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**IN THE MATTER**

**OF**

**LARRY MARTIN,  
*Roxbury Township Board of Education,  
Morris County***

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**: BEFORE THE**  
**: SCHOOL ETHICS COMMISSION**  
**: Docket No.: C18-97**  
**: DECISION**  
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### **PROCEDURAL HISTORY**

This matter arises from a complaint filed by Armand D’Agostino on July 16, 1997. Therein, he alleged that Larry Martin violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when the Roxbury Township Board of Education purchased computers from AGO Consultants. At the time, Larry Martin was President of the Roxbury Board of Education and President of AGO Consultants. Mr. D’Agostino also alleged that Mr. Martin was paid before the Board approved the purchase and that AGO Consultants did not have the lowest quote for the computers. He alleges that these facts show a violation of N.J.S.A. 18A:12-24(a), (b), (c) and (f).

At its meeting of February 24, 1998, the School Ethics Commission determined that there was no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(b), (c) and (f). The Commission concluded that he had not used his position to secure unwarranted privileges for himself in violation of section 24(b) since he did not benefit from the transaction. Similarly, since the Commission found that he did not benefit from the transaction, it could not find that he used his position to secure financial gain for himself in violation of section 24(f). Last, he appropriately abstained from voting on the bill when it came before the board. Therefore, he did not act in his official capacity in a matter in which he had a personal or financial involvement in violation of section 24(c). The Commission did, however, find probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(a), which prohibits a school official from engaging in a transaction that is in substantial conflict with the proper discharge of his duties in the public interest.

The Commission determined that the material facts were not in dispute. Thus, it invited the complainant and respondent to file a written submission setting forth whether the Commission should find Mr. Martin in violation of N.J.S.A. 18A:12-24(a) for participating in a business transaction whereby the Board purchased computers from his company, AGO Consultants.<sup>1</sup> The Commission also invited them to set forth whether they agreed with the undisputed facts set forth by the Commission. The Commission received timely responses

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<sup>1</sup> The Commission usually does not invite a complainant to file a written submission once the Commission has found probable cause. The Commission made an exception in this case because it believed that allowing the complainant to file a submission would aid the Commission in rendering its ultimate decision.

from the complainant and the respondent and considered them in rendering its decision at its March 30, 1998 public meeting. The Commission will address the factual and legal arguments raised by the parties in its statement of facts and analysis below.

At its meeting of March 30, 1998, the Commission concluded that Mr. Martin did not violate N.J.S.A. 18A:12-24(a) of the School Ethics Act and dismissed the complaint. It adopted this decision at its April 28, 1998 public meeting.

## **STATEMENT OF FACTS**

The Commission finds the following facts to be undisputed. Complainant Armand D'Agostino is a member of the Nixon Elementary School Parent Teachers Association (PTA). Larry Martin is a member of the Roxbury Board of Education (Board). His term expires in April 1998. He became the President of the Roxbury Board of Education in June 1996 and remained in that position at all times relevant to this complaint. He was then and still is President and co-owner of AGO Consultants, Inc. His company specializes in software development, implementation and support for property/casualty insurance companies. AGO is not in the business of selling hardware; however AGO has purchased, from Infotel, computers and peripherals for its own use in the development of software.

In the spring of 1996 the Nixon PTA Executive Board voted to purchase four Macintosh computers for Nixon School at an estimated cost of \$1500.00 each, totaling \$6000.00. The complainant's spouse, Theresa D'Agostino, was at all relevant times vice-president of the Nixon PTA. Nixon Elementary School Principal Robert Cavo informed the PTA that he would check the pricing with the state contract. According to Mr. Martin's notarized chronology appended to his answer, "Larry Martin offered to get a bid from his company's computer distributor and provide Nixon the opportunity to purchase the computers at the same cost as AGO." Mr. Martin has clarified that he offered to get a bid for IBM compatible computers that Mr. Cavo eventually said he wanted, not the Macintosh models.

