
**BOARD OF EDUCATION OF THE
TOWNSHIP OF CHESTER**

V.

**WALTER RILEY and
DONALD BEATTY,
MORRIS COUNTY**

:
: **BEFORE THE**
:
: **SCHOOL ETHICS COMMISSION**
:
: **Docket No.: C12-98**
:
: **DECISION**
:
:

PROCEDURAL HISTORY

The above-captioned matter arises from a transmittal from the New Jersey Commissioner of Education (“Commissioner”). The Board of Education of the Township of Chester (“Board”) filed a petition before the Commissioner to have respondents Walter Riley and Donald Beatty removed from the Board for violating N.J.S.A. 18A:12-2. This section disqualifies a member of the board of education if he has a direct or indirect interest in a claim against the Board. The Board asserted that respondents’ involvement in challenging a special election that approved a referendum to finance improvements to Chester schools created a conflict of interest. The Board further asserted that on June 3, 1997, respondents unethically participated in Board discussions and votes regarding the referendum.

The Commissioner transmitted the petition to the Office of Administrative Law (“OAL”) as a contested case for a hearing. The Administrative Law Judge (“ALJ”) concluded that respondents had violated N.J.S.A. 18A:12-24(c) and recommended that the respondents be reprimanded for participating in the Board votes on bond referendum issues while the litigation was still pending. The parties filed exceptions to the initial decision with the Commissioner. The Commissioner rejected the decision of the ALJ because she erroneously melded two discrete statutory provisions, N.J.S.A. 18A:12-2 and the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.*, violations of which are under the jurisdictional purview of two distinct entities. In his decision of April 27, 1998, the Commissioner concluded that respondents did not stand to gain the “substantial and material” benefit sufficient to disqualify them from holding a seat on the Board pursuant to N.J.S.A. 18A:12-2. (Commissioner decision decided April 27, 1998, p.16-17.) He thus dismissed the petition and transmitted the decision and the record to the School Ethics Commission (“Commission”) for action, as it deems appropriate, with respect to issues of alleged School Ethics Act violations.¹

¹ The Commissioner’s decision is currently on appeal before the State Board of Education solely on the issue of whether respondents are entitled to indemnification from the Board for their attorney’s fees, which the Commissioner denied.

By letter of May 4, 1998, the Commission advised the parties that it would treat the verified petition as a complaint filed pursuant to N.J.S.A. 18A:12-29 of the Act. It would then proceed to determine whether there is probable cause to credit the allegations that respondents violated the Act by participating in Board discussions and votes regarding the bond referendum when they had supported the election challenge prior to their election to the Board. The Commission invited the parties to submit any objections to this procedure and invited them to attend the Commission's discussion of this matter at its May 26, 1998 meeting. Neither party objected to the procedure, and both parties were represented at the Commission's meeting. Mr. Beatty appeared with his attorney, Louis Tomasella, Esq. and David Rand, Esq. appeared on behalf of the Board.

The Commission found no probable cause and adopted this decision at its meeting of June 23, 1998.

FACTS

The parties stipulated to the facts before the ALJ. The parties represented to the Commission that they have no objection to the Commission using the same Stipulation of Facts. Thus, the Commission adopts the following stipulated facts:

1. The Chester Township Board of Education is a public body organized under the laws of the State of New Jersey.
2. The Board maintains and operates a public K-8 school district which serves the residents of both the Borough and Township of Chester, Morris County, New Jersey.
3. Respondents, Walter Riley and Donald Beatty, are members of the Board, having been elected to their offices at the Annual School Election conducted on April 15, 1997.
4. On December 10, 1996, a special school election was held within the Chester School District for the purpose of seeking voter approval for an \$8.4 million dollar capital project and related school bond financing. The Board sought to obtain this approval for the construction of additions, renovations and improvements to the Chester Schools.
5. The Ballot box count revealed that the referendum had been defeated with 794 votes against, and 771 votes in favor of the referendum. However, when 56 absentee ballots were cast, the result of the Special Election as certified by the Morris County Board of Elections and Morris County Clerk was: 823 "yes" (in favor), and 798 "no" (opposed). The question was deemed "approved."

6. Of the total of 1,621 votes cast in the election, 56 were cast by absentee ballot. The recount confirmed that of the 56 absentee ballots cast, 52 were “yes” and 4 were “no.”

7. On or about January 16, 1997, a Verified Petition was filed with the Superior Court of New Jersey, Law Division, Morris County, in a matter know as “In Re the December 10, 1996 Special School Election of Chester Township/Chester Borough, County of Morris, State of New Jersey.”

8. The petition had attached to it the verifying signatures of fifteen Chester residents, including that of Mr. Beatty. Mr. Riley did not sign the Petition.

9. Mr. Riley was a financial supporter of the Petition filed on January 16, 1997. Mr. Riley maintains that he withdrew his personal financial support on February 4, 1997.

10. The attorneys representing the petitioners in the election challenge, Pearce and Massler, Esqs., likewise represent a business for which Mr. Riley acts as Chief Executive Officer.

11. Mr. Riley issued a “campaign flyer” that was attached to the Stipulation of Facts.

12. On January 24, 1997, the Court considered the Order to Show Cause regarding the challenge to the referendum.

13. On February 4, 1997, the Honorable Reginald Stanton, A.J.S.C., entered an Order dismissing the January 16, 1997 Petition.

14. On February 21, 1997, the Petitioners in the election challenge matter caused a Notice of Appeal to be filed with the Superior Court of New Jersey, Appellate Division. The Appeal sought a reversal of Judge Stanton’s dismissal Order.

