

<b>IN THE MATTER</b>	:	<b>Before the School</b>
	:	<b>Ethics Commission</b>
<b>OF</b>	:	
	:	<b>Docket No.: C12-96</b>
<b>HANOVER PARK, REG. SCHOOL</b>	:	
<b>DISTRICT BOARD OF EDUCATION</b>	:	<b>DECISION</b>
<b>MORRIS COUNTY</b>	:	
	:	
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**PROCEDURAL HISTORY**

This matter arises from a complaint filed with the School Ethics Commission by Gordon A. Raupp and Louis John Belle, principal owners of Kinsley Associates on May 7, 1996. The complainants allege that they contracted with the Hanover Park Regional High School District to provide professional services but were not paid. The respondents submitted a written statement under oath in reply on June 3, 1996, pursuant to N.J.S.A. 18A:12-29(b). In addition, respondents set forth two affirmative defenses: first, that the complaint fails to state a claim upon which relief can be granted; second, that the School Ethics Commission lacks subject matter jurisdiction over the allegations in the complaint. Last the respondents ask that the Commission impose sanctions for the filing of a frivolous complaint pursuant to N.J.S.A. 18A:12-29(e).

Commission staff notified the parties on September 5, 1996, that this matter would be on the Commission's agenda for the September 24, 1996, meeting. The Commission rendered this decision at that meeting.

**STATEMENT OF FACTS**

The following facts are undisputed. Mr. Raupp and Mr. Belle, principal owners of Kinsley Associates, contracted with the Board of Education to provide professional services to provide professional services. These services consisted of the design and supervision of athletic field renovations and water service installation. Complainants billed their services to the board approximately fifteen months prior to the filing of this complaint. However, the parties agree that there are aspects of the job that remain uncompleted.

The complainants were unable to engage in discussion with the board regarding payment and disagree with the board over the cause of the breakdown in negotiations. They have asked in writing for payment of the uncontested amounts. In response, the respondents have undertaken an investigation to determine the worth of the work performed.

The parties appear to dispute whether the board has paid the respondents any money to date; however, the resolution of this issue and other disputed issues is not required to render the following decision. The complainants urge the School Ethics Commission to find that the school board has not contracted in good faith and has not acted consistently with its duty to uphold the public trust. The respondents urge dismissal of the complaint on the grounds set forth in their affirmative defenses.

## **ANALYSIS**

The complainants have not set forth any particular provision of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., that the respondent has violated by failing to honor its obligations under the contract. Section 24 of the Act sets forth the types of conduct that school officials are prohibited from exhibiting. After carefully reviewing each of the prohibited acts under section 24, the Commission finds none of them to be applicable to the facts of this case. Rather, the Commission finds the respondents' affirmative defenses persuasive.

Apparently the complaint seeks a finding that respondent has breached its general duties under the Act that are set forth in the Legislature's findings and declarations, N.J.S.A. 18A:12-22. This section sets forth 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.

While N.J.S.A. 18A:12-22 may appear to be a catch-all provision that would allow the Commission to find a violation of the School Ethics Act for not honoring a contract, the Commission concludes this is not the purpose of the Act. Clearly what complainants actually seek is the proceeds that they believe that they are due under the contract. For this relief, they would have to file their complaint in the New Jersey Superior Court -- Law Division, not with the School Ethics Commission. The respondents have alleged no appearance of impropriety nor conflict of interest capable of resolution by the School Ethics Commission. Even viewing the facts in the light most favorable to the complainants, the Commission cannot find that the respondents violated the public trust or created an impression that the public trust was being violated. The School Ethics Commission therefore finds that respondents have failed to state a claim upon which relief can be granted under the School Ethics Act. The Commission further finds that the School Ethics Commission lacks subject matter jurisdiction over the allegations in the complaint.

Respondents have requested that the Commission sanction the complainants pursuant to N.J.S.A. 18A:12-29(e), for filing a frivolous complaint. N.J.S.A. 18A:12-29(e) sets forth that the standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b of N.J.S.A. 2A:15-59.1. Subsection b reads:

In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

The New Jersey Supreme Court has held that the term “frivolous” should be given restrictive interpretation, in light of the premise that in a democratic society, citizens should have ready access to all branches of government. McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546 (1993). Applying the law and its interpretation to the present case, the Commission finds no facts to support that the complaint was filed in bad faith to harass, delay or injure the respondent. Clearly, an actual dispute exists between the parties. The complainants, however, filed the dispute in a jurisdiction that was incapable of resolving it. Further, the Commission cannot find that the complainants knew or should have known that the complaint was without reasonable basis in law because N.J.S.A. 18A:12-22 may seem to apply to a contract breach situation to one without legal training. Also, the School Ethics Act is still a relatively new law for those persons who do not deal with education issues on a regular basis. Therefore, the Commission finds the complaint should be dismissed, but without sanctions imposed for filing a frivolous complaint.

## **DECISION**

For all of the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint and therefore dismisses the complaint against the board. The Commission does not find that the complainants should be sanctioned. This is a final agency decision that may only be appealed to the Superior Court -- Appellate Division.

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Paul C. Garbarini  
Chairman, School Ethics Commission

**Resolution Adopting Decision -- C12-96**

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 determined that no probable cause exists to credit the allegations in the complaint; and

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

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

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Paul C. Garbarini, Chairman

I hereby certify that the Resolution  
was duly adopted by the School  
Ethics Commission at its public meeting  
on September 24, 1996

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Lisa James-Beavers  
Executive Director

### **Resolution Adopting Decision -- C08-96**

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 determined that probable cause exists to credit the allegations in the complaint; and

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

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

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Paul C. Garbarini, Chairman

I hereby certify that the Resolution  
was duly adopted by the School  
Ethics Commission at its public meeting  
on September 24, 1996

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Lisa James-Beavers  
Executive Director

**Resolution Adopting Decision -- C10-96**

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 determined that probable cause exists to credit the allegations in the complaint; and

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

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

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Paul C. Garbarini, Chairman

I hereby certify that the Resolution  
was duly adopted by the School  
Ethics Commission at its public meeting  
on September 24, 1996

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Lisa James-Beavers  
Executive Director