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<b>IN THE MATTER OF</b>	:	<b>Before the School</b>
	:	<b>Ethics Commission</b>
	:	
<b>BARBARA RONE,</b>	:	<b>Docket No.: C03-97</b>
<i>SOUTH AMBOY BOARD OF EDUCATION,</i>	:	
<i>MIDDLESEX COUNTY</i>	:	<b>DECISION</b>
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**PROCEDURAL HISTORY**

This matter arises from a claim that South Amboy board member Barbara Rone violated the School Ethics Act, "Act," N.J.S.A. 18A:12-21 et seq. Complainant Dr. Robert Dicker, Superintendent of the South Amboy school district, filed this complaint on February 5, 1997. Therein, he alleges that South Amboy Board of Education member Barbara Rone violated the Act when she voted on matters concerning him. Barbara Rone filed her answer to the complaint on February 26, 1997. Therein, she denies that she violated N.J.S.A. 18A:12-24(b) or (c) of the Act.

By decision dated July 23, 1997, the Commission found probable cause to credit the allegations that she should have abstained on a resolution to hire a special counsel to investigate him. However, the Commission dismissed the allegations in Count Two of the complaint. This count alleged that Ms. Rone should have abstained on voting for Dr. Dicker's bills presented at the September, October, November and December 1996 meetings of the Board. The bills were for his reimbursement for attendance at conferences and county superintendent roundtable meetings and meals and other expenses in connection with his attendance. Respondent voted against each of the reimbursements.

**FACTS**

After submission of written statements, the Commission finds that the parties consent to the following material facts of this case.

1. Prior to the 1996-97 school year, respondent Ms. Rone filed a criminal complaint against Dr. Dicker.
2. According to the official transcript, respondent testified in the municipal court proceeding that she had voted against Dr. Dicker's appointment to become superintendent in April 1995 because she believed that there was someone within the district who was better for the job. In the probable cause determination, the Commission found the transcript to constitute the accurate version of what Ms. Rone said at the municipal proceeding.

3. Although the municipal court judge found complainant guilty of harassment, the Superior Court of New Jersey-Law Division vacated that decision. The Honorable Joyce Munkasci, J.S.C., then entered an order finding complainant not guilty of the charges.

4. After the entry of the above order finding complainant not guilty, the complainant sought indemnification for the legal fees and expenses incurred in defending the criminal action pursuant to N.J.S.A. 18A:16-6.1.

5. Prior to the board meeting at which the board was to discuss the payment of complainant's legal fees, complainant's counsel sent a letter to board attorney Clark W. Convery, Esq., notifying him that respondent has a conflict of interest that precludes her from voting on matters concerning the superintendent. in any matter dealing with the superintendent pursuant to N.J.S.A. 18A:12-24(c).

6. In that same letter, Dr. Dicker's counsel notified Mr. Convery that Dr. Dicker is considering bringing a civil action against respondent as a result of her false accusations against him.

7. As a result of the above letter and the advice of Board counsel, respondent abstained from one vote regarding the payment of complainant's legal fees.

8. Respondent abstained from other votes regarding the reimbursement of expenses incurred by Dr. Dicker.

9. The Board set forth a resolution to hire a special counsel to:

(1) Review the conduct of the superintendent and report to the board with any recommendations as to appropriate disciplinary actions, if any:

(2) Review and advise the board with regard to the superintendent's claim for reimbursement of attorney's fees resulting from criminal charges filed against him in the South Amboy Municipal Court and subsequent appeal:

(3) Review and advise the board as to the validity of the claims made in the letter dated January 17, 1997, from counsel representing the superintendent seeking to restrict the board members' voting rights and to further advise as to appropriate action in connection with said claims.

10. Respondent voted in the affirmative on the above resolution at the Board's meeting on January 27, 1997.

11. The resolution passed by a vote of five to two, with seven members present and voting.

12. There are nine members on the South Amboy Board of Education.

13. The resolution needed a majority of four votes to pass.

Complainant alleged that respondent's conduct set forth above violated N.J.S.A. 18A:12-24(c) and N.J.S.A. 18A:12-24(b) respectively. The Commission found probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(c) only and dismissed the charge that respondent violated subsection (b).

## **ANALYSIS**

The issue now before the Commission is whether respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when she voted on the above resolution to hire special counsel.