In the summer of 1996, Mr. Cavo decided that he wanted six IBM compatible personal computers, instead of the "Macs". He planned to fund the balance with the funds allocated to the Nixon school account by the Board. Again, according to Mr. Martin's chronology, which his attorney appears to dispute, Mr. Cavo "gave specifications to the district computer coordinator, Mr. Martin and Mrs. Bissani." Mrs. Bissani had said that her husband could get a quote from DHT Computers. The chronology is confirmed in Mr. Cavo's memo to Mr. Martin of August 16, 1996, setting forth the specifications. It states that, "The last price quote you had gotten for me was on June 25th and it was \$1864.82 inclusive of COD charges." When the final bids came in, the state contract price per computer was \$2198.98; the DHT Computer bid was \$1740.00 and the Infotel Pentium bid was \$1818.77. Mr. Cavo stated that he made the decision to go with the Infotel bid because Infotel had a better service contract and an extended warranty.

Mr. Cavo drafted the purchase orders and forwarded them to central office. He called Mr. Martin to get the phone number and name of a contact at Infotel so that he could order the computers. However, when Mr. Cavo contacted Infotel, a representative informed him that neither the Board nor the PTA could serve as resellers to get the pricing of AGO. Mr. Cavo then informed Mr. Martin who, in response, ordered the computers under the AGO account. Mr. Martin's credit card bill indicates that he made the purchase on August 30, 1996, in the amount of \$10,912.62. The computers were ordered with tower cases, but Mr. Cavo decided that desktop cases would be better and called Mr. Martin to see if he could change the order. Mr. Martin changed the order with Infotel and found that the order would be \$60.00 less than the original bid. Mr. Martin called Mr. Cavo and had the purchase orders modified to reflect the true amount. It appears that the computers were delivered on September 6, 1996. Mr. Cavo wanted the computers for the start of the school year.

In order to satisfy all parties involved with the transaction, Infotel billed AGO and AGO was reimbursed separately by the Board and the PTA. The board issued a hand warrant check to AGO for \$4850.38 on September 27, 1998. Since Mr. Martin paid Infotel on his personal credit card, AGO had to reimburse him for the expense after the board and PTA wrote checks to AGO.

At the September 1996 meeting of the PTA, Mr. Cavo explained his plan to purchase the computers from Infotel through AGO, albeit after Mr. Martin had placed the purchase on his personal credit card. The PTA questioned how the price increased from their \$1500.00 budget and to whom it should write the check. The members also questioned who would own the computers once purchased. The Executive Board voted to issue the check to AGO in the amount of \$6000.00 as discussed. According to a September 10, 1996 letter to the President of the Nixon School PTA, AGO sent the PTA a copy of the Infotel invoice to AGO showing an amount of \$10,850.28. This was to show that AGO did not bill for any amount over its cost to Infotel. In the letter, AGO acknowledged the PTA's payment to AGO of \$6000.00 and advised that it would bill the remainder to the Board. Larry Martin signed the letter as President of AGO.

At its October 21, 1996 meeting, the Roxbury Board of Education approved the bill list including the payment of \$4850.38 to AGO Consultants, Inc. for the balance of the computers. Mr. Martin abstained from voting on the resolution. Mrs. D'Agostino questioned Mr. Martin about the details of this transaction. At the Board's public meeting of November 4, 1996, Mrs. D'Agostino questioned the Board's policy regarding doing business with board members. Mr. Martin explained that computers were purchased at cost for the Nixon School through his firm. In the executive session of the meeting, a majority of the Board agreed that, although they do not believe there were any improprieties, the Board will not make purchases through Board members in the future.

## ANALYSIS

The Commission found probable cause to credit the allegations that Mr. Martin violated N.J.S.A. 18A:12-24(a) of the Act when AGO sold computers to the Board. Subsection a sets forth:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

In its probable cause determination, the Commission focused on the fact that school officials are prohibited from engaging in any “transaction or professional activity” that is in substantial conflict with the proper discharge of their official duties. The Commission stated in its probable cause letter that this transaction created entanglements between Mr. Martin’s position as Board President and his job as President of AGO that one could construe as creating a conflict. First, Mr. Martin offered to seek a bid from Infotel. At all relevant times, he was President of the Board, although the Commission is satisfied that he was not acting in that capacity when he made the offer. Then Mr. Martin charged the computers on his personal credit card before the Board knew of the purchase, as Mr. D’Agostino alleged. The Commission also found that Mr. Martin then had to instruct Ms. Cross, a board employee, to issue the check for the computers to AGO Consultants before the Board voted to pay the bill. He later received reimbursement from AGO for his credit card purchase. He retained frequent flier mileage points he received from making the purchase on his credit card.

