
IN THE MATTER OF	:	BEFORE THE SCHOOL
THE HOWELL TWP. BOARD OF ED.	:	ETHICS COMMISSION
DR. CHARLES KUZMINSKI AND	:	
HERBERT C. MASSA,	:	Docket No.: C10-97
<i>HOWELL TWP. BOARD OF EDUCATION,</i>	:	
<i>MONMOUTH COUNTY</i>	:	DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed by Steven Morlino against Howell Township Board of Education and administrators Dr. Charles Kuzminski and Herbert Massa on April 28, 1997. Therein, he alleges that the above-named respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.*, when they approved one budget and sent a budget with different figures to the Department of Education. Mr. Morlino alleges that respondents' conduct violated N.J.S.A. 18A:12-22(a).

By letter of May 2, 1997, the School Ethics Commission advised Mr. Morlino that it could not base a violation of the School Ethics Act on N.J.S.A. 18A:12-22 alone. Rather, he would have to allege that one of the prohibited acts set forth at N.J.S.A. 18A:12-24. The Commission invited Mr. Morlino to amend his complaint accordingly. By letter of November 4, 1997, Mr. Morlino advised that although he believed that the respondents violated N.J.S.A. 18A:12-24(b) and (c), he was not going to modify his complaint.

At its Tuesday, January 27, 1998, meeting, the Commission determined that there was no probable cause to credit the allegations in the complaint and dismissed the matter.

FACTS

On the basis of the pleadings, documents and the Commission's investigation, the following facts appear to be undisputed. On February 26, 1997, the Howell Township Board of Education adopted a tentative budget. Thereafter, but prior to the March 4, 1997, budget submission, the administration realized that it had underbudgeted for Courtesy Busing by \$285,000. As a result, the administration revised the budget. On March 4, 1997, the revised budget was submitted to the county office for review and approval. On March 7, 1997, the Finance Committee received the revised budget. On March 10, the Finance Committee met and approved the changes to the budget. It also made changes regarding administration salaries that increased the budget by another \$109,037. On March 12, 1997, the full board met at a public meeting and removed the \$109,037 for administrative salaries, but left the \$285,000 for courtesy

busing. The result of the increased budget would mean that the school tax rate would increase 10.5 cents instead of 10.1 cents as originally calculated. The revised budget was adopted as submitted to the County Office.

At the March 12, 1997 meeting, Board President, Mrs. Mary Ann Bancroft-Piatkowski, asked the board to create a committee to investigate who authorized the \$285,000 that was added to the tentative budget. The board voted 5-3 to create the committee. The board also charged it with investigating why board members were not notified of the underbudgeted amount.

The committee met on March 24, 1997. The members present were Patricia Blood, who served as Chair; Robert Alberti and Ronald Lawson. The committee met with Superintendent Charles Kuzminski, Assistant Superintendent and Business Administrator Herbert Massa, Board Attorney Edward Kasselmann and the board president. The Committee's report issued on March 26, 1997. It did not find any inappropriate conduct, although it noted that problems existed in the areas of dissemination of information, communication and authority.

On April 1, 1997, Complainant Steven Morlino wrote to the School Ethics Commission and requested a complaint form.

DECISION

Mr. Morlino alleges that the foregoing facts show that respondents violated N.J.S.A. 18A:12-22a, which states:

The Legislature finds and declares:

- a. 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.

He alleges that the administration, by circumventing the elected board and submitting a budget \$285,000 above the budget approved by formal vote of the board, acted in a manner in violation of the public trust. In addition, he alleges that Board Secretary Herbert Massa made an adjustment to the salary increases in the amount of \$175,963 contending that the computer dictated the change. Mr. Morlino alleges that this act to disregard and circumvent the board vote and blame the computer is in violation of N.J.S.A. 18A:12-22a. Last, he alleges that the board failed to identify the persons accountable for the circumvention of the approved budget and failed to exert fiduciary responsibility as empowered by and accountable to the district taxpayers through the election process. Furthermore, he alleges that the investigation revealed the board's knowledge that Mr. Massa had engaged in such violations of the public trust previously, but the board failed to place responsibility on the administration in conflict with the investigative

committee's findings. He alleges that these actions give the justifiable impression among the public that its trust is being violated.

Edward Kasselmann, Esq., attorney for the respondents, argues in defense that complainant has failed to state a claim upon which relief can be granted because he only cited to N.J.S.A. 18A:12-22. After close review of the facts and the law, the Commission agrees that the complainant has failed to state a claim under the School Ethics Act. N.J.S.A. 18A:12-22 sets forth the Legislature's findings and declarations, which serves as its purpose for enacting the School Ethics Act. N.J.S.A. 18A:12-22 does not set forth a basis for a violation of the School Ethics Act, although the Commission has cited to it to stress the importance of school officials avoiding the appearance of impropriety. However, it has done so only when it finds a violation of one of the prohibited acts set forth at N.J.S.A. 18A:12-24. This section sets forth the prohibited acts that school officials must avoid in order to remain in compliance with the School Ethics Act.

Further, N.J.S.A. 18A:12-22b clearly sets forth that:

To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards among them.

Those specific standards are provided at N.J.S.A. 18A:12-24. The School Ethics Act was not drafted in such a way that all conduct of which the public disapproved would fall under its jurisdiction. Section 24 provides school officials with notice of what constitutes a violation so that they may be guided thereby. A vague standard such as that set forth in N.J.S.A. 18A:12-22a would not provide school officials with sufficient notice "to ensure the uniform maintenance of those standards among them."

For the foregoing reasons, the School Ethics Commission finds no probable cause to credit the allegations in the complaint and dismisses the charges against the above-named respondents.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C10-97

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

Whereas, the Commission has found no probable cause to credit the allegations that respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq.; 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, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on February 24, 1998.

Lisa James-Beavers
Executive Director