
ALBERT J. SCALA

V.

MICHAEL BUBBA,
WAYNE TOWNSHIP BOARD OF EDUCATION,
PASSAIC COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

DOCKET NO.: C44-17

DECISION ON
MOTION TO DISMISS

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on April 10, 2017, by Albert J. Scala (Complainant), alleging that Michael Bubba (Respondent), a member of the Wayne Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. More specifically, the Complaint alleges that Respondent violated N.J.S.A. 18A:12-25.

On April 21, 2017, the Complaint was sent to Respondent, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to answer the Complaint. On May 12, 2017, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss). On June 6, 2017, Complainant filed a response to the Motion to Dismiss.

The parties were notified by correspondence dated June 16, 2017, that this matter would be placed on the Commission's agenda for its meeting on June 27, 2017, in order to make a determination regarding the Motion to Dismiss. At its meeting on June 27, 2017, the Commission considered Respondent's Motion to Dismiss and, at its meeting on July 25, 2017, the Commission voted to grant the Motion to Dismiss for the reasons more fully discussed below.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

In Count 1 of the Complaint, which was filed with the Commission on April 10, 2017, Complainant alleges that Respondent violated N.J.S.A. 18A:12-25 because he failed to file his "financial disclosure statement" in 2016 after he was appointed by the Interim Executive County Superintendent to fill a vacancy on the Board. According to the information detailed in the Complaint, Respondent was appointed to fill the vacancy in "February 2016," but failed to file his "financial disclosure statement" within thirty (30) days of his appointment, or at any other time in 2016.

In Count 2 of the Complaint, which was filed with the Commission on April 10, 2017, Complainant alleges that Respondent violated N.J.S.A. 18A:12-25 because he failed to file his "financial disclosure statement" in 2017 after "winning a new three year term and being sworn in January 2017, for which the law states new members have 30 days to do so." According to the information detailed in the Complaint, Respondent was sworn-in as a Board member (for his

new three year term) on February 5, 2017, and, as argued by Complainant, he failed to file his “financial disclosure statement” within thirty (30) days thereafter.

Based on the above, Complainant alleges that Respondent violated N.J.S.A. 18A:12-25 in both 2016 and 2017.

B. Motion to Dismiss

In his Motion to Dismiss, Respondent argues, with respect to Count 1, that he did not file his financial disclosure statement in 2016 because his Business Administrator did not include him on the list of persons required to file same. As a result, Respondent argues that he did not have the means to file the required financial disclosure statement in 2016. With regard to Count 2, Respondent alleges that he did, in fact, file the required financial disclosure statement in 2017. More specifically, the financial disclosure statement was filed by Respondent on April 4, 2017, and accepted by the New Jersey Department of Education on April 11, 2017.

Respondent also contends that the Complaint should be dismissed because Complainant alleges that Respondent violated N.J.S.A. 18A:12-25 for failing to file his “financial disclosure statement”; however, N.J.S.A. 18A:12-25 pertains to the required “personal/relative disclosure statement,” and not the “financial disclosure statement,” the latter of which is referenced in N.J.S.A. 18A:12-26, not N.J.S.A. 18A:12-25. In short, Respondent argues that Complainant cited the wrong statute, and failed to articulate facts demonstrating that Respondent failed to comply with the statute cited, i.e., N.J.S.A. 18A:12-25.

Respondent also argues that Count 1 should be dismissed as untimely. Respondent argues that Complainant’s claim is that Respondent failed to file his 2016 financial disclosure statement thirty (30) days after he was appointed to fill a vacancy in February 2016. In order to have been timely, Complainant needed to file his Complaint within one hundred eighty (180) days thereafter. Instead, Complainant did not file a Complaint until April 10, 2017, which was more than one year later. Because the filing occurred outside the Commission’s one hundred eighty (180) day limitations period, Respondent urges that Count 1 must be dismissed. Even if the Commission does not find Count 1 to be untimely, Respondent argues that it would be unfair to penalize Respondent for the Business Administrator’s failure to include him on the list of persons required to file financial disclosure statements in 2016.