In his written submission, Mr. Martin argues that the facts set forth in the Commission’s probable cause decision are not sufficient to establish a violation of N.J.S.A. 18A:12-24(a). Mr. Martin argues alternatively that, if the Commission does not dismiss the matter on the basis of the undisputed facts set forth in the probable cause decision, it should transfer the case to the Office of Administrative Law (OAL) as there are certain material facts that need to be considered. Since, as will be discussed below, the Commission has determined that Mr. Martin’s actions did not constitute a violation of N.J.S.A. 18A:12-24(a), there is no need to reach the issue of whether there are additional facts that require an evidentiary hearing before the OAL.

The Commission does note, however, that the alleged disputed facts are not material to the Commission’s determination. It is irrelevant to a resolution of this matter whether anyone advised Mr. Martin beforehand that his actions could constitute a conflict of interest. It is not a prerequisite to the finding of a violation that someone warn the school official that his actions might violate the Act. Likewise, the alleged fact that complainant’s wife questioned Mr. Martin on the transaction would not obviate a violation if one were found to have occurred. Also, whether the PTA discussed the price increase in June 1996 or at some other time is immaterial as it is undisputed that the Executive Board voted to issue AGO a check in the amount of \$6000.00. Finally, Mr. Martin's letters documenting

that a number of individuals in the community believe that Mr. Martin's actions did not create a conflict of interest do not raise a material factual dispute.

Mr. Martin argues in the written submission that the Commission should not draw any inference from his use of his personal credit card. Infotel always requires AGO to make purchases through a credit card and AGO has no corporate credit card, he states. There is sufficient evidence to show that this was Mr. Martin's usual way of conducting business. The Commission had already determined in its probable cause letter that he did not use his personal card to gain frequent flier miles. Further, the facts show that Mr. Cavo was eager to get the computers by the start of the school year and this method facilitated his wishes. Thus, the Commission agrees with Mr. Martin's argument and finds no violation in connection with his placing the computer purchase on his personal credit card.

Mr. Martin further argues that the Commission should not infer any overreaching by respondent's alleged instruction to Ms. Cross to issue a hand warrant check before the Board approved the payment. He states that he never instructed her, but asked her to do so because the correction of the purchase order delayed submitting the bill to the Board on the September bill list. Mr. Martin adds that Ms. Cross's action was not extraordinary since the District regularly pays bills to various vendors for computer services and supplies, among other things, "in amounts far in excess of the \$4800 remitted to respondent." The Commission is concerned by this revelation of how the Roxbury administration conducts business and is forwarding respondent's submission to the Department's Office of Compliance for further inquiry. Regarding the alleged ethics violation, the Commission believes that a board member should never be in the position of asking a board employee for a check unless it is for reimbursement for expenses he incurred doing board business. Otherwise, as in this case, the board member could be inviting the filing of a complaint with the Commission. In this case, however, the facts surrounding Mr. Martin's request for a check do not rise to the level of a violation of N.J.S.A. 18A:12-24(a). It was not unusual for Mrs. Cross, the Board Secretary, to issue a hand warrant check for an expense such as this prior to Board approval. The undisputed facts do not demonstrate that the issuance of the check was in substantial conflict with the proper discharge of his duties as a Board member. Mr. Martin was not receiving anything more than he was entitled, nor did he receive any special treatment as a result of being a Board member.

Relying on N.J.S.A. 18A:12-22(a), complainant argues that Mr. Martin's actions created a justifiable impression that the public trust was being violated and therefore he must be found to be in violation of the Act. Mr. Martin argues to the contrary that there could be no reasonable public perception that he had a conflict on the facts before the Commission. He cites two recent Commission decisions for this proposition, School Ethics Commission v. Famularo, SEC Docket No. C23-96 (February 24, 1998) and School Ethics Commission v. Kilmurray, SEC Docket No. C12-94 (February 24, 1998). As respondent notes, both decisions alleged violations under N.J.S.A. 18A:12-24(c) of the School Ethics Act. Therefore, the Commission finds them to be inapposite to the present case, which alleges a violation of N.J.S.A. 18A:12-24(a). The Commission has cited N.J.S.A. 18A:12-22(a), but not as a basis for a violation of the Act. It provides:

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.

