
ROBERT IMHOFF

v.

**TERRIE SOSTORECZ,
HIGH BRIDGE BOROUGH BOARD
OF EDUCATION,
HUNTERDON COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO.: C89-17

**DECISION ON
MOTION TO DISMISS**

I. PROCEDURAL HISTORY

This matter arises from a Complaint filed on December 8, 2017, by Robert Imhoff (Complainant), alleging that Terrie Sostorecz (Respondent), former member of the High Bridge Borough Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By correspondence dated December 11, 2017, Complainant was notified that the Complaint was deficient, and required amendment. On December 27, 2017, Complainant cured all defects and filed an Amended Complaint (Complaint) that was deemed compliant with the requirements detailed in N.J.A.C. 6A:38-6.7. The Complaint alleges that Respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On January 10, 2018, the Complaint was served on Respondent, via regular and certified mail, notifying her that charges were filed against her with the School Ethics Commission (Commission), and advising that she had twenty (20) days to file a responsive pleading. On January 29, 2018, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On February 12, 2018, Complainant filed a response to Respondent's Motion to Dismiss, and to the allegations of frivolous filing.

The parties were notified by correspondence dated March 19, 2018, that this matter would be placed on the Commission's agenda for its meeting on March 27, 2018, in order to make a determination regarding the Motion to Dismiss and allegation of frivolous filing. At its meeting on March 27, 2018, the Commission considered the filings in this matter and, at its meeting on April 24, 2018, the Commission voted to grant the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g) as alleged in the Complaint. The Commission also voted to find the Complaint not frivolous, and to deny Respondent's request for sanctions.

II. SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(g) when she "lied" to the public on October 25, 2017 (twice), November 3, 2017 (once), and November 7, 2017 (three times). More specifically, Complainant alleges that beginning on October 25, 2017, "in writing and continuing through November 7, 2017," Respondent, while a "sitting member of the" Board, "willfully and purposely lied to the public...concerning the November 7, 2017, school board election." Complainant further argues that "on at least 6 occasions in writing and

countless times verbally,” Respondent cited a “clerical mix up in the Hunterdon County Clerk’s Office” as the reason she was “placed incorrectly on the ballot.”

Complainant contends that the nomination petition filed with the Hunterdon County Clerk’s Office, as well as a statement from the Hunterdon County Clerk’s Office, verify that a “clerical error” was not responsible for Respondent’s placement on the ballot. Further, when Respondent was confronted about “lying to the public” at a Board meeting on November 15, 2017, she “verbally insisted” that her nomination was a “clerical error,” and did so despite clear evidence to the contrary.

Based on the above, Complainant alleges that Respondent violated N.J.S.A. 18A:12-24.1(g).

B. Motion to Dismiss and Allegation of Frivolous Filing

Following receipt of the Complaint, and in lieu of an Answer to Complaint, Respondent filed a Motion to Dismiss, and also alleged that the Complaint is frivolous. In her Motion to Dismiss, and by way of background, Respondent states that she was appointed to the Board in July 2017, to fill a vacancy. At the time she was appointed to fill the vacancy, two years “from the beginning of 2018” remained for the seat. Respondent wanted to run for this seat, so she filled out and filed the necessary paperwork, including the nominating petition, with the Hunterdon County Clerk’s Office, but “left the term of years blank.” Respondent contends that she requested that “someone at the County Clerk’s office” fill in this information. According to Respondent, “someone” mistakenly wrote that Respondent was seeking a full three year term on the Board, as opposed to the unexpired two-year term. When Respondent attempted to correct this “clerical error,” she was advised to “run a write-in campaign for the two year term,” and she did so. Respondent also notes that Complainant was the individual placed on the two year term ballot, which is why he is bringing this complaint. Of note, Respondent is no longer a Board member, as she was not successful in the election.

Based on the above, Respondent argues that the Complaint should be dismissed because it fails to allege facts sufficient to demonstrate that Respondent violated N.J.S.A. 18A:12-24.1(g), or that “this was anything other than reasonable mistake or personal opinion or was not attributable to developing circumstances.” Respondent also contends that the Commission lacks subject matter jurisdiction to consider this Complaint, as statewide elections are “governed by N.J.S.A. 19:1-1.”

Finally, Respondent argues that the Complaint is frivolous because Respondent is no longer a Board member, and Complainant “is a regular filer of often unnecessary ethics complaints...merely for what he sees as personal slights against his own agenda and for daring to challenge his decisions.”

