

members remained in executive session after Mr. Giberna and Mr. Klausner left the meeting. According to the minutes and the Commission's investigation, Ms. Doherty did not speak out against Mr. Giberna during the remainder of that meeting. The Board voted on the coach's reappointment when Ms. Doherty was out of the State on January 14, 1999. Mr. Giberna's reappointment was approved by a five-to-one vote.

ANALYSIS

The complainant alleges that Ms. Doherty violated N.J.S.A. 18A:12-24(b), (c) and (g) of the School Ethics Act. Before the Commission, Mr. Giberna, through his attorney, David Rosenberg, Esq., stated that Mr. Giberna does not allege that Ms. Doherty had any financial interest in Mr. Giberna's reappointment as coach. Rather, he alleges that she should not have actively participated in the consideration of his coaching reappointment when her son had been a member of the team and expressed displeasure at his treatment by the coach. Ms. Doherty, through her attorney, responds that none of the conduct set forth by the complainant rises to the level of an ethics violation.

N.J.S.A. 18A:12-24(b) provides:

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.

Mr. Giberna argues that Ms. Doherty actively solicited members of the public to speak out against him at the public meeting. Through his attorney, however, he concedes that it would not be a violation of the School Ethics Act for a board member to seek support for her position barring any conflict of interest on the matter. Since Ms. Doherty's son had graduated prior to the meetings in question, the Commission does not find that her son's prior membership on the baseball team constituted a conflict of interest. Therefore, the Commission cannot conclude that Ms. Doherty was trying to secure unwarranted privileges for herself or for her son if she actively sought support to have Mr. Giberna's application for reappointment rejected; an allegation that she denies. Based on the foregoing, the Commission finds no probable cause to credit the allegation that Ms. Doherty attempted to use her official position to secure unwarranted privileges for herself or her son.

N.J.S.A. 18A:12-24(c) provides:

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

This provision raises the question as to whether Ms. Doherty or her son had a direct or indirect personal involvement that might reasonably be expected to impair her objectivity or independence of judgment. While Ms. Doherty had personal knowledge of the coach's conduct through her son, she had no personal involvement of the nature required by N.J.S.A. 18A:12-24(c) in whether Mr. Giberna continued to coach since her son was no longer a student at the school. Ms. Doherty's son also had no personal involvement since he graduated and will not be affected by the decision on whether to reappoint Mr. Giberna. The Commission does not find that Ms. Doherty or her son had a personal involvement that might reasonably be expected to impair her objectivity. The Commission also questions what official actions she took that could be considered "acting in her official capacity." There is no information before the Commission to indicate that she expressed any disapproval of Mr. Giberna at the public or executive session meetings of the board when the issue was raised. As set forth above, she was absent at the time that the Board voted. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Doherty violated N.J.S.A. 18A:12-24(c).

N.J.S.A. 18A:12-24(g) provides:

No school official...shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the district in which he serves.... This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities.

Ms. Doherty never stood before the Board as a representative for her son or any other person to attempt to thwart Mr. Giberna's reappointment as coach. At all times, she was acting as a board member and even as a board member, she has not been shown to make any statements indicating that she was representing her son. Therefore, N.J.S.A. 18A:12-24(g) does not apply to the facts of this case and the Commission finds no probable cause to credit the allegation that Ms. Doherty violated it.

DECISION

For all the foregoing reasons, the Commission finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(b), (c) or (g) of the School Ethics Act and dismisses the complaint against her.

The respondent requested that the complainant be found to have filed a frivolous complaint pursuant to N.J.S.A. 18A:12-29(e) of the School Ethics Act. The Commission did not determine that the complaint was frivolous at the April 27, 1999 meeting.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C20-98

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

Whereas, the Commission finds no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(b), (c), or (g) of the School Ethics Act; and

Now Therefore Be It Resolved that the Commission hereby finds no probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(b), (c) or (g) of the School Ethics Act, dismisses the charges against them and directs staff to draft a decision setting forth its conclusion 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 April 27, 1999.

Lisa James-Beavers
Executive Director

[c2098DEC/h:lisa/decisions]