N.J.S.A. 18A:12-24(c) of the School Ethics Act sets forth:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

Complainant contends that the litigation between him and Ms. Rone constituted a direct personal involvement that might reasonably be expected to impair her objectivity in voting on the resolution to hire special counsel to investigate his conduct and his request for attorney's fees incurred in defending the municipal court matter. The Commission agrees and now finds that respondent violated N.J.S.A. 18A:12-24(c) when she voted on the resolution to hire special counsel.

Respondent argued in a post-meeting submission that her voting on a resolution to hire special counsel differs from voting to actually discipline the superintendent or deny his request for attorneys' fees. She notes that she abstained on both of those votes. Respondent states that the purpose of hiring the special counsel is to have an independent, impartial person assist the board in determining what, if any, action it should take regarding the matter. Respondent further states in response to the Commission's probable cause finding that, "it would be curious, indeed incongruous, were the Commission to conclude that a Board member's 'independence of judgment' had been impaired by her voting to obtain independent judgment and advice from a disinterested source." The Commission disagrees.

The appointment of a special counsel in this instance was directly related to respondent's municipal court proceeding against the superintendent. Particularly troubling to the Commission is the first item of the resolution. It clearly authorizes the special counsel to review the conduct of

the superintendent and report to the board with any recommendations for disciplinary action. Ms. Rone would not explain what she understood that section to mean when the Commission questioned her. Thus, it must be interpreted by its plain meaning. The Commission finds that Ms. Rone had a direct personal involvement in the appointment of the special counsel to review the superintendent's conduct that might reasonably be expected to impair her objectivity or independence of judgment. Respondent's argument that she was only voting to appoint someone who is neutral to look into the matter fails because it is irrelevant that the special counsel would be neutral. She should have abstained because the matter involved a legal dispute in which she was an adversary of the superintendent. In addition, she had an alternative course of action. That alternative was to put the matter to rest since the courts had already ruled on the matter. By her vote, she succeeded in continuing a matter that would have been concluded otherwise.

Respondent also argues that the Commission should not find her in violation of subsection (c) because the motion to adopt the resolution to appoint special counsel would have succeeded without her vote. The Commission finds this argument unpersuasive. The Commission has not ruled that a vote does not violate the Ethics Act if it was not the deciding vote. In Scannella v. Scudillo, 95 N.J.A.R. 2d (EDU) 190 (1995), the Commission considered the fact that Ms. Scudillo cast the deciding vote in its decision because she had abstained when the board did not need her vote to pass the motion she wanted. She decided to vote when the motion would have failed without her vote. In cases in which the respondent does not cast the deciding vote, such information can only mitigate the penalty. The Commission shall discuss the recommended penalty below. The Commission finds that respondent violated N.J.S.A. 18A:12-24(c) of the Act when she voted in favor of the resolution to appoint special counsel review and investigate the conduct of the superintendent.

## **DECISION**

For the foregoing reasons the Commission finds that Ms. Rone violated the School Ethics Act, N.J.S.A. 18A:12-24(c) when she voted in favor of the resolution concerning Dr. Dicker. Pursuant to N.J.S.A. 18A:12-29(c), the Commission must now recommend a penalty to the Commissioner of Education that he can accept or modify. The Commission considers as a mitigating factor the facts that the board did not need her vote to pass the resolution. The Commission does not accept as a mitigating factor respondent's length of service on the board because it generally expects long-term board members to have more knowledge and understanding of their responsibilities under the Act. The Commission also does not consider as a mitigating factor the fact that Ms. Rone abstained on the direct vote whether to pay Dr. Dicker's legal fees. By voting on the resolution, respondent still authorized having special counsel advise the board as to whether the board should indemnify him. Without the resolution, the board would have resolved the issue. In addition, the Commission must weigh the mitigating factors against the seriousness of the offense of voting in a matter in which she had a personal involvement that might reasonably be expected to impair her objectivity.

For the foregoing reasons, the Commission concludes that a censure is the appropriate penalty in this case and therefore recommends to the Commissioner of Education that he impose a censure as the sanction.

Upon the Commission's adoption of this decision by a formal resolution, the matter shall be transmitted to the Commissioner of Education for action on the Commission's sanction recommendation pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, 100 Riverview Plaza, PO Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision -- C03-97**

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and if applicable, has considered the arguments raised by parties in subsequent submissions; and

Whereas, the Commission finds that respondent Barbara Rone violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission believes that the appropriate sanction in this matter is a censure and recommends that the Commissioner of Education impose a censure; 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.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 28, 1997.

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Lisa James-Beavers  
Executive Director