
IN THE MATTER

OF

JAMES FAMULARO, RODNEY BOND :
WILLIAM YOUNG & RENARD NEAL, :
***ASBURY PARK* :**
***BOARD OF EDUCATION* :**
***MONMOUTH COUNTY* :**

BEFORE THE
SCHOOL ETHICS COMMISSION

Docket No.: C29-97

DECISION

PROCEDURAL HISTORY

The above-captioned matter arises from a complaint filed on October 9, 1997 by Catherine Mellina on behalf of the Asbury Park Homeowners Association. Therein, she alleges that the above-named members of the Asbury Park Board of Education (“Board”) violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., when the Board issued a “promotional piece” with the picture of the Board President, Sheila Solomon, just before the city council election in which Sheila Solomon was a candidate.¹ The respondents filed answers indicating that there was nothing in the promotional piece concerning Ms. Solomon’s council campaign. Further, they state that the law allows for the printing and mailing of public relations material to inform the community about matters of importance concerning the school board. Respondents further ask for a finding that the complaint be deemed frivolous pursuant to N.J.S.A. 18A:12-29(e).

The School Ethics Commission investigated the allegations and informed the parties that it would discuss this matter at its May 28, 1998 meeting. Both parties were provided the opportunity to appear before the Commission. Catherine Mellina appeared, but the respondents did not. The Commission tabled decision on this matter at the conclusion of the May meeting. At its June 23, 1998 meeting, the Commission found no probable cause and adopted this decision dismissing the complaint. The Commission determined that the complaint was not frivolous and did not impose sanctions against the complainant.

¹ Sheila Solomon was originally named in the complaint, but since she was no longer a board member when the complaint was filed, the complaint against her was dismissed.

FACTS

The Commission was able to discern the following facts from the pleadings, the testimony and its investigation.

In April 1996, James Famularo, Rodney Bond, and William Young became members of the Asbury Park Board of Education. Renard Neal was elected in April 1997. They elected Sheila Solomon as President of the Board. In 1997, Ms. Solomon also became a candidate for Asbury Park city council. A few weeks before the May 13, 1997 city council election, the Board sent out a public relations piece touting the accomplishments of the Asbury Park School Board and featuring a picture of Sheila Solomon. At the bottom of the piece, it set forth, "Pd for by Asbury Park Bd of Ed." The Board had printed and mailed promotional pieces in the past, but they did not look like this one.

On May 14, 1997, the Board approved a motion that it "ratify and confirm the appointment of F.S.D. Enterprises to prepare a public relations mail piece to highlight the accomplishments of the Asbury Park School District at a cost of \$3,190." The motion passed by a vote of 5 to 3 with the five affirmative votes coming from Sheila Solomon, James Famularo, Rodney Bond, Renard Neal and William Young. The owner of F.S.D. Enterprises submitted a final invoice to the Board on May 1, 1997, prior to the vote to authorize its preparation.

F.S.D. Enterprises is owned by Declan O'Scanlon. Declan O'Scanlon is also listed on an election registration statement as a person authorized to sign checks or otherwise make transactions on behalf of the political committee, "Citizens for Good Government." This group was organized to support Sheila Solomon and four other council candidates, according to its registration statement. Mr. O'Scanlon is also listed as the person having control over the affairs of the political committee.

ANALYSIS

The complainant did not set forth a particular provision of the Act that she believed the respondents violated. However, based on the information set forth in the complaint, the issue before the Commission appears to be whether the respondents used their official position to secure unwarranted privileges or advantages for others in violation of N.J.S.A. 18A:12-24(b).

The Commission has closely examined the promotional piece in question. Therein, it states, "It's Been a Great Year for the Asbury Park School System." It notes the names of the Board members, the Board's plans for the future, and the accomplishments of the Board. The accomplishments are said to be class size reduction, tax rate reduction, hiring of Asbury Park residents, the opening of an alternate school and upgrades to recreational

facilities. The piece features pictures of a new school and a new library/technology center. Other than the picture of Sheila Solomon on the front, there is nothing in the piece alluding to the city council election or the fact that she is candidate for council.

