

May 6, 1997 meeting to approve school level assignments. On July 31, 1997, the Board held a special meeting at which the assignments were clarified. At this meeting, the individual's name, current position and the assignment to which they were being transferred was provided. One of the transfers was that of complainant Janice Taylor. She was transferred from principal of Hatch Middle School to principal of Powell Elementary School. Also transferred was Calvin Gunning. He was moved from principal of Whittier Elementary School to principal of Hatch Middle School. Mr. Gunning was principal at Whittier for one year before the transfer. Prior to that time, he served as an assistant to the principal for several years. Mr. Gunning held a Certificate of Eligibility, issued in July 1996, which allowed him to serve in the position of middle school principal while in the residency mentoring program to be certified for his provisional certificate. The County Superintendent renewed his certificate in December 1997.

Dr. Dawson and Mr. Gunning belong to the same national fraternity, Kappa Alpha Psi, Inc. It consists of college students and graduate members. However, neither is an active member of that fraternity.

ANALYSIS

The issue before the Commission is whether Dr. Dawson violated N.J.S.A. 18A:12-22 or N.J.S.A. 18A:12-24 (b), (c) or (d) of the School Ethics Act by transferring Ms. Taylor and Mr. Gunning, along with the others. The School Ethics Commission has previously ruled that it cannot find a violation of the School Ethics Act based solely upon N.J.S.A. 18A:12-22. This section sets forth the Legislature's findings and declarations. It does not set forth conduct that is prohibited under the Act. For that, the Commission must look to N.J.S.A. 18A:12-24.

N.J.S.A. 18A:12-24(b) prohibits a school official from using his position to secure unwarranted privileges, advantages or employment for himself or others. The Commission has stated that if a school official had a role in getting a person employment, it must determine whether that person's employment was "unwarranted," that is, whether the person was undeserving of the employment. The Commission notes from the above facts that Mr. Gunning had the qualifications to serve as principal of Hatch Middle School. He held a Certificate of Eligibility and had recommendations from his supervisor indicating that he would make an excellent middle school principal. All of the transfers, including that of Mr. Gunning, were approved by the Board. There is nothing to indicate that Mr. Gunning received any special favors or treatment. Therefore, the Commission finds no probable cause to credit the allegations that Dr. Dawson used his position to secure unwarranted privileges for Mr. Gunning in violation of section 24(b).

N.J.S.A. 18A:12-24(c) prohibits a school official from acting in his official capacity in a matter in which he has a direct or indirect personal or financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. The complainants' only claim that Dr. Dawson had a personal or financial involvement with Mr. Gunning such that he should have removed himself from the process is that the

two men are fraternity brothers. The Commission does not discern why that relationship would reasonably be expected to impair Dr. Dawson's objectivity or independence of judgment. Therefore, the Commission finds no probable cause to credit the allegations that Dr. Dawson acted in his official capacity in a matter in which he had a personal involvement in violation of section 24(c).

Janice Taylor also argues that respondent violated N.J.S.A. 18A:12-24(d). This subsection prohibits a school official from undertaking 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. Subsection d refers to the undertaking of other employment or services outside a school official's normal duties. It does not apply to a person acting in his official duties, as Dr. Dawson did when he set forth the reorganization plan. Thus, subsection d does not apply to this case and the Commission finds no probable cause to credit the allegations that Dr. Dawson violated subsection d.

CONCLUSION

For all the foregoing reasons, the Commission finds no probable cause to credit the allegations that Roy Dawson violated N.J.S.A. 18A:12-22 or 18A:12-24(b),(c) or (d) of the School Ethics Act when he transferred principals and other administrators in connection with a district-wide reorganization. The Commission therefore dismisses the two complaints against him.

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 -- C22-97 and C25-97

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

Whereas, the Commission found no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-22 or N.J.S.A. 18A:12-24(b), (c) or (d) of the School Ethics Act; 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 dismisses the complaint against Dr. Roy Dawson; and

Be It Further Resolved that the Commission adopts the enclosed decision referenced as its decision 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 March 30, 1998.

Lisa James-Beavers
Executive Director

[c222597/c:lisajb/decisions]