
SCHOOL ETHICS COMMISSION

V.

**JAMES FAMULARO,
ASBURY PARK
BOARD OF EDUCATION
MONMOUTH COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

Docket No.: C23-96

DECISION

The School Ethics Commission has reviewed the record of this matter and the Initial Decision finding that James Famularo violated the School Ethics Act, N.J.S.A. 18A:12-24(c), when he made the motion and voted in favor of appointing Albert Reinoso to a position as principal within the Asbury Park school district. The Administrative Law Judge (hereinafter “ALJ”) set forth that a reprimand was an appropriate penalty. Upon mailing of the Administrative Law Judge’s decision to the parties on January 30, 1998, the parties were provided 13 days to file written exceptions to the School Ethics Commission for its consideration. Deputy Attorney General Arlene Lutz filed timely exceptions on February 11, 1998. Kim Fellenz, Esq. indicated that his office did not receive the DAG’s exceptions until February 17, 1998. Thus, he filed a reply and cross exceptions on behalf of James Famularo on February 23, 1998, pursuant to N.J.A.C. 1:1-18.4. The Commission considered the record, the Initial Decision and the exceptions and cross-exceptions in rendering its decision.

DAG Lutz supports the conclusion of the ALJ that Mr. Famularo violated the Act; however, she excepts to the sanction of reprimand recommended by the ALJ. Regarding the violation, she argues that Mr. Famularo, as Mr. Reinoso’s campaign treasurer, had a relationship that might “reasonably be expected to impair his objectivity or independence of judgment” in violation of N.J.S.A. 18A:12-24(c). Further, she argues that the public perception is that Mr. Famularo was providing for a political crony. Thus, he should have abstained from the vote and his failure to recuse himself was a violation of the Act.

Regarding the violation, Mr. Fellenz argues two points on Mr. Famularo’s behalf. First, he argues that Mr. Famularo’s status as a new board member coupled with the lack of clear precedent concerning the vote at issue makes dismissal appropriate. Second, he argues that the lapse of time between Mr. Famularo’s conduct as Mr. Reinoso’s campaign treasurer and his vote on the position of principal make dismissal appropriate.

The Commission now addresses the arguments as to whether to accept the findings and conclusions of the Administrative Law Judge setting forth that Mr. Famularo violated

the School Ethics Act, N.J.S.A. 18A:12-24(c) when he made the motion and voted for Mr. Reinoso's appointment.

Subsection c sets forth:

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.

Respondent's argument regarding the status of Mr. Famularo as a new board member is more appropriate for determination of penalty, not whether a violation occurred. There is no new member exception to subsection c that would permit the Commission to overlook conduct in violation of this subsection. Similarly, the argument that there is a lack of clear precedent goes to the penalty determination. The issue is whether respondent acted in his official capacity in a matter in which he had a personal involvement that might reasonably be expected to impair his objectivity. The Commission may not have been previously presented with a case to apply subsection c to a political relationship. However, the Act is clear that if it is a relationship reasonably expected to impair a school official's objectivity, then he should abstain.

In determining whether there is a violation of N.J.S.A. 18A:12-24(c), the determinative factor is the public's perception and not the school official's belief as to whether he could participate in a matter objectively. This is different from relying on only an "appearance of impropriety," standard as respondent suggests. The violation is based on an actual relationship that a reasonable person would expect to create a conflict of interest. Thus, Mr. Famularo may have believed that he was voting for the best candidate when he voted for Mr. Reinoso. However, if the public would reasonably expect that the motion and vote were tainted by his personal involvement, then he should have abstained from the discussion and vote.

The Commission agrees with the Administrative Law Judge's conclusion that Mr. Famularo's position as Mr. Reinoso's campaign treasurer created a personal involvement that might reasonably be expected to impair his objectivity in making and supporting the motion for Mr. Reinoso's appointment to the position of principal. In so concluding, the ALJ did not set a new standard and apply it retroactively as respondent suggests when he cites to Crema v. New Jersey Department of Environmental Protection, 94 N.J. 286 (1983). The Court in Crema discussed when rulemaking is more appropriate than adjudication. The reliance on Crema is thus misplaced since the ALJ certainly was not addressing a broad policy issue that affects the public at large. Rather, he interpreted the phrase "personal involvement" in the Act to apply to the facts of this case, using his reasoned judgment. For the reasons set forth in the Initial Decision, the Commission concludes that Mr. Famularo's conduct violated N.J.S.A. 18A:12-24(c).

In addition to the ALJ's reasoning, the Commission agrees with the DAG, that the Commission must look to the Legislature's findings and declarations set forth at N.J.S.A. 18A:12-22a, which state:

The Legislature finds and declares:

a. 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.

