
IN THE MATTER

OF

**KATHERINE MALLETTE,
JACKSON TOWNSHIP
BOARD OF EDUCATION
OCEAN COUNTY**

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No.: C09-98

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed by Jackson Township Board members Joy Ann Harmer, Marvin Krakower, Chuck Murphy and Twila Rust on February 23, 1998. Therein they alleged that Katherine Mallette, a Jackson Township board member, participated in discussions and closed session meetings concerning the Board's purchase of property when one of the parcels was owned by her brother-in-law in violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq. They also alleged that she wrongfully participated in discussions concerning the selection of an auditor. The complainants also alleged that Board members Ted Koch and Stephen Chisholm violated the act when they assisted Ms. Mallette in trying to persuade the Board to purchase her brother-in-law's property. Last, the complainants alleged that Katherine Mallette and Ted Koch violated the act when they met with the Transit Workers Union (TWU).

Ms. Mallette filed her answer with the School Ethics Commission on May 29, 1997, admitting to participating in some discussions, but denying that she violated the School Ethics Act. Respondents Ted Koch and Stephen Chisholm also denied having violated the act in their answers. The Commission advised the parties that it would discuss this matter at its July meeting. All of the parties attended the meeting in July except for Stephen Chisholm, who became unable to attend when the Commission had to change the date of the meeting to July 30, 1998.

At the Commission's October 26, 1998 meeting, the Commission found no information upon which to base a finding that Ms. Mallette attempted to secure unwarranted privileges or advantages for her brother-in-law. Therefore, it found no probable cause and dismissed the charge that Ms. Mallette violated N.J.S.A. 18A:12-24(b). The Commission similarly dismissed the charges against Ms. Mallette regarding her vote on the auditor and the meeting with the TWU as not setting forth facts upon which it could base a finding of probable cause. In addition, the Commission found no probable cause and dismissed all charges against Ted Koch and Stephen Chisholm. However, the Commission found probable cause to credit the allegations that Ms. Mallette violated

N.J.S.A. 18A:12-24(c) when she participated in Board meetings in which her brother-in-law's property was discussed on July 29, 1997, December 16, 1997.

The Commission determined that the material facts of the case were undisputed. Thus, rather than transmit the case to the Office of Administrative Law for a hearing, the Commission invited the parties to file written statements setting forth whether Ms. Mallette should be found in violation of the School Ethics Act. The Commission received timely statements from Ms. Mallette and Mr. Murphy, on behalf of the complainants, and considered them in rendering this decision at its meeting of December 15, 1998. The Commission also received a written statement from Mr. Chisholm and considered it in rendering this decision as well.

FACTS

The Commission finds that the facts upon which it bases its finding of probable cause are undisputed. Respondent Katherine Mallette is married to the brother of George Glory's wife. Mr. Glory is thus her brother-in-law. George Glory's corporation, Pleasant Grove, Inc., owns 60 acres of property on West Pleasant Grove Road. When the Board was seeking property on which to build a school in 1997, the Board considered Mr. Glory's land in addition to several other parcels. Ms. Mallette participated in all closed session and public meetings and discussions concerning the Board's purchase of property. Ms. Mallette specifically participated in meetings on the purchase of property in which Mr. Glory's land was either directly or indirectly discussed on the dates of July 29, 1997 and December 16, 1997.

ANALYSIS

As set forth in the procedural history in its probable cause determination, the Commission previously rejected the complainants' argument that Ms. Mallette should not have participated in any discussions involving property, whether Mr. Glory's land was discussed or not. Complainants ask the Commission to reconsider this conclusion and its statement in its probable cause determination that because Ms. Mallette was board president at the time she should have been able to participate on an issue as important as the location of a new school. The Commission declines to reconsider its prior conclusions and now proceeds to determine whether there is sufficient information from which to conclude that Ms. Mallette violated N.J.S.A. 18A:12-24(c) when she participated in discussions concerning Mr. Glory's land.

