
BARBARA LESINSKI

v.

**CHRISTINE HALL, GENEVA SMALLWOOD,
AND QZEENA TAYLOR
ASBURY PARK
BOARD OF EDUCATION,
MONMOUTH COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Docket No. C27-13
PROBABLE CAUSE NOTICE**

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 4, 2013 by Barbara Lesinski, alleging that Christian Hall, Geneva Smallwood and Qzeena Taylor, member of the Asbury Park Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that Respondent Smallwood violated N.J.S.A. 18A:12-24(b) of the School Ethics Act (Act) and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code) and all of the respondents violated N.J.S.A. 18A:12-24(e) of the Act and N.J.S.A. 18A:12-24.1(f) of the Code. Respondents Hall and Taylor filed an answer to the complaint on July 18, 2013, alleging that the complaint was frivolous. After having been granted an extension for good cause shown, Respondent Smallwood filed an answer on August 7, 2013. The respondents served their respective Answers on the complainant, who was accorded an opportunity to respond to the allegation of frivolousness, but she did not do so.

By letter dated August 9, 2013, the complainant and respondents were notified that the Commission would review this matter at its meeting on August 27, 2013 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9, as well as to make a determination on the allegation of frivolousness. At its August 27, 2013 meeting, the Commission found no probable cause to credit the allegations in Count 1 that any respondents violated N.J.S.A. 18A:12-24(e) or N.J.S.A. 18A:12-24.1(f) of the Code. Moreover, the Commission found no probable cause to credit the allegations in Count 2 that Respondent Smallwood violated N.J.S.A. 18A:12-24(b) or that she violated N.J.S.A. 18A:12-24.1(f) of the Code as Count 2 of the complaint was determined to be untimely, pursuant to N.J.A.C. 6A:28-6.5. The Commission dismissed both Counts of 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.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

In Count 1 of the complaint, the complainant alleges that the respondents, as board members received donations for their election campaigns from the same law firm they later voted to retain as board counsel. The complainant alleges this is a violation of N.J.S.A. 18A:12-24(e), and N.J.S.A. 18A:12-24.1(f).

In Count 2 of the complaint, the complainant asserts that the Respondent Smallwood participated in a political campaign event held on school property supporting her candidacy for

school board member while a school board member. The complainant alleges this to be a violation of N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f).

In her Answer, Respondent Smallwood denied that she is aware of any contributions by the law firm of Cooper Levinson to her campaign. The respondent contends that the complaint fails to document any contributions by Cooper Levenson to her 2012 election campaign. (Answer at p. 1) In Count 2, the Respondent Smallwood asserts as a threshold issue that complainant filed her complaint more than 180 days after receiving notice of the event, and therefore, Count 2 is untimely and should be dismissed. The respondent further denies participation in a political campaign event on school property supporting her candidacy for the Asbury Park Board of Education. (Answer at p. 2)

In their answers, Respondents Hall and Taylor admitted having voted to approve Cooper Levenson [sic] as board attorney, but they denied receiving donations from the firm to their election campaigns. (Answer at p. 1) Respondents answer included an allegation that the complaint was frivolous. (Answer at p. 4)

Respondents served their answers on the complainant; therefore, complainant was provided but did not take the opportunity to respond to respondents' allegation of frivolousness.

FINDINGS OF PROBABLE CAUSE

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.9, processing of complaints alleging *both* prohibited acts and a violation of the Code of Ethics for School Board Members. A finding of probable cause is not 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.

Pursuant to N.J.A.C. 6A:28-10.9, in a "combination" complaint such as this, the Commission first determines whether, based on the record before it, probable cause exists to credit the allegations in the complaint that the respondent engaged in prohibited acts. Here, and as set forth below, the Commission found no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(e) as alleged in Count 1 of the complaint. On Count 2, the Commission finds that the complaint is untimely pursuant to N.J.A.C. 6A:28-6.5(a) and it will not reach to the merits of the case.

