

SANDRA MOORE,	:	BEFORE THE
V.	:	SCHOOL ETHICS COMMISSION
ALBERT ALEXANDER AND	:	Docket No.: C19-98
DIANA LOBOSCO,	:	DECISION
<i>PASSAIC COUNTY TECHNICAL</i>	:	
<i>INSTITUTE, PASSAIC COUNTY</i>	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed by Sandra Moore on November 19, 1998 alleging that the Passaic County Technical Institute Board of Education violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. The Commission advised Ms. Moore that a School Ethics Commission complaint could only be filed against one or more school officials and that it appeared that she was only alleging violations by a former board president and the superintendent. The Commission asked Ms. Moore to provide the names and addresses of the school officials whom she believed violated the act, which she eventually did. Specifically, she alleges: 1) that Board member Albert Alexander had his son-in-law appointed to a supervisory position in the district although he had no supervisory experience; 2) that Superintendent Diana Lobosco’s husband has been paid to remove recyclables from the district for five years although Ms. Lobosco is the Chief School Administrator; and 3) that employee Richard Faulkner was hired as a supervisor with no supervisory background and his position was created to provide him a job.

Mr. Alexander and Ms. Lobosco filed separate answers with the School Ethics Commission on February 16, 1999 setting forth the circumstances surrounding the allegations in the complaint and denying that they violated the School Ethics Act.

The Commission advised the parties that it would discuss this matter at its meeting of May 25, 1999 and provided the parties an opportunity to appear before it and present witnesses. All parties attended the meeting, the respondents with counsel. At that meeting, the Commission tabled the matter for further information. At its June 21, 1999 meeting, the Commission found no probable cause and dismissed the complaint.

## **FACTS**

The Commission was able to derive the following facts from the pleadings, the documents submitted, the testimony and the Commission's investigation.

### **ALBERT ALEXANDER**

At all times relevant to this complaint, Albert Alexander was a member of the Passaic County Technical Institute (PCTI) Board of Education (Board). On May 25, 1994 Mr. Alexander's son-in-law, S.A., applied for the position of Supervisor of Maintenance in the PCTI. S.A.'s resume indicates that he graduated from three technical schools with concentrations in air conditioning, refrigeration and electrical contracting. He was employed by a local electrical union at the time he applied for the position. He was previously an Assistant Manager at Foodtown and a Foreman at an electrical company. S.A. did not list Mr. Alexander as a reference or otherwise refer to him in his application. S.A. was hired on June 13, 1994 at a prorated salary of \$49,500. Mr. Alexander was a board member at that time and abstained on the appointment.

On October 16, 1996, the Board approved an organizational chart change for the Custodial/Maintenance Department setting forth positions in the following order: Project Manager; Supervisor of Buildings/Grounds/Maintenance; Lead Person/Custodian; and Lead Person/Grounds. Mr. Alexander voted in favor of the new organizational chart. The Supervisor of Buildings position was combined with the Supervisor of Grounds and Maintenance position. The person who was then serving as Supervisor of Buildings was appointed as Project Manager at a salary of \$73,093. S.A. was appointed Supervisor of Buildings/Grounds/Maintenance at a salary of \$60,665.

On September 1, 1998, the project manager retired. At that time, the Board decided not to replace the Project Manager and to incorporate the Project Manager position into a new position of Supervisor of Maintenance. The Board posted the job and interviewed candidates. S.A. was selected on November 24, 1998 to be Supervisor of Maintenance at a salary of \$65,500, pro-rated for the year. Mr. Alexander's term on the Board expired on November 1, 1998 and he was replaced on November 10, 1998 and therefore was not present at the time of that vote.

### **DIANA LOBOSCO**

Diana Lobosco was appointed Superintendent of the Passaic County Technical Institute in December 1996. She is married to Gennaro Lobosco, who is a minority shareholder in R. Lobosco & Sons Recycling, Inc. (Lobosco & Sons). Mr. Lobosco is a member of the Board of Directors and past president of the New Jersey Recycling Association and has been an instructor and lecturer on recycling at Rutgers University.