Based on the foregoing, the Commission cannot conclude that the four Board members who approved the funding for the promotional piece used their membership on the Board to assist Ms. Solomon's city council campaign. The Commission notes that the timing of the release of the promotional piece with Ms. Solomon's picture on the cover may have given the impression to some that it was an attempt to promote her council campaign. However, the timing of the mailing does not prove that the purpose of it was to finance campaign mailings through the Board, especially when there is no indication anywhere in the material that Ms. Solomon is running for council.

Further, the fact that the Board did not approve the funding of the piece until after its mailing is a separate issue that is irrelevant to the question of whether the Board members used their positions to advance Ms. Solomon's campaign. The Board has the authority to issue public relations material touting its accomplishments. At the time of the release of this mailing, Sheila Solomon was the Board President so there was nothing inappropriate about her picture and title appearing on the cover. Clearly, the outcome would be different if it indicated "Candidate for City Council" under her name. The piece however, only focuses on school issues and does not outwardly appear to further Ms. Solomon's campaign.

Also unrelated to the issue of whether respondents violated section 24(b) is Ms. Solomon's relationship to the owner of F.S.D. Enterprises, Declan O'Scanlon. The Commission has already dismissed the complaint against Sheila Solomon because she was not a board member when the complaint was filed. As a general proposition, the Commission will continue to decide a complaint if the respondent board member leaves the board while the complaint is pending, but will not act on a complaint against a board member who has left the board at the time of filing. Ms. Solomon falls into the latter category. Mr. Young falls into the former, so the complaint is still proceeding against him. The Commission does not have information before it to indicate that the four respondents were trying to gain unwarranted privileges for Mr. O'Scanlon since he was a principal in Ms. Solomon's city council campaign, which was separate from her Board membership. Thus, the Commission cannot conclude that the four Board members used their positions to secure unwarranted privileges for him in violation of section 24(b) merely because of their association with Ms. Solomon. The Commission thought it needed to address this issue since the facts set forth by the complainant may have raised the question.

Regarding the main focus of the complaint, the Commission finds no probable cause to credit the allegation that the respondents wrongfully utilized their positions on the Board to further Ms. Solomon's campaign for city council in violation of N.J.S.A. 18A:12-24(b) of the School Ethics Act.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(b) and dismisses the charges against them.

Respondents have asked the Commission to find this complaint to be frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In support of this request, they argue, in pertinent part, that the complaint was politically and racially motivated and filed for the sole purpose to harass them. They further argue that a streak of political losses in the city council and board elections motivated the Homeowners' Association to file this complaint. Complainant denies that the Asbury Park Homeowners Association is a political organization and indicates that its membership is multi-racial.

N.J.S.A. 18A:12-29(e) provides that the standard for determining whether a complaint is frivolous shall be the same as that set forth in N.J.S.A. 2A:15-59.1. The latter provides:

In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall 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.

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).

Respondents assert that the complaint is frivolous under the first category in that it was filed in bad faith solely for the purpose of harassment. The Commission cannot find that this complaint meets this stringent standard. The Commission notes that N.J.S.A. 18A:12-22(a) of the School Ethics Act states that:

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.

Based on this provision, members of the public often assume that if a school official's conduct appears to be improper, it must violate the School Ethics Act. Although the Commission does seek to act in matters where school officials create the appearance of impropriety, the appearance alone is not enough to substantiate a violation of the Act. In the present case, the timing of the publication that coincided with the council election, along with the picture on the cover of the Board President who was a council candidate, appeared to the Homeowners Association that the Board was supporting its President as a council candidate. The Board heightened suspicion when it voted to fund the publication after the council election. Considering the foregoing factors, the Commission cannot find that sole purpose of the complaint was to harass the respondents.

This decision constitutes final agency action. Thus, it may be appealed directly to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C29-97

Whereas, the School Ethics Commission has considered the pleadings, documents and testimony before it; and

Whereas, the Commission has reviewed all of the information and now concludes that there is no probable cause to credit the allegation that respondents 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 allegations that James Famularo, Rodney Bond, William Young and Renard Neal violated N.J.S.A. 18A:12-24(b) of the School Ethics Act and dismisses the allegations against them; 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 June 23, 1998.

Lisa James-Beavers
Executive Director

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