The Legislature's findings and declarations indicate that the purpose of the Act is to set standards to guide the conduct of school officials. Those standards are clearly set forth in the "prohibited acts" under N.J.S.A. 18A:12-24. The Commission could not base a violation on N.J.S.A. 18A:12-22 alone, because school officials would not have sufficient notice of what type of conduct would violate the Act. Rather, N.J.S.A. 18A:12-22(a) provides guidance on how to interpret the provisions of N.J.S.A. 18A:12-24. N.J.S.A. 18A:12-22(a) does not set forth a violation in and of itself. Thus, the Commission finds neither the complainant nor the respondent's argument persuasive on this point and concludes that N.J.S.A. 18A:12-22(a) provides instruction on how to interpret the prohibited acts, but does not alone constitute a violation.

In this case, the issue before the Commission is whether the factors upon which it based its finding of probable cause constitute a violation of N.J.S.A. 18A:12-24(a). The undisputed facts show that Mr. Martin offered his services to the PTA to help the PTA and the school secure the best price for computers they intended to purchase. Mr. Martin did not make any profit on the deal and he acted to purchase the computers only when Infotel would not sell the computers directly to the school and the PTA. The Commission cannot find this to be in substantial conflict with his duties as a Board member. Thus, the Commission finds that Mr. Martin did not engage in a business or transaction that was in substantial conflict with the discharge of his duties as a Board member.

However, the perceived entanglements noted in the probable cause determination indicate the reasons that the Board's subsequent decision not to make purchases through a board member again is sound judgment. There will always be questions about whether the board member gained financially or otherwise from a transaction with the Board, despite his or her good intentions. In this transaction, the Commission has found no financial or other gain to Mr. Martin. Mr. Martin was acting as a member of the PTA when he offered to get a bid from Infotel. As a member of the PTA, there was nothing wrong with his attempt to secure the PTA the best price for the computers they wanted to purchase. It became problematic when Mr. Cavo decided to use what he called Nixon School funds to finance the rest of the computers that he needed. The money he was using was Board money notwithstanding that his testimony that he has a discretionary budget. When he committed Board funds to add to the donation from the PTA, he placed Mr. Martin in a precarious position. As the Commission stated in its probable cause determination, it believes that Mr. Martin did not intend to act in a manner to give the impression that he was violating the

public's trust. The Commission concludes however, that the ultimate cause that such an impression may have been created was a lack of adequate procedures and policies. The informality and laxity in the conduct of this transaction resulted in the filing of this complaint.

## **CONCLUSION**

For the foregoing reasons, the Commission concludes that respondent did not violate N.J.S.A. 18A:12-24(a) and dismisses the charges against him. Because of other concerns regarding the Roxbury Board's method of doing business, the Commission is referring this matter to the Office of Compliance for further inquiry.

As noted above, the Commission found probable cause prior to dismissing the case. Therefore, any appeal of this decision will be to the State Board of Education, rather than the Superior Court-Appellate Division.

Paul C. Garbarini  
Chairperson

## **Resolution Adopting Decision -- C18-97**

Whereas, the School Ethics Commission considered the pleadings, the testimony and the documents submitted in support thereof; and

Whereas, the Commission found probable cause to credit the allegation that Larry Martin violated N.J.S.A. 18A:12-24(a) at its meeting of February 24, 1998; and

Whereas, the Commission invited the parties to file written submissions with the Commission setting forth whether the facts constitute a violation of the Act; and

Whereas, the Commission has considered the arguments raised by parties in subsequent submissions; and

Whereas, the Commission found that respondent Larry Martin did not violate N.J.S.A. 18A:12-24(a) of the School Ethics Act and dismissed the charges against him at its meeting of March 30, 1998; 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 April 28, 1998.

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Lisa James-Beavers  
Executive Director