The Commission must now determine whether Ms. Mallette acted in her official capacity in a matter in which she had a personal involvement that might reasonably be expected to impair her objectivity or independence of judgment as prohibited by section 24(c). Ms. Mallette makes several points in her response to the finding of probable cause. First, she corrects some facts set forth in the probable cause determination. She indicates

that she and Mr. Glory do not share the same father-in-law as the Commission set forth and that Mr. Glory did not say that they had known each other since the second grade. Mr. Glory's testimony may have been inaccurately recorded. Since neither fact is material to the ultimate finding in the case and Ms. Mallette says that she met Mr. Glory when she was engaged to her husband in approximately September 1981, the Commission accepts her representations as fact.

Next, Ms. Mallette charges Mr. Krakower with lying under oath when he stated that he did not know that she was related to Mr. Glory. The Commission recognizes that there is a clear dispute as to whether Ms. Mallette advised the Board at its July 29, 1997 meeting that she is related to Mr. Glory. Complainants say that she did not advise the Board, but she and the other named respondents state that she did. The complainants have asked in their submission that the Commission interview more witnesses in order to resolve this issue. However, the Commission declines to do so. The Commission did not and could not base its finding of probable cause on Ms. Mallette's alleged failure to disclose her relationship to Mr. Glory. A failure to disclose a relationship in and of itself does not constitute a violation of the act unless it is the failure to disclose it on a disclosure form pursuant to N.J.S.A. 18A:12-25. Therefore, this dispute is not material to the Commission's determination of whether Ms. Mallette violated section 24(c) of the School Ethics Act.

Ms. Mallette makes several other points. She takes issue with the Commission's statement that her agreement not to vote on George Glory's property is a tacit admission that she knew that she had a conflict of interest. She states that she agreed not to vote on Mr. Glory's property because of how it may be perceived in public; however, she believed that she had a right to vote. Further, she denies having advocated for the purchase of Mr. Glory's property at any Board meetings, particularly the ones noted. She then proceeds to explain her participation in each of the meetings as it relates to the discussion of Mr. Glory's property in an attempt to show the Commission that George Glory's land was not discussed in any of the meetings. The Commission finds Ms. Mallette's arguments to be persuasive only with regard to the meeting of January 5, 1998.

Regarding Ms. Mallette's argument that she believed that she could vote, but agreed not to vote because of the public's perception, the Commission has stated many times that the public's perception is extremely important in determining whether the act has been violated. Section 24(c) is phrased so that the emphasis is on whether the public might reasonably expect to impair a school official's objectivity, not whether the school official believes that she can be objective. Further, the Legislature's findings and declarations set forth at N.J.S.A. 18A:12-22(a) that:

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of

their public trust or which creates a justifiable impression among the public that such trust is being violated.

Thus, the Commission recognizes that the purpose of the act is to foster public trust in school officials and this requires giving due consideration to the public's perception. With this in mind, the Commission will discuss the dates of each of the meetings on which the Commission found probable cause.

At the July 29, 1997 Board meeting, Ms. Mallette says that at this meeting the West Pleasant Grove parcels were introduced and the minutes reflect that the parcel could not be considered for the construction of the elementary school at hand and could only be considered in the future because the parcel did not meet the 208 water plan. However, she states that the memorandum introducing the parcel was acknowledged as received but the parcel was not discussed. She goes on to state, "No discussion of Mr. Glory's or the West Pleasant Grove properties were discussed." The Commission finds her statement to contradict the minutes of the meeting. Clearly, the parcel was discussed, and although it may have been ruled out at the time, it was kept on the list of potential sites for future consideration. Ms. Mallette appears to be confusing the notion of advocating for the property with improperly discussing the property because of the impression created by her participation. The Commission already said she that she did not attempt to use her position to secure unwarranted privileges for others when it dismissed the charges under N.J.S.A. 18A:12-24(b). She did not advocate for Mr. Glory's property at this meeting, but the minutes show that it was discussed, if only to introduce it and rule it out.

At the December 16, 1997 meeting, Ms. Mallette and Mr. Koch presented the Board a chart comparing of all of the properties based on the information gathered. The West Pleasant grove site was noted as the most cost-effective site on that chart. Mr. Chisholm notes in his submission that he said that the West Pleasant Grove site was the least costly at the meeting and Ms. Mallette did not make that statement. The Commission does not find it important that Ms. Mallette made the statement, as she had made the cost comparisons on the chart presented to the Board. Ms. Mallette notes in her submission that the property was ultimately disqualified and she asserts that no discussion on her chart took place. The minutes set forth:

It was the recommendation of both Mr. Elms and Mr. Campbell that the Kelly property be selected over the Hyson Road property conditioned on the outcome of the January 5th meeting.

