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| IN THE MATTER OF | : | Before the School |
| | : | Ethics Commission |
| FRANK HUBER, JOHN BENDOKAS, | : | |
| JAMES PALMISANO, FRANK PANNUCCI, | : | Docket No.: C19-96 |
| JOSEPH SANGIOVANNI, NICHOLAS | : | |
| EREMITA, and EDWARD MERCER | : | |
| BRICK TWP. BOARD OF EDUCATION, | : | DECISION |
| OCEAN COUNTY | : | |

PROCEDURAL HISTORY

This matter arises from a claim that Brick Township board members Frank Huber, John Bendokas, James Palmisano, Frank Pannucci, Joseph Sangiovanni, Nicholas Eremita and Edward Mercer violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* On June 7, 1996, complainant Lauren Kelly filed this complaint with a letter dated June 2, 1996, alleging that the board members’ conduct violated N.J.S.A. 18A:12-24(b), (c), and (d) of the School Ethics Act. Complainant also named Robert Shea, Esq., who was then the attorney for the Brick Township Board of Education. However, the Commission advised complainant and Mr. Shea that he was not a “school official” subject to the jurisdiction of the School Ethics Act.

Mr. Pannucci filed his answer to the complaint on July 2, 1996, through his attorney Jay Sendzik, Esq. He stated that complainant made no specific allegations against him. Mr. Palmisano filed his answer on July 11, 1996, denying certain allegations and stating that he did not understand what ethical breaches the complaint was alleging. Mr. Sangiovanni also filed his answer on July 11, 1996, denying allegations against him specifically and also stating that he did not understand the complainant’s charges. Mr. Bendokas filed his answer on July 19, 1996. Therein, he joined in some of the allegations of Mrs. Kelly and stated that he lacked of knowledge with respect to others. Mr. Mercer filed his answer on July 24, 1997, denying the allegations specifically against him and also seeking clarification of the ethical violations complainant alleges. Mr. Eremita filed an answer, but the Commission returned it for being uncertified.

Mr. Huber’s attorney received two extensions to file an answer and then advised the Commission that someone else would be representing him. Prior to the filing of an answer, the Commission issued a letter on October 7, 1996, clarifying the charges against the respondents. Ms. Kelly’s complaint was in letter format, making it difficult for the respondents to respond specifically to each allegation separately. The Commission gave the respondents an opportunity to answer the charges as set forth in the October 7, 1996, letter if they had not addressed those issues in their initial answers. On January 13, 1997, the Commission received an answer to the complaint from Frank Huber, through his attorney Joseph Grisanti, Esq. He generally denied the

allegations in the complaint. The Commission also received a certified general denial of the allegations from Mr. Eremita.

The majority of the respondents stated that Mrs. Kelly was generally unhappy with the board members, but alleged no actual ethical violation. Thus, they requested that she be sanctioned for filing a frivolous complaint pursuant to N.J.S.A. 18A:12-29(e) and N.J.A.C. 6:3-9.15(d)3.

The Commission investigated the matter and advised the parties that the Commission would discuss the matter at its meeting on March 25, 1997. The Commission advised the parties of their right to bring witnesses and counsel on their behalf. Ms. Kelly appeared before the Commission on March 25, 1997, and testified as to the reasons that the Commission should find respondents to be in violation of the Act. No other parties appeared. The Commission tabled its decision at that time and rendered this decision at its April 22, 1997, meeting.

FACTS

The following facts are undisputed. The Brick Township Board of Education consists of seven board members. At the time the complaint was filed, the respondents constituted the full board. Frank Huber was president and Edward Mercer was vice-president. Several allegations stem from the May 1996 reorganization meeting at which Mr. Huber and Mr. Mercer were elected. At that meeting, the board fired then board solicitor Nicholas Montenegro, Esq. and hired Robert Shea, Esq. Similarly, the board fired the existing auditor and replaced him. In addition, the board hired a new agency to handle negotiations for administrative contracts. Complainant alleges that all of these appointments were improper and violated N.J.S.A. 18A:12-24(b) and (c). In addition, she alleges separately that Mr. Sangiovanni violated subsections (b) and (c) by voting on the board attorney because he had used Mr. Shea as an attorney in the past. The Commission's investigation showed that Mr. Shea had prepared closing papers on his home eleven years before the filing of the complaint. This is undisputed. The Commission was unable to substantiate allegations that Mr. Shea had represented Mr. Sangiovanni in any more recent matters.

The next allegations concern Board President Mr. Huber. During the course of the Commission's investigation, Mr. Huber admitted allegations in the complaint that he hired a uniformed officer to attend a budget meeting without the board's knowledge or approval. Ms. Kelly alleges that his conduct violated subsection (b) of the Act. He also admitted that he attempted to remove materials on Health and Sex Education without consulting the board's curriculum committee. Ms. Kelly alleges that he was using his position to promote his Christian Fundamentalist films in violation of subsections (b) and (c).