Eight years ago, then Superintendent William Galese instituted a recycling course as a vocational program. One of Mrs. Lobosco's duties as vice-principal at that time was

to review curriculum. When Mrs. Lobosco was advised of the pending recycling program, she contacted the then Principal and Superintendent and suggested having her husband assist in setting up the curriculum and program at no consulting fee to the school. The recycling course involved the placement of two recycling wastebaskets in each classroom and office throughout the school district. Students in the program would collect the recyclables, sort them in the classroom, learn the cost of each of the separate recyclables and eventually place them in gaylords that were supplied at no cost by Lobosco & Sons. When the gaylords were full, Lobosco & Sons would be called and the company would send a truck to empty the gaylords. There are six gaylords within the recycling center. There is also a large container for cardboard paper supplied free of charge by the company.

During its relationship with PCTI, Lobosco & Sons has paid PCTI for the recyclables it takes off the grounds. PCTI has paid nothing for the use of the company's gaylords or the container. The amount of money paid to PCTI has varied due to fluctuations in the market for recyclable goods. Lobosco & Sons is now out of business. Zozzaro Brothers, Inc. has picked up recyclable material since March 1998.

#### ALBERT ALEXANDER & DIANA LOBOSCO

The last allegation, which appears to be against Mr. Alexander and Mrs. Lobosco is that a position was created for Richard Faulkner simply to give him a job despite his lack of supervisory experience. Richard Faulkner previously worked on school grounds as an employee of an outside contractor. According to the Commission's investigation, he was recognized as a good worker who was familiar with school property. Mr. Faulkner was hired as a Supervisor of Grounds on February 23, 1995 after being recommended by the former Superintendent, William Galese. Neither Mr. Alexander nor Mrs. Lobosco is alleged to have any familial or other relationship to Mr. Faulkner.

#### ANALYSIS

The issue before the Commission is whether Mr. Alexander violated N.J.S.A. 18A:12-24(b) or (c) of the School Ethics Act or Ms. Lobosco violated N.J.S.A. 18A:12-24(a) or (b) of the School Ethics Act based on the allegations set forth in the complaint.

#### ALBERT ALEXANDER

Mrs. Moore contends that the hiring of Mr. Alexander's son-in-law and the son-in-law's subsequent promotions despite his lack of experience violated the Act. The Commission finds that N.J.S.A. 18A:12-24(b) and (c) of the School Ethics Act apply to the facts set forth above. Section 24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.

The Commission has reviewed the application and resume of Mr. Alexander's son-in-law and listened to the testimony of Mrs. Moore and Mr. Alexander. Based upon the application, the Commission cannot conclude as Ms. Moore has set forth in her complaint that S.A. had no supervisory experience. He had been an assistant manager at a Foodtown and a foreman with an electrical contractor prior to working for PCTI. Ms. Moore's contention that S.A. did not have experience in school maintenance resulting in the workers' having to assist him in performing his job may indeed be true. However, the Commission's role is not to second-guess the hiring decisions of the district. Rather, the issue is whether Mr. Alexander used his position as a board member to secure employment for S.A. who allegedly lacked the qualifications for his supervisory position. There are no facts in the record to demonstrate that Mr. Alexander encouraged, influenced or otherwise sought the employment of his son-in-law. Additionally, upon review of S.A.'s application documents, the Commission cannot conclude that S.A. was unqualified for the position. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Alexander violated N.J.S.A. 18A:12-24(b).

The facts set forth in Mrs. Moore's complaint also raise an issue under N.J.S.A. 18A:12-24(c), which provides:

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

Although a son-in-law is not an "immediate family member" under N.J.S.A. 18A:12-23 of the Act, the Commission has previously held that a board member violated N.J.S.A. 18A:12-24(c) when she voted on the hiring of her son-in-law to a high ranking position in the district. In the Matter of Carol Scudillo, C14-93 (April 22, 1997), aff'd Commissioner of Education (June 10, 1997). The Commission found that the board member had a personal involvement with the appointment of the son-in-law that might reasonably be expected to impair her objectivity. Thus, in the present case, the question is whether Mr. Alexander acted in his official capacity in such a matter.

The minutes of the June 14, 1994 meeting show that Mr. Alexander abstained when his son-in-law was first hired in the district as Supervisor of Maintenance. Thus, he did not act in his official capacity in a matter in which he had a personal involvement at that meeting.

