity in a matter where she or a member of her immediate family had a personal involvement that is or created some benefit to her or the member of her immediate family. After review, the Commission finds there is no information or allegation in the Complaint that Respondent took any *action* in her official capacity in any matter that might reasonably be expected to impair her objectivity or independence of judgment. Instead, Complainant asserts that the mere act of taking the oath of office is a violation of N.J.S.A. 18A:12-24(c). The Commission agrees with Respondent that such a finding would be tantamount to a determination that Respondent is ineligible to serve as a board member; however, the Commission does not have the authority, or the jurisdiction, to render such a determination. The eligibility, or lack thereof, of an individual to serve as a board member is outside the Commission's purview. Therefore, the Commission finds no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(c) of the Act.

The Commission also notes there are important factual distinctions between the instant matter, and A11-13. Although both cases involve districts with shared services, and a shared superintendent in particular, the Respondent in this case was employed by the Seaside Heights Board of Education *before* she was elected to serve as a board member. Conversely, in A11-13, the individual sought to become employed by a district *after* being seated as a board member in another district; in this way, the individual would have become employed upon the recommendation of an individual (shared Superintendent) who the board member supervised in the other district. It could appear to the public that this might create a *quid pro quo* exchange of a position in the district for continued employment of the Superintendent. In this case, because Respondent's employment preceded her service on the Board, no *quid pro quo* arrangement could appear to exist.

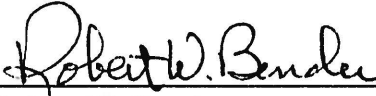
Notwithstanding the above, the Commission cautions that Respondent's role as a board member, while simultaneously maintaining employment in a district that shares services with her board, is riddled with potential ethical violations, some of which may be incompatible with her continued ability to serve. However, until such time that a complaint articulates specific facts detailing such a violation, the Commission cannot render such a determination.

Accordingly, and for the reasons set forth above, the Commission dismisses the Complaint in its entirety for failure to provide sufficient facts to support a finding of probable cause, pursuant to N.J.A.C. 6A:28-10.7(d).

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that it finds no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(c) of the Act, 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: August 24, 2016

Resolution Adopting Decision – C06-16

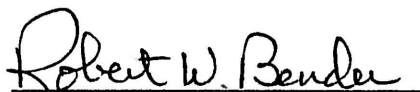
Whereas, the School Ethics Commission (Commission) has considered the Complaint and the documents filed in support thereof, as well as the Answer to Complaint along with its supporting documentation; and

Whereas, at its meetings on July 26, 2016, the Commission reviewed the matter and found no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(c) of the Act; and

Whereas, at its meeting on July 26, 2016, the Commission voted to dismiss the complaint for failure to provide sufficient facts to support a finding of probable cause, as determined pursuant to N.J.A.C. 6A:28-10.7(d); and


Whereas, at its meeting on August 23, 2016, the Commission agreed that the within probable cause notice accurately memorializes its findings; and

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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 23, 2016.



Kathryn A. Whalen
Acting Executive Director
School Ethics Commission