Mrs. Mallette then presented the board with a comparison of costs she and Mr. Koch had put together as shown on the attached sheet. Based on their analysis, the Pleasant Grove property works out to be the most cost-effective site for new construction. Board members were asked to review the cost comparison for future discussion.

As Ms. Mallette notes, she did not respond to the request for a straw poll vote on the Kelly property.

Again Ms. Mallette appears to confuse the sections that she was charged with violating. The Commission can agree that based on the memorandum and the minutes, Ms. Mallette did not try to secure unwarranted privileges for Mr. Glory in violation of N.J.S.A. 18A:12-24(b). However, the Commission cannot conclude that his West Pleasant Grove Road property was not discussed at the meeting she attended as she has been charged with under N.J.S.A. 18A:12-24(c). The minutes show clearly that it was discussed and Mr. Chisholm's submission confirms as much.¹ The fact that it was ultimately ruled out for this project because of the sewer issue is of no consequence to the determination of whether Ms. Mallette participated in a meeting in which Mr. Glory's property was discussed.

Based on the foregoing, the Commission finds Ms. Mallette to have violated N.J.S.A. 18A:12-24(c) of the School Ethics Act for acting in her official capacity in a matter in which she had a personal involvement that might reasonably be expected to impair her objectivity or independence of judgment.

With regard to the January 5, 1998 meeting, the Commission noted in its probable cause determination that Ms. Mallette discouraged a suggestion to purchase property other than that of George Glory. She offered the 110-acre parcel of West Pleasant Grove Road that did not belong to Mr. Glory as an alternative. However, the Board had always referred to the property on West Pleasant Grove as one contiguous parcel, thus, giving the appearance that she was advocating for Mr. Glory's property. Ms. Mallette clarifies that she only asked Mr. Vena if the land could be sewerable with a septic system installed. She states that Mr. Vena replied that it could not be and that was the end of the discussion. The Commission has found no evidence to refute Mr. Glory's testimony that he has no ownership interest in the parcel contiguous to his that was discussed on January 5, 1998. Further, the minutes do not provide additional information to contradict Ms. Mallette's representations that Mr. Glory's land was not discussed at that time. Therefore, the Commission dismisses the charge that Ms. Mallette violated N.J.S.A. 18A:12-24(c) in connection with the January 5, 1998 meeting.

¹ Ms. Mallette sets forth in her submission that she had a discussion with a board member outside of the meeting in which this board member made an offer to her that she believes was in violation of the School Ethics Act. The Commission will not address such an allegation in the context of a statement in response to its probable cause determination. If Ms. Mallette believes that this school official violated the act, then she can file a complaint with the Commission.

CONCLUSION

For all the foregoing reasons, the Commission concludes that Katherine Mallette violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when she participated in discussions in which her brother-in-law's property was discussed. As a result of the above, the Commission recommends that the Commissioner of Education impose the lowest sanction of reprimand. In making the recommendation, the Commission has considered the fact that Mr. Glory is Ms. Mallette's brother-in-law in the loosest definition of the term so that they are related by marriage, but not closely. Further, as set forth, the Commission found that she participated in discussions on property, but did not find information that she attempted to persuade the Board to purchase Mr. Glory's property during the discussions.

Upon adoption of this decision by a formal resolution of the School Ethics Commission, the matter shall be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C09-98

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

Whereas, the Commission found probable cause to credit the allegations in the complaint and invited respondent to file a written statement in response; and

Whereas, the Commission has reviewed respondent's written statement and now concludes that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its conclusion; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby finds that Katherine Mallette has violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommends that the Commissioner impose a sanction of reprimand; and

Be it Further Resolved that the Commission adopts the enclosed decision referenced as its decision in this matter.

Paul C. Garbarini, Chairman

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 15, 1998.

Lisa James-Beavers
Executive Director

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