Regarding Count 2, Respondent notes that he had until April 30, 2017, to file his financial disclosure statement because he was a returning Board member and not, as alleged in the Complaint, a “new” Board member. Respondent asserts that his financial disclosure statement was filed on April 4, 2017, and approved by the New Jersey Department of Education on April 11, 2017. Consequently, he argues that he timely filed his 2017 financial disclosure statement prior to the April 30, 2017 deadline and, therefore, Count 2 should also be dismissed.

C. Response to Motion to Dismiss

In his response to the Motion to Dismiss, Complainant argues that Respondent was first elected to serve as a Board member in 2012 and, based on this prior service, was aware of the annual requirement to file a financial disclosure statement even if he was not added to the list of filers by the Business Administrator following his appointment in February 2016. Complainant

also contends that following Respondent's election to a new three year term (in November, 2016), he had thirty (30) days after being sworn-in to file his financial disclosure statement because he was a "new" Board member, and not a returning Board member. Instead of filing his financial disclosure statement within thirty (30) days, Complainant argues that he (Respondent) only filed his financial disclosure statement after ethics charges were filed against him.

III. ANALYSIS

Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant) and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response, is reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-25 as alleged in Count 1 and/or Count 2 of the Complaint.

Timeliness Issue / Statute of Limitations – Count 1

In his Motion to Dismiss, Respondent argues, with regard to Count 1, that because the Complaint was filed on April 10, 2017, and the events which formed the basis of the alleged violation occurred more than a year prior, Count 1 is untimely and should be dismissed.

The Commission's regulations provide a one hundred eighty (180) day limitation period for filing a complaint. More specifically, N.J.A.C. 6A:28-6.5(a) provides, 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* (emphasis added).

As applied here, the Complaint was received by the Commission on April 10, 2017. Because the events which formed the basis of the alleged violation of the Act, namely Respondent's failure to file his financial disclosure statement, occurred thirty (30) days after he was appointed to fill a vacancy on the Board in February 2016, Respondent argues that Count 1 is "clearly untimely." In his response to the Motion to Dismiss, Complainant does not offer an explanation as to why he did not file a Complaint regarding Respondent's failure to file his 2016 financial disclosure statement prior to April 10, 2017.

Pursuant to N.J.A.C. 6A:28-6.5(a), the Commission must determine when Complainant knew or would have known, had he used due diligence, of the events which form the basis of his complaint. In its review of the pleadings, and because financial disclosure statements are public

records, the Commission determines that, as of March 30, 2016,¹ Complainant had notice of the events which formed the basis of the alleged violation of N.J.S.A. 18A:12-25 in Count 1.

With March 30, 2016, as the starting point, Complainant had one hundred eighty (180) days, or until September 26, 2016, to file a Complaint with the Commission regarding Respondent's failure to file his financial disclosure statement in 2016. However, because the Complaint was not received by the Commission until April 10, 2017, approximately seven (7) months beyond the one hundred eighty (180) day limitation period, the Commission finds that Count 1 of the Complaint is untimely and time barred.

The Commission recognizes that limitation periods of this type 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 complainant(s). In addressing potential violations of the 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 the Commission is to operate in a fair and consistent manner. Phillips v. Streckenbein et al., Edgewater Park Bd. of Educ., Burlington County, C19-03 (June 24, 2003). Although the Commission recognizes that the regulatory time period may be relaxed, in its discretion, in any case where strict adherence may be deemed inappropriate or unnecessary or may result in injustice, it finds no extraordinary circumstances in this matter that would compel relaxation.

Accordingly, and for the reasons set forth above, Count 1 of the Complaint is dismissed as untimely.

