
IN THE MATTER OF : **Before the**
 : **School Ethics Commission**
GINA KOLATA, :
Princeton Regional Board of Education, : **Docket No. C34-96**
Mercer County :
 : **DECISION**

PROCEDURAL HISTORY

This matter arises from a claim brought by Kenneth Raybuck against Gina Kolata, a member of the Princeton Regional Board of Education. Mr. Raybuck alleges that Ms. Kolata violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., when she negatively characterized a teacher when interviewed by a reporter for the *Princeton Packet* on December 13, 1996. Mr. Raybuck filed his complaint on December 17, 1996. Ms. Kolata filed an answer on January 10, 1997, admitting that she made certain comments to the newspaper, but denying that any of her actions violated the School Ethics Act. She alleges in her separate defenses that the complaint is filed in bad faith; therefore, the School Ethics Commission should impose sanctions against the complainant for filing a frivolous complaint. Mark Blunda, Esquire, counsel for respondent, also submitted a memorandum of law setting forth the reasons he believes the Commission should dismiss the case against Ms. Kolata and impose sanctions.

By letter of April 3, 1997, the Commission advised the parties that the Commission would discuss their case at its April 22, 1997, meeting. The Commission provided both parties the opportunity to attend the meeting and address the members. However, neither party chose to do so. The Commission tabled decision on the complaint. It rendered this decision orally at its meeting of May 27, 1997 and now memorializes that decision in writing.

FACTS

On the basis of the pleadings, documents and investigation into this matter, the Commission finds the following facts to be undisputed. Kenneth Raybuck is the President of the Princeton Regional Education Association. Gina Kolata is a member of the Princeton Regional Board of Education, a parent of a student and a journalist.

On December 13, 1996, the *Princeton Packet* published an article entitled “Tower mock issue called ‘tasteless.’” The article reported that a four-page satirical section of the Princeton High School student newspaper published the week before had drawn wide public criticism. The newspaper featured a *Trentonian* picture of a woman bathing with the superintendent’s head superimposed and various headlines and articles that students and parents found offensive. The responsible students apologized, saying that the humor was intended to be self-deprecating and not offensive. However, the superintendent stated that some of the jokes there in crossed the line of poor taste.

The newspaper's faculty advisor was quoted in the article as saying, "They made mistakes in judgment, but they never intended to hurt anyone. They intended it to be a joke on themselves." The respondent was quoted at the end of the article as follows (except for the paragraph separations):

Board member Gina Kolata, who said she was speaking as a parent, said that the Tower lacks proper journalistic guidance. "I think that the students need guidance on journalistic principles and taste, said Ms. Kolata, a science writer at the New York Times. "I think that's what's been lacking at the Tower." Ms. Kolata cited other examples of what she considered to be flawed journalism. She called an editorial criticizing the proposed Princeton Charter School poorly researched. A sting operation carried out by newspaper staffers on cigarette sales to minors was "attack journalism" that she said wouldn't appear anywhere except on the television program Prime Time Live. "The kids need guidance from a responsible adult," she said. Ms. Kolata, who has received three complaints from community members about the satire issue, suggested that people wishing to complain about the issue write a letter to [the advisor] and send copies to [the] high school Principal.

Complainant alleges that by these comments, the respondent, who was identified as a member of the board, commented on a pending personnel matter involving a teaching staff member. He alleges that her invitation to members of the community to correspond with that teacher and send copies of such correspondence to the principal violated N.J.S.A. 18A:12-24(b), (c), and (g) of the School Ethics Act.¹

ANALYSIS

The issue presented is whether the respondent violated the School Ethics Act, specifically N.J.S.A. 18A:12-24(b), (c) or (g) by making the above comments to the newspaper reporter.

Subsection (b) prohibits school officials from using or attempting to use their positions to secure unwarranted privileges, advantages or employment for themselves or others. The complainant has not clearly set forth what privilege or advantage he believes she gained by making the statements to the press. It appears clear that the press sought respondent to provide comments because she was a board member, although she noted at the outset that she was speaking as a parent. The Commission does not find that respondent spoke about a "pending personnel matter." Rather, she commented on an issue of concern to the school district and attempted to clarify the procedure for people who wished to complain, since members of the public were complaining to her. The Commission concludes that respondent's comments were not an attempt to use her position to secure unwarranted privileges for herself. Thus, the

¹ Complainant also asserts that her public statements concerning the performance of an employee were in violation of N.J.S.A. 10:4-12(8) of the Open Public Meetings Act. Because the School Ethics Commission has no jurisdiction to enforce the Open Public Meetings Act, the Commission cannot make any ruling on this issue.

Commission finds no probable cause to credit the allegation that respondent violated subsection (b) and hereby dismisses this charge.

N.J.S.A. 18A:12-24(c) prohibits a school official from acting in her official capacity in a matter in which she has a direct or indirect financial or personal involvement that might reasonably be expected to impair her objectivity or independence of judgment. This subsection does not apply to the facts presented because respondent was not acting in her official capacity at the time she spoke to the press. Also, there are no facts to support that she had a financial or personal involvement in the matter. Thus, the Commission finds no probable cause to credit the allegation that respondent violated subsection (c) and hereby dismisses this charge.

Last, N.J.S.A. 18A:12-24(g) of the Act sets forth:

No school official or business organization in which he has an interest 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 school district in which he serves or in any proceeding involving the school 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.

The Commission does not see the relevance of this subsection to the facts set forth in the complaint. The respondent did not represent any other person or party when speaking with the press and this was not a matter currently pending before the school district at the time. Neither the superintendent nor the principal had taken any action against the faculty advisor at the time respondent was interviewed. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated subsection (g) in connection with the December 13, 1996 article and hereby dismisses this charge.

DECISION

For the foregoing reasons, the School Ethics Commission finds no probable cause to credit the allegations that respondent Gina Kolata violated the School Ethics Act by making the above stated comments to the reporter for the *Princeton Packet*. The Commission thus dismisses the complaint against her.

The Commission has considered the respondent's request for sanctions against the complainant for filing a frivolous complaint pursuant to N.J.S.A. 18A:12-29e. The School Ethics Act adopts the same standard for the filing of a frivolous complaint as that used in Superior Court, N.J.S.A. 2A:15-59.1. It 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). The Commission can discern no basis to conclude that the present complaint was filed for the purpose of harassment, delay or malicious injury. It is not enough to say that the complaint was calculated to advance political and union agendas, as Mr. Blunda suggests, with only the complainant’s union presidency as proof. Regarding the second standard, Mr. Blunda suggests that the complainant is no stranger to legal proceedings of this nature and the complaint was filed through counsel. Thus, both should have known that the complaint was without reasonable basis in law. Although the Commission finds the argument interesting, it believes that it should view the law in a restrictive manner as suggested in McKeown. Considering the lack of precedent on the School Ethics Act, it was not unreasonable for the complainant to file the complaint with the belief that the Act could be extended to these facts. Thus, the Commission finds that the standard for a frivolous complaint has not been met and does not impose sanctions against the complainant.

This decision constitutes final agency action and thus may be appealed directly to the Appellate Division of the Superior Court.

Respectfully submitted,

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C34-96

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

Whereas, the Commission has found no probable cause to credit the allegations in the complaint; and

Whereas, the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairman

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 24, 1997.

Lisa James-Beavers
Executive Director