
TASHA DE GEORGE

v.

**DEBRA L. OSBORNE AND
GAYLE A. ANDRIAC
MONTAGUE BOARD OF EDUCATION,
SUSSEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C11-15

**DECISION ON
MOTION TO DISMISS**

PROCEDURAL HISTORY

This matter arises from a Complaint filed on February 20, 2015 by Tasha DeGeorge alleging that Debra L. Osborne and Gayle A. Andriac, members of the Montague Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Specifically, Complainant asserted that Respondent Osborne violated N.J.S.A. 18A:12-24(c) of the Act and N.J.S.A. 18A:12-24.1 (e), (f), and (h) of the Code of Ethics for School Board Members (Code), and that Respondent Andriac violated N.J.S.A. 18A:12-24.1(f), and (h) of the Code. By letter dated March 4, 2015, the Complaint was sent to the Respondents, notifying them that charges against them were filed with the School Ethics Commission (Commission) and advising them that they had 20 days to answer the Complaint. The Respondents retained counsel, who requested and received a brief extension to file a response. The Respondents filed a joint Motion to Dismiss in Lieu of an Answer on April 16, 2015. After a brief extension of time, the Complainant filed a reply to the allegation on May 22, 2015.

On June 5, 2015, the Commission received a letter from superseding counsel for the Respondents seeking a 30-day extension to review the CD and the facts and evidence proffered by the Complainant and to file an allegation of frivolous Complaint, pursuant to N.J.S.A. 18A:12-29(e). On July 2, 2015, counsel for the Respondents filed the supplemental response, but did not include the allegation of frivolous complaint.

By letter dated July 7, 2015 the Commission notified the Complainant and Respondents that this matter was scheduled for discussion by the Commission at its meeting on July 28, 2015 in order to make a determination regarding the Respondents' Motion to Dismiss.

At its meeting of July 28, 2015, the Commission voted to grant the Motion to Dismiss the Complaint in its entirety for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.8(a)(5).

SUMMARY OF THE PLEADINGS

Count 1

The Complainant asserts that Respondent/Board member Osborne violated the Code when she publicly stated on August 27, 2014 that she would never vote for the referendum to terminate a sending-receiving relationship with a bordering school in New York and for not supporting the Board's decision to end the sending/receiving relationship with the Port Jervis, New York school system. In doing so, the Complainant contends that the Respondent attempted to benefit her friends who wanted to remain in New York. Complainant asserts that Respondent Osborne violated of N.J.S.A. 18A:12-24.1(e) & (f).

Count 2

Complainant alleges that Respondent Osborne violated the Code when, on September 30, 2014, she displayed a "Vote No" sign on her lawn prior to and during the referendum vote. Complainant asserts that Respondent Osborne violated of N.J.S.A. 18A:12-24.1(e) & (f).

Count 3

Complainant avers that Respondent Osborne violated the Act, when, on September 24, 2014, she questioned every bill paid on the bill list, even normal fees for the HVAC system, electrician, etc. Complainant asserts that Respondent Osborne violated of N.J.S.A. 18A:12-24(c) of the Act.

Count 4

The Complainant alleges that Respondent Osborne violated the Act, when, on January 29, 2015 she questioned every transfer of funds listed by the BA. Complainant asserts that Respondent Osborne violated of N.J.S.A. 18A:12-24(c) of the Act.

Count 5

The Complainant alleges that Respondent Osborne violated the Code when, on January 7, 2015, she voted against the Superintendent's recommendations to hire two teachers as coaches so the students could have intramural basketball. Complainant asserts that Respondent Osborne violated of N.J.S.A. 18A:12-24.1 (f) & (h) of the Code.

Count 6

The Complainant alleges that Respondent Osborne violated the Code when, on December 17, 2014, she stated that she did not agree that it was in the best interest of the children to bring them back to the domicile district for 7th and 8th grade and that it was not a step forward. Complainant asserts that Respondent Osborne violated of N.J.S.A. 18A:12-24.1(e) & (f) of the Code.

Count 7

The Complainant alleges that Respondent Osborne violated the Code when, on January 29, 2015, she voted against the Superintendent's recommendation to hire teachers as part of the Curriculum Committee to prepare for the start of the new school year in September. Complainant asserts that Respondent Osborne violated of N.J.S.A. 18A:12-24.1(h) & (f) of the Code.

