

the Respondent has not abstained from votes related to the mortgagors and continues to hold power over them. As such, the Complainant asserts that Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f).

Counts 2, 7, and 9

The Complainant charges that the Respondent wrote mortgages for several teacher/coaches and, as in Count 1, alleges that the Respondent and his family have received a financial gain from these transactions as well as from the interest they continue to receive. Complainant also avers that the Respondent has not abstained from votes related to the mortgagors and continues to hold power over them. The Complainant asserts this was a violation of N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f).

Count 3

The Complainant charges that the Respondent wrote mortgages for a food service worker and, as in Count 1, alleges that the Respondent and his family have received a financial gain from these transactions as well as from the interest they continue to receive. Complainant also avers that the Respondent has not abstained from votes related to the mortgagor and continues to hold power over the employee. The Complainant asserts this was a violation of N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f).

Counts 4, 5, 6, 8, and 10-16

The Complainant charges that the Respondent wrote mortgages for a number of teachers in the District and, as in Count 1, alleges that the Respondent and his family have received a financial gain from these transactions as well as from the interest they continue to receive. Complainant also avers that the Respondent has not abstained from votes related to the mortgagors and continues to hold power over them. The Complainant asserts this was a violation of N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f).

In his Answer and Certification, the Respondent admits to writing these various mortgages, but asserts that because he is a salaried employee, not a principal of the Company, he does not receive a commission, and that his actions were proper. He argues that:

1. His work for the Company is not in “substantial conflict” with his Board duties: He does not own an interest in the business and the Company does not contract with the Board.
2. He did not solicit clients, use his position to hire clients, or vote to hire his clients as employees in the District.
3. In February 2015, prior to the May 2015 vote for the Interim Superintendent and accompanying salary increase, the mortgage that the Respondent wrote for the then-District Education Specialist, was sold to an investor by the Company, thus ending the business relationship between the Interim Superintendent and the Company.
4. There is nothing inherently in conflict with the Respondent’s duties as a Board member and his employment that would impair his independence of judgment.

5. He did not solicit or accept anything of value from the Interim Superintendent and there was no way to anticipate that the previous Superintendent would have been arrested months later and the position of Interim would be available.
6. He never used his office to secure financial gain for himself and contends that the Complainant has failed to provide any facts to support the claim.

FINDINGS OF PROBABLE CAUSE

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

The Complainant alleges in Counts 1—16 that the Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f) of the Act when he wrote mortgages for various District employees and benefitted from these transactions while continuing to vote on employment issues affecting these individuals. Thus, the question before the Commission is whether the Complainant alleged facts in these Counts, which, if true, could support a finding of probable cause to credit the allegations that the Respondent violated the Act.

In reviewing the facts of this matter, the Commission considers all of the subsections together as a whole because of the commonality of purpose, and to address the multi-faceted violations alleged in the Complaint on a similar set of facts, though involving different District employees.

The Complainant has alleged in all Counts of the Complaint that the Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f), which provide, respectively:

- 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;
- b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;
- 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;
- d. No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to

prejudice his independence of judgment in the exercise of his official duties;

- e. 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;
- f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

Count 1

The Complainant asserts that in February 2015, the Respondent, as an employee of the Company, wrote a mortgage for the then-District Education Specialist, who was appointed Interim Superintendent on May 7, 2015 to succeed the sitting Superintendent, arrested that same evening. He further asserts that on that same night, the Respondent urged the Board to increase the salary for newly appointed the Interim Superintendent, to which the Board as a whole agreed. The Complainant maintains that because the Company is owned by his father, the Respondent violated N.J.S.A. 18A:12-24(a), which would prohibit him from engaging in any business or professional activity in which he has an interest in substantial conflict with the proper discharge of his public duties.

In his Certification, the Respondent attests that he does not own any portion of the Company's assets. Moreover, he is salaried employee of the Company and does not receive a commission, compensation or residue based on any of the mortgage loans he writes. Respondent further certifies that the one-time origination fee associated with the mortgage is paid at closing and then the loan is sold to various investors. Once the loan is sold, the Company does not retain any interest in the note, financial or otherwise, and the mortgagor is no longer its client. (Respondent's Cert. p. 2)

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24(a), the Commission would have to find evidence that the Respondent or a member of his immediate family¹ had an "interest" in the Company that is in substantial conflict with the proper discharge of his duties.

¹ 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 Respondent's father is not an "immediate family" member as defined, the father's ownership if the Company cannot be conferred on the Respondent so this element of this subsection of the Act does not apply.

As defined by the Act, “interest” is ownership or control of more than 10% of the profits, assets or stock in the Company. N.J.S.A. 18A:12-23. The record before the Commission contains no evidence that Respondent owns a 10% interest of the Company or that the activity of writing mortgages is different from any other service enterprise which exists and functions separate and apart from a Board member’s public duties. In brief, the Company and its employees serve the general public. The mortgage business is not intrinsically in substantial conflict with the Respondent’s Board duties as these activities are not linked, and the Company does not transact any business with the Board. Instead, the Company serves the needs of the public, including the Interim Superintendent and other employees of the District in their capacity as private citizens.

The Complainant also alleges that the Respondent’s May 2015 support and vote for additional compensation for the Interim Superintendent was in exchange for the mortgage, originated in February 2015. However, the Respondent asserts in his Certification that the mortgage he wrote for the then-District Education Specialist was sold to an investor by the Company on February 27, 2015, and that he maintained no further relationship with him, nor did the Company. (Respondent’s Cert., p.3) He further avers that he would not have known in February that the Superintendent would be arrested on May 7, 2015, and that the then-District Education Specialist would be selected to become the Interim Superintendent. The Commission observes that the Complainant does not offer any support for, or evidence of, a continuing association between the Respondent and the Interim Superintendent. Consequently, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(a).