Count 2

In Count 2 of the Complaint, Complainant argues that Respondent violated N.J.S.A. 18A:12-25 because he did not, "after winning a new three year term and being sworn in [in] January 2017," file his financial disclosure statement within thirty (30) days thereafter. Respondent does not dispute that he was elected to a new three year term in November, 2016, but argues that he was required to file his 2017 financial disclosure statement by April 30, 2017, and not within thirty (30) days of appointment, because he was a returning school official by virtue of his appointment to the vacant Board member position in February, 2016, and not a "new" school official.

As Respondent argues, it is N.J.S.A. 18A:12-26, and not N.J.S.A. 18A:12-25, which requires every school official to annually file financial disclosure statements with the Commission. Although Complainant cited the wrong statutory reference for both Counts of his Complaint, the Commission is obligated to review the Motion to Dismiss in the light most favorable to the non-moving party. Therefore, and for purposes of this Motion to Dismiss, the

¹ Neither Complainant nor Respondent provided the Commission with the specific date that Respondent was appointed to fill the vacancy on the Board in February, 2016. Therefore, and in viewing the facts in the light most favorable to the non-moving party, the Commission used February 29, 2016 as the date of Respondent's appointment.

Commission will analyze Count 2 of the Complaint as if Complainant had properly cited N.J.S.A. 18A:12-26 as the operative statute.

Pursuant to N.J.S.A. 18A:12-26(b), financial disclosure statements are due to be filed by school officials with the Commission “on or before April 30th each year.” In addition, the Commission’s regulations, and N.J.A.C. 6A:28-3.1 in particular, reiterates that, “Annually, on or before April 30th of each year or as otherwise provided in these rules, all school officials shall file...a Financial Disclosure Statement with their local board secretaries...who shall file the original disclosure statements with the office of the executive county superintendent.” Subsections (d), (e), and (f) of N.J.A.C. 6A:28-3.1 delineate the instances in which school officials are required to file their financial disclosure statements at times other than on or before April 30th of each year. However, none of those circumstances, i.e., an *initial* appointment and/or appointment to fill a vacancy, are present here because, contrary to Complainant’s allegations, Respondent was a returning school official by virtue of his appointment to the vacant Board member position in February 2016. Moreover, following his appointment, he continued to serve as a Board member without any break in service. Therefore, the Commission considers Respondent to be a returning school official, and the deadline for him to file his 2017 financial disclosure statement was April 30, 2017.

In addition, a review of the documentation submitted by Respondent confirms that he submitted his financial disclosure statement on April 4, 2017, and that his financial disclosure statement was accepted by the New Jersey Department of Education on April 11, 2017. Respondent’s filing of his financial disclosure statement on April 4, 2017, preceded the filing of the Complaint at issue here, and also preceded the April 30th deadline set forth in both N.J.S.A. 18A:12-26 and N.J.A.C. 6A:28-3.1.

Consequently, and for the reasons set forth above, Count 2 of the Complaint is dismissed because Respondent timely filed his financial disclosure statement in 2017 as required by the School Ethics Act and related regulations.

IV. DECISION

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that it finds that Count 1 of the Complaint was untimely and time barred and, as such, is dismissed. In addition, because Respondent timely filed his financial disclosure statement in 2017 as required by the School Ethics Act and related regulations, it further finds that Count 2 of the Complaint is 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: July 26, 2017

RESOLUTION ADOPTING DECISION – C44-17

Whereas, at its meeting on June 27, 2017, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the Response to Motion to Dismiss; and

Whereas, at its meeting on July 25, 2017, the Commission voted to dismiss Count 1 of the Complaint because it was untimely and time barred; and

Whereas, at its meeting on July 25, 2017, the Commission voted to dismiss Count 2 of the Complaint because Respondent timely filed his financial disclosure statement in 2017 as required by the School Ethics Act and related regulations; and

Whereas, at its meeting on July 25, 2017, the Commission voted to approve the within decision; and

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.



Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 25, 2017.



Kathryn A. Whalen, Director
School Ethics Commission