Count 8

Complainant alleges that Respondent Andriac violated the Code when, on January 7, 2015, she voted against the Superintendent's recommendations to hire two teachers as coaches so the students could have intramural basketball. Complainant asserts that Respondent Andriac violated of N.J.S.A. 18A:12-24.1 (f) & (h) of the Code.

Count 9

The Complainant alleges that Respondent Andriac violated the Code when, on January 29, 2015, she voted against the Superintendent's recommendation to hire teachers as part of the Curriculum Committee to prepare for the start of the new school year in September. Complainant asserts that Respondent Andriac violated of N.J.S.A. 18A:12-24.1(f) & (h) of the Code.

The Respondents argue that the Complainant does not provide Board Minutes demonstrating that the statements as alleged were made, and that if made the statements were nothing more than a personal opinion. They assert that there is no evidence that the Respondents made a personal promise or took personal action on behalf of a particular party or cause. They assert that the lawn sign was not a violation because the Commission has held that no disclaimer is necessary on a generic sign. They also argue that they did not exceed their authority as they undertook only Board actions suitably within the scope of their duties.

In her reply, the Complainant provides copies of Board Minutes, a CD recording of meetings, and correspondence from the Sussex County Office of Education which informs the Board that Montague is not in a sending/receiving relationship with the Port Jervis, New York School District for new students and parents sending students to that District would be individually responsible for the expense. Complainant alleges that the actions taken by the Respondents as laid out in the Complaint were taken to stymie the transition of students back to Montague for Grades 7 & 8 and to attend High Point Regional for Grades 9-12.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the alleged 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. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the

Commission was whether the Complaint alleged facts, which, if true, could support a finding that Respondent Osborne violated N.J.S.A. 18A:12-24(c) of the Act and N.J.S.A. 18A:12-24.1 (e), (f), and (h) of the Code and that Respondent Andriac violated N.J.S.A. 18A:12-24.1(f), and (h) of the Code.

Allegations of Prohibited Acts: Respondent Osborne

In Counts 3 and 4 of the Complaint, the Complainant asserts that Respondent Osborne violated N.J.S.A. 18A:12-24(c), 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 support of her claims in Counts 3 and 4, respectively, the Complainant asserts that on September 24, 2014, Respondent Osborne questioned every bill paid on the bill list, even normal fees as for the HVAC system and electrician, and similarly on January 29, 2015, she questioned every transfer of funds listed by the Business Administrator.

For a violation of N.J.S.A. 18A:12-24(c) to exist, the school official must have acted in her official capacity for the benefit of herself or her 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. Since the Complainant has not alleged that those individuals or Ms. Osborne herself benefitted from the actions taken by Respondent Osborne in her official capacity, this subsection of the Act does not apply. Further, the Respondent’s inquiries regarding the expenditure of public funds are entirely within her authority as a Board member to question, pursuant to the Code. Consequently, even granting all inferences to the Complainant, the Commission finds that the facts set forth in these Counts of the Complaint, if true, would not establish a violation of N.J.S.A. 18A:12-24(c) and, therefore, dismisses the allegations in Counts 3 and 4.

Allegations of Violations of the Code of Ethics for School Board Members: Respondent Osborne

In its review, the Commission considers the allegations in Counts 1, 2, and 6 that the Respondent Osborne violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code, which state, respectively:

- e. 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.
- f. 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 order to prove a violation of N.J.S.A. 18A:12-24.1(e), the Complainant must provide factual evidence that the respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board, pursuant to N.J.A.C. 6A:28-6.4(a)5. In Counts 1, 2, and 6, the Complainant contends that the Respondent took private action beyond the scope of her duties when she publicly stated that she would not support the referendum to terminate the District's sending-receiving agreement with the Port Jervis Schools, when she displayed a lawn sign advocating "Vote No" on the referendum and when she told members of the community that returning the 7th and 8th grades to the Montague School District was not a step forward or in the best interest of the children. The Complainant has not provided any facts or evidence to demonstrate that Respondent Osborne made personal promises to encourage others to vote against the referendum or that she took action beyond the scope of her authority. The Code does not prohibit a Board member from voting contrary to the other members nor does it silence a point of view that differs from the rest of the Board. Consequently, even accepting as true all facts alleged by the Complainant in Counts 1, 2 and 6, such facts are insufficient to support a finding that Respondent Osborne violated the Code. Accordingly, the allegations in Counts 1, 2 and 6 that Respondent Osborne violated N.J.S.A. 18A:12-24.1(e) of the Code are dismissed.

