

Mr. Smith admitted that he made the call and discussed his disagreement with the student's views expressed in the letter. He denies the request that she keep quiet and the allegations that he sought information on staff members. The Commission accepts as undisputed facts the allegations that Mr. Smith admitted. It does not confirm the complainant's allegations that Mr. Smith denied. It now concludes that those allegations would not constitute a violation of the School Ethics Act, even if they were true.

ANALYSIS

The issue before the Commission is whether respondent's conduct violated N.J.S.A. 18A:12-22 and N.J.S.A. 18A:12-24(b) of the School Ethics Act. Section 22(a) sets forth:

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.

As the Commission has stated previously, section 22 of the Act sets forth the Legislature's findings and declarations. It indicates the Legislature's purpose for setting the standards that are set forth at section 24. Section 22 gives guidance on how to interpret the prohibited acts. It does not set forth a prohibited act that the Commission can charge a school official with violating. If the Commission were to find a violation of section 22 alone, it would hinder the performance of school officials who would not know exactly what conduct would be considered creating a justifiable impression that the public trust is being violated. However, the Commission has cited to section 22 in the past to indicate how the Legislature intended a violation of section 24 to be interpreted. Therefore, the Commission must determine whether respondent violated N.J.S.A. 18A:12-24(b).

N.J.S.A. 18A:12-24(b) sets forth that:

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.

Even assuming, for the sake of argument, that all of the allegations in Ms. Mancini's complaint were true, the Commission does not discern any evidence that Mr. Smith was trying to secure unwarranted privileges or advantages through his position as a board member. A board member does not give up his right to voice his disagreement to the author of an article or letter he reads in the newspaper, even if the author is a student. While the Commission does not condone Mr. Smith's method, for which he has

apologized, the Commission does not find that he secured or tried to secure privileges for himself in violation of N.J.S.A. 18A:12-24(b). Regarding the allegations that Mr. Smith went on to ask the student about any information she had on any staff members, the Commission finds it rather inconceivable that a student would have information to which a board member would not have access on his own. Nonetheless, even if true, the Commission does not view this as an attempt to secure unwarranted privileges. At the worst, it was poor judgment on Mr. Smith's part. Again, for that he has apologized.

Last, regarding Ms. Mancini's allegations in paragraph three, complaining of Mr. Smith's general behavior, the Commission agrees with Mr. Smith that he should not have to respond to such allegations. Such behavior clearly does not constitute a violation of any provision of the School Ethics Act. Thus, the Commission dismisses such allegations without comment. If, as Ms. Mancini alleges, such behavior violates the Board's code of ethics, then the Board has the power to enforce its own code in the manner it sees fit. The School Ethics Act does not address such behavior.

CONCLUSION

For all the foregoing reasons, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-22 or N.J.S.A. 18A:12-24(b) of the School Ethics Act and dismisses the complaint.

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 -- C28-97

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

Whereas, at its meeting of March 30, 1998, the Commission found no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(b) 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 finds no probable cause to credit the allegation that Wesley Smith violated N.J.S.A. 18A:12-24(b) of the School Ethics Act, dismisses the charges against him and adopts the proposed decision 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 April 28, 1998.

Lisa James-Beavers
Executive Director

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