

MICHAEL GUARINO,	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No.: C02-99
STEPHEN COLACURCIO,	:	
Lyndhurst Board of Education	:	
Bergen County	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Michael Guarino on February 17, 1999 alleging that Lyndhurst Board of Education member Stephen Colacurcio violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, he alleges that the Lyndhurst Board of Education hired the Superintendent’s wife in a neighboring district in exchange for the neighboring district board’s hiring of Mr. Colacurcio’s daughter. Mr. Guarino alleges that the appointments constituted a classic quid pro quo in violation of N.J.S.A. 18A:12-24(a).

The School Ethics Commission sent the complaint to Mr. Colacurcio and advised that he had 20 days to answer. In addition, it advised him that the Commission may consider whether the conduct complained of violated any of the prohibited acts set forth in N.J.S.A. 18A:12-24 of the Act. Mr. Colacurcio filed an answer on March 9, 1999 setting forth that he has never spoken with, written to, otherwise contacted or met the Superintendent of the neighboring district, his wife or any member of the neighboring district board. He denies voting for the superintendent’s wife in exchange for the neighboring district board’s hire of his daughter and denies any violation of the School Ethics Act.

The Commission notified the parties that it would discuss the complaint at its April 27, 1999 meeting and invited the parties to appear. Mr. Guarino appeared and Richard J. DiLascio, Esq., attorney for the Lyndhurst Board of Education, appeared on behalf of Mr. Colacurcio.

At its public meeting on April 27, 1999, the Commission found no probable cause and dismissed the complaint against Mr. Colacurcio.

STATEMENT OF FACTS

The following facts have been discerned from the pleadings, minutes, testimony and the Commission's investigation.

On June 30, 1997, the Lyndhurst Board of Education voted to hire the wife of a Superintendent in a neighboring district. Mr. Colacurcio seconded the motion and voted in favor of the appointment. The hire was one of twelve persons recommended for hire that evening by the Lyndhurst Schools Superintendent. Mr. Colacurcio voted in favor of all of the recommended hires. Mr. Guarino, who is also a member of the Lyndhurst Board of Education, voted against all of the recommended hires. The minutes do not set forth a reason for Mr. Guarino's opposition to the recommended hires.

On July 14, 1997, the Board of a district neighboring Lyndhurst voted to hire Mr. Colacurcio's daughter. She had applied to several districts and received interviews, but was ultimately offered the position in the neighboring district.

ANALYSIS

The issue before the Commission is whether Mr. Colacurcio violated the School Ethics Act by agreeing to hire a neighboring district's Superintendent's wife in exchange for the hire of his daughter. Mr. Guarino has alleged that such conduct violates N.J.S.A. 18A:12-24(a), which prohibits a school official from having an interest in a business organization or engaging in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest. Although the term "transaction" is not defined within the Act or the Commission's regulations, it is usually associated with business or contracts. *Black's Law Dictionary*, 5th Edition 1979, defines it as an "[a]ct of transacting or conducting any business;" or "negotiation; management; or proceeding." The dictionary sets forth that "[i]t may involve selling, leasing, borrowing, mortgaging or lending." Based on this definition and the plain wording of N.J.S.A. 18A:12-24(a), subsection a does not apply to the factual situation that Mr. Guarino has set forth. Therefore, the Commission finds no probable cause to credit this allegation and dismisses the charge that Mr. Colacurcio violated N.J.S.A. 18A:12-24(a).

The Commission also notes that Mr. Guarino's allegations present an issue under N.J.S.A. 18A:12-24(e), which provides:

No school official, or member of his immediate family, ..., 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.

The Commission asked Mr. Guarino what information he had to demonstrate that Mr. Colacurcio entered in an arrangement to have his daughter hired, but Mr. Guarino was unable to provide any. Mr. Colacurcio answered the complaint under oath that he did not have any contact with the Superintendent or his wife, much less discuss with them the hire of his daughter. The Commission's investigation was unable to uncover any information to refute Mr. Colacurcio's sworn statement and Mr. Guarino was unable to provide any such information.

Mr. Guarino apparently believes that the Commission can find probable cause based on the occurrence of the meeting to hire the Superintendent's wife within two weeks of the neighboring district board's meeting to hire Mr. Colacurcio's daughter. Clearly, the Commission cannot draw an inference that a deal was made based on the present facts. Mr. Colacurcio contends, and the Commission agrees, that Mr. Guarino's allegations imply that Mr. Colacurcio was able to institute a conspiracy to have the Superintendents recommend the respective wife and daughter and then persuade a majority of two boards go along with the recommendation. Such an allegation would have to be supported by some credible evidence and cannot be based solely on conjecture. Mr. Guarino has produced no such evidence. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Colacurcio accepted a favor based upon an understanding that it was given for the purpose of influencing him in the discharge of his official duties in violation of N.J.S.A. 18A:12-24(e).

DECISION

For all of the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that Mr. Colacurcio violated N.J.S.A. 18A:12-24(a) or N.J.S.A. 18A:12-24(e) and dismisses the complaint of Michael Guarino.

This decision constitutes final agency action and thus is directly appealable to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C02-99

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

Whereas, the Commission found no probable cause to credit the allegations in the complaint and directed staff to draft a decision so stating; and

Whereas, the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairman

I hereby certify that this decision was duly adopted by the School Ethics Commission at its public meeting on July 27, 1999.

Lisa James-Beavers
Executive Director