15. A copy of the Case Information Statement that accompanied the aforementioned appeal was attached to the Stipulation of Facts.

16. A Chester School Board meeting was held on February 25, 1997.

17. The Board conducted a meeting on April 15, 1997, the date of the annual school board election.

18. At a Board meeting conducted on April 21, 1997, David B. Rand, Esq., attorney for the Board was asked to give an opinion whether Mr. Beatty and Mr. Riley could be seated as members of the Board. Mr. Beatty and Mr. Riley were both present at the April 21, 1997 meeting.

19. Mr. Beatty and Mr. Riley were formally seated as members of the Board at its April 29, 1997 annual Reorganization Meeting.

20. Copies of the minutes of the April 29, 1997 meeting were attached to the Stipulation of Facts.

21. At the June 3, 1997, meeting of the Board, the Board publicly voted to authorize the filing of this Petition.

22. At a public meeting of the Board conducted on June 3, 1997, Mr. Riley and Mr. Beatty both voted “no” in connection with the approval of a Bond Anticipation Note required to fund aspects of the challenged project.

23. Copies of minutes of the Board meeting of June 3, 1997 were attached to the Stipulation of Facts.

The respondents also wish to add as a fact the Commissioner’s conclusion that respondents stood to gain no substantial or material benefit from the litigation in question. The Board did not object to the addition of this stipulation of fact so the Commission adopts it as such. The Commission also notes that in the minutes of the June 3, 1997 public meeting of the Board appended to the Stipulation of Facts, Mr. Riley also moved and Mr. Beatty seconded the motion to stop spending on the proposed building project until the litigation on the referendum is settled. The motion was defeated by a vote of 2 to 6 with Mr. Riley and Mr. Beatty voting in the affirmative. Although not noted in the stipulated facts, this vote was noted in the minutes of the June 3, 1997 meeting attached to the Stipulation of Facts. Therefore, the Commission adopts this as a fact as well.

ANALYSIS

The issue before the Commission is whether respondents violated N.J.S.A. 18A:12-24(c) when they discussed, moved and voted for motions concerning the bond referendum although the litigation they supported challenging the referendum was still pending. N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The Board asserts that respondents had a financial and personal involvement in the bond referendum that might reasonably be expected to impair their objectivity or

independence of judgment. The Board stresses that Mr. Beatty was a signatory on the petition and Mr. Riley was a financial supporter. Even after February 1997, when Mr. Riley says he withdrew his support, the attorney who represents Mr. Riley's company remained the attorney of record. In addition, the Board emphasizes that although the referendum was not against the Board specifically, the appeal of the summary dismissal of the challenge included allegations of Board misconduct. This appeal had not been resolved when the respondents voted on the referendum matters at the June 3, 1997 meeting. The litigation did not conclude until August 1997 when the appeal was dismissed. Thus, the Board argues, respondents should not have moved to stop spending on the building project while the litigation was pending and should have abstained from the vote on whether to obtain short term financing by a Bond Anticipation Note.

Conversely, respondents assert that they did not violate the Act by participating in the discussions and votes at the June 3, 1997 meeting. They state that they were acting out of public interest and not their own personal or financial interest. Again they stress that there was no "substantial or material benefit" to either Mr. Riley or Mr. Beatty. Thus, they urge the Commission to conclude that N.J.S.A. 18A:12-24(h) applies to the facts of this case. N.J.S.A. 18A:12-24(h) provides:

No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain would reasonably be expected to accrue to any other member of that business, profession, occupation or group.

Respondents argue that subsection h clearly applies in this case, where it is stipulated that no material or monetary gain would accrue to them as a result of the litigation challenging the approval of the referendum.

The Commission has reviewed the record in this matter with particular attention to the votes in question. First, the respondents moved to stop spending on the building project while the litigation was pending. Even if the Commission were to conclude that the respondents had a personal involvement in the outcome of such a motion that might reasonably be expected to impair their objectivity, it would have to agree with respondents that N.J.S.A. 18A:12-24(h) applies. The Commission finds that no material or monetary gain could accrue to the respondents by voting on the motion to any greater extent than any gain could reasonably be expected to accrue to any other member of the public. The Commission finds similarly regarding the second vote that respondents cast against obtaining short term financing by a Bond Anticipation Note. Respondents voted consistently with their referendum challenge, but they did not vote for their own material or monetary gain. The Commission cannot find as a matter of law that respondents stood to accrue material or monetary gain to any greater extent than any gain might reasonably be expected to accrue to any other member of the public. The Commission therefore

concludes that subsection h applies to the facts of this case and respondents did not have to abstain from voting on the two motions regarding the referendum.

DECISION

For the foregoing reasons, the School Ethics Commission finds no probable cause to credit the allegations that respondents Walter Riley and Donald Beatty violated N.J.S.A. 18A:12-24(c) of the School Ethics Act by participating in the discussion and voting on referendum matters and dismisses the charges against them.

This decision constitutes final agency action and thus may be appealed directly to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C12-98

Whereas, the School Ethics Commission has considered Petition, the Answer, the Initial Decision of the ALJ, the exceptions and replies of the parties to the Commissioner of Education, the Commissioner's decision, the testimony before the Commission and the record before the ALJ; and

Whereas, the Commission has reviewed all of the information and now finds no probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when they participated in the discussion and vote concerning the referendum; 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 no probable cause to credit the allegation that Walter Riley and Donald Beatty violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and dismisses the charges against them; and

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

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 23, 1998.

Lisa James-Beavers
Executive Director

[c1298dec/h:lisa/decisions]