Mrs. Kelly also alleged that Mr. Sangiovanni tried to have Mr. Eremita fired. Mr. Sangiovanni admitted that he wrote a letter to the administrators at Lakewood High School to advise them that Mr. Eremita, a teacher in Lakewood, had used a fax machine at the school for

board business. He denied the allegation, however, that he did so to get Mr. Eremita fired. Mr. Eremita feels that the sole purpose of Mr. Sangiovanni's action was to have him fired. Mrs. Kelly alleges that Mr. Sangiovanni violated subsection (b) in connection with this incident.

Last, Mrs. Kelly alleged that Mr. Mercer voted for an insurance company that employs his wife in violation of subsection (c). Mr. Mercer denied the allegation. Ultimately, the Commission investigation found that Ms. Kelly had confused the facts regard Mr. Mercer's vote for an insurance company. Mrs. Kelly agreed to drop this charge prior to the meeting with the Commission. Other allegations set forth in Mrs. Kelly's initial complaint were dismissed administratively in the Commission's October 7, 1996 correspondence to the parties. The Commission does not need to reiterate these other allegations herein.

ANALYSIS

As set forth above, Mrs. Kelly initially alleged that respondents violated N.J.S.A. 18A:12-24(d) in addition to subsections (b) and (c). Subsection (d) sets forth:

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.

The Commission did not find this subsection to apply to any of the allegations that Mrs. Kelly set forth.

Regarding the allegations that concern the appointment of professionals at the reorganization meeting, Mrs. Kelly's main contention is that the board did not allow public comment and did not allow discussion from minority board members. The failure to allow such discussion does not constitute a violation of the School Ethics Act. Subsection (b) sets forth:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.

In reviewing the circumstances surrounding the board's appointment of the professionals, the Commission finds insufficient evidence to find probable cause that the respondents used their positions to secure unwarranted privileges, advantages or employment for others. The allegation against Mr. Sangiovanni is more appropriately addressed under subsection (c) which reads:

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 Commission finds the fact that Mr. Shea represented Mr. Sangiovanni in a legal matter eleven years before the vote in question to be insufficient evidence of a financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment. Even if the representation were closer in time to the hiring of Mr. Shea, such evidence may not amount to the type of involvement that creates a conflict of interest under the statute. However, the Commission does not seek to resolve this issue since there is insufficient evidence to support that the representation was closer in time.

The Commission also finds that the actions of Mr. Huber in calling for the uniformed police officer and trying to have certain teaching materials removed from the curriculum without consulting the curriculum committee did not constitute violations of the Act. There is insufficient evidence to support a finding of probable cause that he did either of these actions as an attempt to secure unwarranted privileges for himself or others in violation of subsection (b). Also, the Commission does not believe that a school official's religious beliefs constitute the type of conflict that the Legislature contemplated when it prohibited a school official from acting in his or her official capacity in matters in which he has a personal involvement. Clearly this would open a Pandora's box requiring the Commission to assess the belief systems of board members. Therefore, the Commission finds no probable cause regarding the allegations against Mr. Huber.

The last allegation is that Mr. Sangiovanni contacted administrators at Lakewood High School and advised them about Mr. Eremita's use of a school fax for board purposes. Again, Mr. Sangiovanni admits to doing so, but does not admit to having done so to get Mr. Eremita fired. Even if Mr. Sangiovanni attempted to get Mr. Eremita fired by contacting his employer, the Commission does not find probable cause that the conduct was an attempt to secure unwarranted privileges for himself or others in violation of subsection (b).

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that respondents violated N.J.S.A. 18A:12-24(b), (c) or (d) of the School Ethics Act. Therefore, it dismisses the charges against them.

The Commission has considered respondents' request for sanctions against Mrs. Kelly for filing a frivolous complaint and concluded that such sanctions would not be appropriate. The standard for finding a complaint to be frivolous is a high one. In order to find that a complaint is frivolous, the Commission must 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.
[N.J.S.A. 2A:15-59.1.]

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). The Commission finds that Mrs. Kelly filed the complaint as a parent who was concerned about the conduct of the board. She expressed that the infighting she witnessed was keeping the board from carrying out its duties on behalf of the district’s children. It finds no evidence of bad faith on her part. Similarly, although the Commission does not find probable cause under the School Ethics Act, the Commission does not find that Mrs. Kelly knew or should have known that the complaint was without reasonable basis in law. She set forth facts that for the most part were substantiated. However, although respondents may have committed conduct that appeared as improper, it simply did not rise to the level of a violation of the Act. Therefore, the Commission finds that the complaint was not frivolous under N.J.S.A. 18A:12-29(e) of the School Ethics Act.

This is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C19-96

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

Whereas, the Commission concluded at its meeting of April 22, 1997, that there was no probable cause to credit the allegations in the complaint that respondents violated the School Ethics Act; and

Whereas, the Commission stated its reasons for the decision orally at its public meeting and directed staff to place the decision in writing; and

Whereas, the Commission has reviewed the proposed decision of its staff finding no probable cause and dismissing the complaint; 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 May 27, 1997.

Lisa James-Beavers
Executive Director