Allegation that the Respondents Engaged in Prohibited Acts

As a preliminary matter, the Commission initially finds that complainant's allegations set forth in Count 2 of the complaint are time-barred, in that the Commission's regulations provide a 180-day limitation period for filing a complaint. The Commission's regulations at N.J.S.A. 18A:25 provide, in relevant part:

- (a) Complaints shall be filed within 180 days of notice of the events, which form the basis of the alleged violation(s). A complainant shall be deemed to be notified of events, which form the basis of the alleged violation(s) when he or she knew of such events or when such events were made public so that one using reasonable diligence would know or should have known.

The Commission recognizes that limitation periods of the type herein serve to discourage dilatoriness and provide a measure of repose in the conduct of school affairs. Kaprow v. Berkley Township Bd. of Educ., 131 N.J. 571, 587 (1993). Thus, “notice of the alleged violation” must be interpreted in a manner that anticipates the reasonable diligence of the complainant(s). In addressing potential violations of the School Ethics Act, the Commission must balance the public’s interest in knowing of potential violations against the important policy of repose and a respondent’s right to fairness. The time limitations set forth in the regulations must be enforced if it is to operate in a fair and consistent manner. Philips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County, C19-03 (June 24, 2003). Further, although the Commission recognizes that this regulatory time period may be relaxed, in its discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice, N.J.A.C. 6A:28-1.8, it finds no extraordinary circumstances in this matter that would compel relaxation. Accordingly, Count 2 is dismissed as untimely pursuant to N.J.A.C. 6A:28-6.5(a).

In Count 1 of the complaint, the complainant asserts that the respondents received donations from Cooper Levenson for their election campaigns and then, as board members, voted to retain the services of Cooper Levenson as board counsel in violation of N.J.A.C. 18A:12-24(e) and N.J.A.C. 18A:12-24.1(f). The respondents contend that there is no documentation that any of the respondents received campaign donations from the law firm.

N.J.S.A. 18A:12-24(e) states:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

The Commission found that the complainant submitted no evidence with might show that the respondents solicited or accepted any election contributions in violation of the above statutory prohibition. Further, the Commission found that the complainant submitted no evidence that these school officials had knowledge or reason to believe that any campaign contributions were accepted by their electoral campaigns from Cooper Levenson when they voted to appoint Cooper Levenson as board counsel.

The Commission also considered the allegation that the respondents violated N.J.S.A. 18A:12-24.1 (f) which states

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.¹

The Commission found that since the complaint lacks support any factual evidence for a violation of N.J.S.A. 18A:12-24(b) or (e), then the complainant has also failed to provide the necessary foundation to demonstrate that the respondents surrendered their independent judgment as board members so as to violate N.J.S.A. 18A:12-24.1 (f).

REQUEST FOR SANCTIONS

Pursuant to N.J.A.C. 6A:28-7.2(b), the Respondent Smallwood alleged in her answer that the complaint herein is frivolous. At its meeting, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence, which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondents that it finds no probable cause to credit the allegations of Count 1 of the complaint that the respondents violated N.J.S.A. 18A:12-24(e) or the allegation that the respondents violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics. Count 2 of the complaint is dismissed as untimely pursuant to N.J.A.C. 6A:28-6.5(a). 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: September 25, 2013

¹ For complaints alleging a violation of the code of ethics for school board members, the complainant has the burden to factually establish a violation in accordance with the standards set forth below:

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. N.J.A.C. 6A:28-4(a)6

Resolution Adopting Decision – C27-13

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and all papers filed thereafter; and

Whereas, at its meeting of August 27, 2013, the Commission found no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(e) or N.J.S.A. 18A:12-24.1(f), as set forth in Count 1 of the complaint, Count 1 is dismissed; and

Whereas, the Commission found that Count 2 of the complaint is untimely, Count 2 is dismissed pursuant to N.J.A.C. 6A:28-6.5(a); and

Whereas, the Commission found that the complaint was not frivolous; and

Whereas, the Commission has reviewed, and agrees with, the proposed probable cause notice; 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on September 24, 2013

Joanne M. Restivo
Interim Executive Director
School Ethics Commission