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| CANDACE MUELLER, JONATHAN | : | BEFORE THE SCHOOL |
| SAVAGE, MARY LOU KRAMLI, KEN | : | ETHICS COMMISSION |
| BRADLEY and BRUCE WHITE | : | |
| | : | |
| | : | |
| V. | : | |
| | : | |
| FAYE BALL | : | Docket No. C09-06 |
| EWING TOWNSHIP | : | |
| BOARD OF EDUCATION | : | DECISION |
| MERCER COUNTY | : | |
| | : | |

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 1, 2006, initially by the Ewing Township Board of Education (Board), alleging that Faye Ball, a member of the Board violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members of the Act when she: 1) wrote to three members of the Ewing Township Council after the budget had been defeated and made her own recommendations as to cuts in the school budget contrary to the recommendations of the board and the administration; 2) wrote a letter to *The Times* newspaper, which appeared on May 10, 2005, seeking public support at the Council meeting for cuts to the budget identifying herself as a member of the Board; and 3) wrote another letter appearing in the January 9, 2006 edition of the *Trenton Times* in which she argued that taxes were too high and made allegedly misleading statements concerning the tax increase. The School Ethics Commission notified the attorney for the complainant Board that a complaint had to be filed by a “person” as set forth in N.J.S.A. 18A:12-29(a). Thereafter, the Board amended its complaint to name Candace Mueller, Jonathan Savage, Mary Lou Kramli, Ken Bradley and Bruce White as complainants. The attorney then withdrew from representation because he did not think that he could represent individual board members against another board member.

Through her attorney, Barry Chatzinoff, Esq., Ms. Ball filed an answer to the complaint on June 19, 2006 setting forth that the first two incidents were addressed by the School Ethics Commission’s advisory opinion that it had issued to Ms. Ball previously and *Public Advisory Opinion A02-06* (March 10, 2006) which addressed a similar question. She denied that she made any misleading statements as alleged in the third charge and stated that, at all times, she complied with the Commission’s advisory opinions.

The Commission invited the parties to its July 25, 2006 meeting to present witnesses and testimony, but did not require that they be present. All of the complainants, except Kenneth Bradley, attended the meeting. Prior to hearing testimony, the Commission deliberated on Ms. Ball’s argument that the first two incidents set forth in the complaint had already been addressed by the Commission’s advisory opinions and should not be found to be violations. The Commission concluded that the first two charges of the complaint should not be revisited in light of the prior advisory opinion that

was provided to Ms. Ball to guide her in the future. Therefore, the scope of the testimony was narrowed to the third charge. The complainants who were present testified. Mr. Savage then informed the Commission that Mr. Bradley wanted very much to testify, but he could not attend when the Commission changed the time for testimony from 9:30 a.m. to 1:00 p.m. Mr. Chatzinoff then stated that he did not want Ms. Ball to testify if there was going to be additional testimony from the complainants. However, Mr. Chatzinoff said that he would allow her to testify if Mr. Bradley would submit his testimony by affidavit and he could then respond. The parties agreed to allow Mr. Bradley to submit an affidavit within 20 days of the date that he is notified by mail. Ms. Ball then testified.

By letter of July 28, 2006, the Commission advised Mr. Bradley that he had 20 days to submit an affidavit regarding the third charge -- that Ms. Ball made misleading statements in her letter to the editor published in the *Trenton Times* on January 9, 2006. Mr. Bradley filed a statement with the Commission on August 17, 2006, addressing all of the incidents in the complaint, rather than the third as the Commission requested. Regarding the third charge, he stated that Ms. Ball's statements that a school budget and a school building referendum "would probably be approved" along with a "regular school tax increase" were inaccurate, misleading and compromised the Board.

Mr. Chatzinoff responded to Mr. Bradley's submission that he objected to Mr. Bradley's submission because he did not adhere to the Commission's guidelines and referenced the first two charges that the Commission decided that it would not hear. With regard to the third incident, Mr. Chatzinoff argued that Ms. Ball's letter to the editor was submitted well before the beginning of the April 2006 budget process, which did not begin until February 23, 2006. Further, he argues that the statements in the letter were neither misleading nor inaccurate and therefore could not have compromised the Board.

At its September 26, 2006 meeting, the Commission voted to find that Ms. Ball did not violate N.J.S.A. 18A:12-24.1(e) of the Code of Ethics. It adopted this decision with amendments at its meeting on November 28, 2006.

FACTS

The Commission discerned the following facts from the pleadings, documents and testimony.

At all times relevant to the complaint, Ms. Ball was member of the Board, along with all of the complainants in the above-captioned matter. On January 6, 2006, Ms. Ball wrote a letter to the *Trenton Times* and emailed it on January 6, 2006. The letter was published on January 9, 2006. The letter set forth that taxes in Ewing were too high. The letter also set forth, "Meanwhile, at the Jan. 23 school board meeting, the ten million dollar referendum for maintenance will probably be approved, and we still have the regular school tax increase to be decided during the April election. So, the next time someone asks me if I live in Ewing, my response will be 'Yes, I live in Tax City.'"

There was no referendum scheduled for a vote at the January 23, 2006 meeting. However, an Action Item in the Board packet for the December 19, 2005 meeting indicated, "The referendum will be voted on by the Board on January 23, 2006." On January 12, 2006, the Business Administrator (B.A.) notified the Board members that the referendum vote was being postponed from the January 23, 2006 Board meeting by memorandum. The B.A. said, "I therefore recommend that we again postpone the actual referendum until the new governor makes his decision on the above two mentioned bills."

As of January 2006, the Board had not received information regarding the amount of State funding that it would receive and the district's budget had not been finalized, so the impact of the district's budget on a resident's tax bill was unknown at the time Ms. Ball said, "we still have the regular school tax increase to be decided during the April election." Ms. Ball testified that she did not set forth any inaccurate information in her letter nor did she purport to be speaking for the Board in her letter of January 6, 2006.

ANALYSIS

Complainants allege that Ms. Ball's conduct violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, which sets forth:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

In interpreting this provision in the context of a board member's desire to express an opinion publicly that is contrary to that of the Board, the Commission said in *Public Advisory Opinion A02-06* (March 10, 2006), that the board member "would not violate the Act by sending a letter to the editor expressing [his] opinion about the budget or making a statement to the press as long as, in the letter, [he did] not hold [himself] out as a board member and the information is accurate, not confidential, and therefore would not compromise the board."

The Commission finds that in her letter that was published on January 9, 2006, Ms. Ball substantially followed the dictates of *Advisory Opinion A02-06*. She provided the Commission with her original letter, which she signed, "Ewing Taxpayer," not "School board member." The reference to the \$10 million dollar referendum "probably" being voted on at the January 23, 2006 meeting was neither inaccurate nor confidential at the time she wrote the letter. Even though, ultimately, the referendum was not on the agenda, her speculation that it might be was based on information from the B.A. that she had at the time of writing. Regarding the tax increase, Ms. Ball's letter says that an increase is yet to be decided, so that also was not inaccurate. The Commission therefore finds that the letter did not constitute private action that may compromise the Board and dismisses the complaint that Ms. Ball violated N.J.S.A. 18A:12-24.1(e).

DECISION

For the reasons discussed above, the Commission concludes that Faye Ball did not violate N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members in the Act and dismisses the allegations against her.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C09-06

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 on September 25, 2006, the Commission voted to find no violation of the School Ethics Act and to dismiss the allegations against Faye Ball; and

Whereas, the Commission reviewed a draft decision prepared by its staff and agrees with the 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, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on November 28, 2006.

Lisa James-Beavers
Executive Director

PCG/LJB/lisa/decisionsC09-06