C. Response to Motion to Dismiss and Allegation of Frivolous Filing

In his reply to Respondent’s Motion to Dismiss and allegation of frivolous filing, Complainant counters that Respondent signed the nominating petition, and her notarized signature indicates that she filled out the information, or at least is responsible for what it contains. As for the alleged “clerical error,” Complainant argues that the clerk’s office indicated,

when asked by Complainant, that there was no clerical error as repeatedly alleged by Respondent. Finally, Complainant argues that the fact Respondent is no longer a Board member is irrelevant, because she *was* a Board member at the time she lied to the public.

III. ANALYSIS

A. Jurisdiction of the Commission

Respondent argues that the Commission does not have jurisdiction over this matter because statewide elections are “governed by N.J.S.A. 19:1-1.”

The Commission notes, as argued by Respondent, that the authority of the Commission is limited to enforcing the Act, N.J.S.A. 18A:12-21 et seq., a set of minimum ethical standards by which all school officials must abide. The Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, N.J.A.C. 6A:28-1.4(a). Consequently, and to the extent that Complainant seeks a determination from the Commission that the Board and/or Respondent violated any aspect of the statewide election laws (N.J.S.A. 19:1-1 et seq.), the Commission dismisses those claims as they fall outside the scope, authority, and jurisdiction of the Commission.

In addition, the Commission notes that, although Respondent is not currently a Board member, and would theoretically not fall within the jurisdiction of the Commission, she *was* a Board member at the time she allegedly violated the Act. Therefore, her conduct, as described above, can be evaluated through the lens of the Act, to the extent the Act is implicated by the conduct alleged.

B. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.1 et seq. Thus, the question before the Commission is whether Complainant has alleged facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g) as alleged in the Complaint.

C. Alleged Code Violations

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24.1(g) multiple times during her fall 2017 campaign for a seat on the Board. N.J.S.A. 18A:12-24.1(g) provides:

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Pursuant to N.J.A.C. 6A:28-6.4(a)(7), factual evidence of a violation of N.J.S.A. 18A:12-24.1(g) shall include evidence that Respondent took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. Factual evidence that Respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by Respondent, and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances.

In support of his claims that Respondent “lied” to the public on at least six (6) different occasions, Complainant provided written statements/comments that Respondent purportedly posted on her personal social media page, a copy of the nomination petition that Respondent filed with the Hunterdon County Clerk’s Office, and an e-mail from the Hunterdon County Clerk’s Office stating that a clerical error did not result in Respondent being incorrectly placed on the ballot for the three year term on the Board. Complainant also referenced comments that Respondent allegedly made at a public Board meeting, but did not provide any evidence to substantiate these statements.

Even if the statements made by Respondent, and her continued representation of a “clerical mistake,” are not completely accurate, a fact which is not clear from the record, Complainant has not offered any evidence to substantiate that the information was inaccurate and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion, or was not attributable to developing circumstances. The record, as provided by Complainant, demonstrates that Respondent has consistently represented the situation to be, in her opinion, a “clerical error.” In addition, none of Respondent’s statements related to Board business, and none of the statements constituted Board action; instead, all of the statements made by, and attributed to, Respondent related to her candidacy for membership on the Board, and her location on the election ballot. Therefore, the Commission finds that even if all of the facts as alleged in the Complaint are true, there is insufficient credible evidence to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g).

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined that Complainant has not alleged any facts which, if true, could support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g) as alleged in the Complaint. Therefore, the Commission grants the Motion to Dismiss in its entirety.

IV. REQUEST FOR SANCTIONS

At its meeting on March 27, 2018, the Commission considered Respondent’s request that the Commission find the Complaint frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). Despite Respondent’s argument, the Commission cannot find evidence which might show that the Complainant filed the Complaint in bad faith or solely for the purpose of harassment, delay, or malicious injury. The Commission also does not have information to suggest that Complainant knew or should have known that the Complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the Complaint is not frivolous, and denies Respondent’s request for sanctions.

V. DECISION

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission grants the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g) as alleged in the Complaint. The Commission also finds that the Complaint is not frivolous, and denies Respondent's request for sanctions.

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender, Chairperson

Mailing Date: April 25, 2018

RESOLUTION ADOPTING DECISION – C89-17

WHEREAS, at its meeting on March 27, 2018, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and allegation of frivolous filing, and the Response to Motion to Dismiss and allegation of frivolous filing, filed in connection with this matter; and

WHEREAS, at its meeting on March 27, 2018, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support a finding that Respondent violated N.J.S.A. 18A:12-24.1(g) as alleged in the Complaint, and dismissing this matter; and

WHEREAS, at its meeting on March 27, 2018, the Commission discussed finding the Complaint not frivolous; and

WHEREAS, at its meeting on April 24, 2018, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from March 27, 2018; and

NOW THEREFORE BE IT RESOLVED, that the Commission hereby adopts the decision and directs its staff to notify all parties of its decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on April 24, 2018.

Kathryn A. Whalen, Director
School Ethics Commission