The Legislature's findings and declarations do not constitute the violation, but they reinforce the principal that the purpose of the act is to develop standards that avoid not just unethical conduct but also avoid the perception thereof. Mr. Famularo's service with Mr. Reinoso's campaign as his campaign treasurer created a justifiable impression among the public that Mr. Famularo's support of his appointment to the position of principal was based more on his political ties to Mr. Reinoso, than Mr. Reinoso's qualifications as a principal. The Commission rejects the argument that the six-month lapse between Mr. Famularo's service as campaign treasurer and the vote in question was enough time to dilute any reasonable suspicion of favoritism. From respondent's own submissions, and as the ALJ found, Mr. Reinoso's election to council in February 1996 clearly was still a matter of great public debate when he applied for the principal position in June 1996. Respondent's reliance on attorney conflict of interest cases is misplaced since such cases do not address the standards by which public officials must abide. Thus, the Commission hereby determines that a violation of the Act occurred.

Regarding the penalty, the ALJ concluded that a written reprimand is a sufficient response to Mr. Famularo's conduct considering the nature of the conflict, the lack of clear precedent and the difficulty in defining the exact parameters of such a restriction. In her exceptions, DAG Lutz argues that the nature of the conduct warrants a more serious penalty than reprimand since a reprimand is a private sanction, directed only to the school official. She argues that the Commission should make the public aware that it will penalize such conduct. Further, she argues that Mr. Famularo's conduct warrants a stronger sanction because he made a conscious choice to elevate his political connections over his ethical obligations. Mr. Fellenz argues that the singular and appropriate sanction is reprimand if the Commission determines that there has been a violation of the Act.

The Commission disagrees with the ALJ and the respondent that the nature of the conflict merits the lowest sanction. The nature of the conflict, here political cronyism, is surely one that Legislature drafted the School Ethics Act to eliminate. Mr. Famularo's vote on July 8, 1996, was to hire Mr. Reinoso to one of the highest positions in the district. He participated in the executive and public meeting sessions regarding the hiring decision giving no consideration to the public's perception of his vote. He did so despite the politically charged atmosphere in which he cast that vote. Furthermore, pursuant to

N.J.S.A. 18A:27-4.1, a board can appoint a certificated employee only with a majority vote of the full membership of the board. Thus, the Asbury Park board needed five votes to appoint Mr. Reinoso. The ALJ recognized as undisputed fact the events occurring at July 8, 1996, meeting. As the minutes indicate, with Mr. Famularo's vote, the board hired Mr. Reinoso by a vote of five in favor, one opposed and one abstention.

The Commission agrees that there is a lack of precedent directly on point with the nature of the conflict. However, there is precedent for the Commission going beyond the familial and financial relationships that would clearly result in a conflict for a board member. See In the Matter of Salvatore Buono, Pennsauken, SEC C16-94, April 9, 1996. In Buono, the Commissioner ordered that Mr. Buono be suspended from the board for one month for voting for the reappointments of his business partner and his emancipated daughter. The Commission believes that a political association such as this one, that is greater than just a shared political affiliation, constitutes as serious a conflict as a relationship with a business partner. However, the Commission recognizes as mitigating factors that it has not previously ruled that a political association such as this constitutes a conflict of interest and that Mr. Famularo was a new board member. Therefore, the Commission recommends a penalty of a censure.

DECISION

For the foregoing reasons, the School Ethics Commission adopts the Initial Decision, with a slight clarification in the reasoning pertaining to Legislative intent. It concludes that James Famularo violated N.J.S.A. 18A:12-24(c) of the School Ethics Act by making the motion and voting for Albert Reinoso as principal when he had previously served as Mr. Reinoso's campaign treasurer. The Commission modifies the ALJ's recommendation regarding sanction for the reasons set forth above and recommends that the Commissioner of Education impose a sanction of censure.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C23-96

Whereas, the Commission found probable cause to credit the allegations in the complaint and transmitted this matter for a hearing at the Office of Administrative Law; and

Whereas, the School Ethics Commission has considered the Initial Decision in this matter and has considered the exceptions and cross-exceptions of the parties and the record below; and

Whereas, the Commission has reviewed all of the information and now agrees with the conclusion of the Administrative Law Judge that respondent violated N.J.S.A. 18A:12-24(c) 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 adopts the Initial Decision with a clarification and hereby finds that James Famularo violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommends that the Commissioner of Education impose a sanction of censure against Mr. Famularo; 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 February 24, 1998.

Lisa James-Beavers
Executive Director

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