To prove a violation of N.J.S.A. 18A:12-24.1(f), the Commission requires that the Complainant provide factual evidence that the Respondent Osborne:

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. N.J.A.C. 6A:28-6.4(a)6.

It is clear that from the facts that the Board is grappling with a new paradigm with which to administer the schools and that there are different viewpoints on the issue of severing the sending-receiving relationship. These contrasting positions render the Board fractious and splintered, but the conflict does not create a special interest group or persons united in opinion who adhere to a political party or cause. Moreover, the Complainant has not provided evidence that the Respondent used the schools to acquire some benefit for herself, her immediate family or a friend any greater than all of the other students and families similarly situated, who wish to maintain the status quo. Consequently, even accepting as true all facts alleged by the Complainant in Counts 1, 2 and 6, such facts are insufficient to support a finding that

Respondent Osborne violated the Code. Accordingly, the allegations in Counts 1, 2 and 6 that Respondent Osborne violated N.J.S.A. 18A:12-24.1(f) of the Code are dismissed.

Allegations of Violations of the Code of Ethics for School Board Members:
Respondents Osborne and Andriac

In its review, the Commission considers the allegations in Counts 5, 7, 8, and 9 that Respondents Osborne and Andriac violated N.J.S.A. 18A:12-24.1(f) and (h) of the Code, which state, respectively:

- f. 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.
- h. I will vote to appoint the best qualified personnel available after consideration of the recommendation of the chief administrative officer.

To prove a violation of N.J.S.A. 18A:12-24.1(f), the Commission requires that the Complainant provide factual evidence that the Respondents:

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 used the schools in order to acquire some benefit for the Respondent, a member of their immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

To prove a violation of N.J.S.A. 18A:12-24.1(h), the Commission requires that the Complainant provide factual evidence that the Respondents:

acted on a personnel matter without a recommendation of the chief administrative officer. N.J.A.C. 6A:28-6.4(a)8.

The Commission finds that Counts 5, 7, 8, and 9, of the Complaint are devoid of any particular factual allegations that would support findings of such violations. Specifically:

- The Complainant has set forth no specific facts that, if proven true, could establish that either Respondent 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 either Respondent used the schools in order to acquire some benefit for herself, a member of her immediate family or a friend. For the same reasons articulated above, the Complainant has failed to demonstrate that the Respondents violated N.J.S.A. 18A:12-24.1(f) of the Code. N.J.A.C. 6A:28-6.4(a)6.

- The Complainant has set forth no specific facts that, if proven true, could determine that the Respondents acted on a personnel matter without a recommendation of the chief administrative officer as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(h). N.J.A.C. 6A:28-6.4(a)8.

In contrast to the allegations in the Complaint, the Commission finds that although the Respondents voted against the Superintendent's recommendations, they conducted Board business in the normal course, commensurate with their Board member duties. Subject to limitations arising from a conflict, any Board member may vote as she chooses from the moment the member is sworn in. Moreover, Board members are not under any obligation to accept the Superintendent's recommended candidate for any position and may vote to select another candidate.

The Commission finds, therefore, that there are no facts set forth in the Complaint that would support a conclusion that the Respondents violated the Code under any of these subsections. Thus, even accepting as true all facts alleged by the Complainant in all Counts of the Complaint, the Commission finds that the Complaint, on its face, fails to allege facts sufficient to maintain a claim that the Respondents violated N.J.S.A. 18A:12-24.1(f) and (h) of the Code and hereby dismisses these allegations and, by extension, the Complaint in its entirety for failure to state a claim upon which relief could be granted.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within Complaint in its entirety for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: August 26, 2015

Resolution Adopting Decision – C11-14

Whereas, the School Ethics Commission has considered the Complaint, the Motion to Dismiss filed on behalf of the Respondents, and the reply thereto; and

Whereas, at its meeting on July 28, 2015, the Commission determined to grant the Respondents' Motion to Dismiss the Complaint for failure to state a claim upon which relief could be granted. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5; and

Whereas, at its meeting on August 25, 2015, 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 25, 2015.

Joanne M. Restivo
Acting Executive Director