In order to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(b), the Complainant would have to show that Respondent used or attempted to use his official position to obtain an unwarranted privilege, advantage or employment for himself, a member of his immediate family, or others. The Respondent does not deny that he originated the mortgage for the Interim Superintendent or that he voted for his appointment as Interim Superintendent; however, he argues that he did not maintain a continuing relationship, duty, or contact with the Interim Superintendent and that their association ceased upon the sale of the note to investors on February 27, 2015. Moreover, the Complainant has not demonstrated or even alleged that the Respondent solicited business from employees of the District, advertised to target this group, or had any role in the selection of the Interim Superintendent. The Respondent was not acting as a Board member in the personal business transaction, and the relationship between the Interim Superintendent and the Company terminated upon the sale of the loan to investors months before the appointment. Accordingly, this business transaction was not between a Board member and District employee, but between a loan originator and mortgagor. Because the Complainant has not provided any support to demonstrate that the Respondent used his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(b).

In order to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(c), the Complainant would have to provide evidence that the Respondent had either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment, or 2) acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family.

In its review of this allegation, the Commission observes that the Complainant has offered no substantive evidence that the Respondent used his official capacity in a matter where he, or a member of

his immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Respondent certifies, however, that he wrote the mortgage as an employee of the Company and that the business relationship between the Respondent and the Interim Superintendent had been long severed at the time of the Interim Superintendent's appointment and salary increase. Any financial involvement that existed between the Respondent and the Interim Superintendent, and any financial gain to the Respondent occurred and concluded months before the appointment. Any notion that future benefits may inure to the Respondent or the Interim Superintendent are purely speculative, attenuated and not ripe for adjudication at this time. In this portion of Count 1, the Complainant failed to provide any facts to support the allegation that the Respondent violated this subsection. Under these circumstances, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(c).

In order to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(d), the Complainant would have to demonstrate that the Respondent undertook employment or service that might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. As discussed, *supra*, the Commission determined that Respondent's profession is not fundamentally in conflict with his actions as a Board member. To be so, the Complainant would have to establish that the two functions created a conflict that would impair the Respondent's independent judgment. The Respondent performed the identical singular service for the Interim Superintendent as he would have to the public at large, and the Complainant has not illustrated how that one act created a continuing relationship sufficient to create a conflict that would result in a violation of the Act. It is not enough to infer a violation. Under these circumstances, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(d).

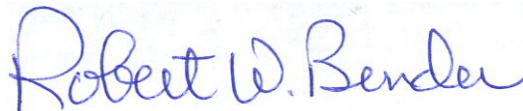
In order to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(e), the Complainant would have to demonstrate that the Respondent, a member of his immediate family, or a business organization in which he has an interest, solicited or accepted something of value for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. As discussed, *supra*, the Complainant has not provided any substantive evidence, demonstrating that the Respondent controls a 10% or greater interest in the Company, and the Respondent's father is not a member of his immediate family under the definition of immediate family in the Act. Further, the Complainant has not alleged that the Respondent solicited the Interim Superintendent's business nor established that any arrangement exists or existed between the Respondent and Interim Superintendent for the promise of some future mutual benefit. Consequently, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(e).

In order to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(f), the Complainant would have to establish that Respondent used, or allow to be used, his public office, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated. The Complainant asserts that the Respondent used his public office to benefit himself through the mortgage he wrote on behalf of the then-District Education Specialist with nothing to support this claim. Complainant neither asserts how Respondent used his public office to benefit himself or what benefit Respondent derived from writing the mortgage. The Respondent certifies, however, that he never solicited this business and that the Interim Superintendent used his services of his own volition without coercion or exchange of promises for future gains. The Complainant does not allege that the Respondent used information that he acquired as a Board member to his benefit. Consequently, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(f).

As to the remaining Counts of the Complaint, the Complainant asserts that by writing mortgages for 15 other District employees over the years, the Respondent violated the Act, and recites the same allegations in regard to different District employees: Teacher/Coach (Counts 2, 7, and 9); food service worker (Count 3); and Teachers (Counts 4-6, 8, 10-16). The Commission observes that the Complainant relies on the same set of facts as he did in Count 1, regarding his argument that mortgages originated by the Respondent for other District employees would also be a violation of N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f) of the Act. The Commission determined in Count 1 that it is not a violation of the Act for the Respondent to have written a mortgage for the Interim Superintendent under any of the subsections alleged. The same is true of these employees. Further, the Complainant has failed to provide any additional facts in Counts 2-16 to support a finding of probable cause other than the to assert that Respondent wrote and issued mortgages on behalf of these employees, and that by the nature of their relationship, it was improper to do so. The Commission determines that it is not. The Complainant did not allege that the Respondent solicited their business or specifically advertise to target these groups and has provided no proof that he did so. The Respondent conducted business in the normal course of his profession with members of the general public, who happen to be employees of the District. Accordingly, as in Count 1, the Commission also finds no probable cause to credit the allegations that the Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f) of the Act as asserted in the remaining Counts for the same deficiencies as analyzed in Count 1.

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 allegations that the Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f) 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: November 25, 2015

Resolution Adopting Decision – C27-15

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

Whereas, at its meetings on October 27, 2015, the Commission reviewed the matter and found no probable cause to credit the allegations that the Respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), and (f) of the Act; and

Whereas, at its meeting on October 27, 2015, 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 November 24, 2015, 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 24, 2015.

Joanne M. Restivo
Acting Executive Director