On October 16, 1996, Mr. Alexander voted in favor of the change in the organizational chart for the custodial and maintenance departments. However, once the

organizational chart was approved, S.A. still had to go through the application process and be recommended for the newly created position of Supervisor of Buildings/Grounds/Maintenance. Therefore, at the time of the vote to approve the organizational chart, it was not certain that the new chart would result in a promotion for Mr. Alexander's son-in-law. Thus, Mr. Alexander did not have a personal involvement with the organizational chart change that might reasonably be expected to impair his objectivity in violation of N.J.S.A. 18A:12-24(c).

On November 24, 1998, when S.A.'s last promotion occurred to the position of Supervisor of Maintenance, Mr. Alexander was no longer a board member. Thus, he had no opportunity to violate N.J.S.A. 18A:12-24(c) in connection with this vote. For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Mr. Alexander violated N.J.S.A. 18A:12-24(c) in connection with the employment of his son-in-law and dismisses this charge.

#### DIANA LOBOSCO

Mrs. Moore has alleged that Mrs. Lobosco violated the Act in connection with Lobosco and Son's removal of recyclables from the district. The Commission finds that N.J.S.A. 18A:12-24(a) and (b) apply to this allegation. N.J.S.A. 18A:12-24(a) prohibits a school official or member of her immediate family from having an interest in a business organization or engaging in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of her duties in the public interest.

The Commission notes that Lobosco & Sons donated all of the receptacles for the recyclables and did not charge the district for the removal of the recyclables. Further, Lobosco & Sons paid the district for their recyclables. The district never paid Lobosco & Sons for its bins or the removal of its recyclables. It should also be noted that the removal of recyclable products is exempt from the bidding laws because of the large fluctuations in the market price for the goods. N.J.S.A. 18A:18A-1 et seq. Based on these facts, the Commission cannot find that Mrs. Lobosco's husband had an interest in a business organization or engaged in a business, transaction or professional activity that was in substantial conflict with the proper discharge of her duties in the public interest. Rather, it appears that Mr. Lobosco's recycling services were designed to and did help the district. Therefore, the Commission finds no probable cause to credit the allegation that Mrs. Lobosco violated N.J.S.A. 18A:12-24(a).

The recycling allegations in the complaint against Mrs. Lobosco also raise an issue under N.J.S.A. 18A:12-24(b), which prohibits a board member from using her position to secure unwarranted privileges for herself, her immediate family members or others. Mrs. Lobosco candidly admits that, as vice-principal, she suggested that the district utilize the services of her husband's company because her husband is an expert in the recycling field. Again, if recycling were subject to the bidding laws and the district had to pay Lobosco & Sons for the receptacles and the removal of the recycling, one could view Mrs. Lobosco as securing an unwarranted privilege for her husband. On the

present facts, however, the Commission cannot discern any unwarranted privilege or advantage that Mr. Lobosco received from his services to the district. Again, it appears that his services benefited the district. Therefore, the Commission finds no probable cause to credit the allegation that Mrs. Lobosco violated N.J.S.A. 18A:12-24(b).

#### ALBERT ALEXANDER & DIANA LOBOSCO

The last allegation of the complaint, that the board created a position for Richard Faulkner and placed him in a supervisory position although he did not have experience, also raises an issue under N.J.S.A. 18A:12-24(b). Thus, the issue is whether Mr. Alexander or Mrs. Lobosco used their position to secure unwarranted employment for Mr. Faulkner.

Mr. Alexander was a board member when Mr. Faulkner was hired on February 23, 1995, however, the Commission was unable to discover any facts that would indicate that Mr. Alexander used his position in any way to obtain a position for Mr. Faulkner. As set forth above, Mr. Alexander is not related to Mr. Faulkner in any way. Ms. Moore only indicates that there are favored employees in the department who receive supervisory positions and promotions and those who are more qualified who do not. Again, the Commission's role is not to second-guess the hiring decisions of the Board, but to determine whether there has been a violation of the Act. The Commission cannot conclude on the facts before it that Mr. Alexander used his position to secure unwarranted privileges or employment for Mr. Faulkner and therefore, finds no probable cause to credit this allegation as to him.

Mrs. Lobosco was principal, not superintendent, at the time that Mr. Faulkner was hired. As with Mr. Alexander, there is no information from which to conclude that Mrs. Lobosco used her position to secure unwarranted privileges for Mr. Faulkner or that she had any reason to do so. According to the documents submitted, Mr. Faulkner applied for the job, was interviewed and hired. Based on these facts, the Commission cannot conclude that Mrs. Lobosco used her position to secure unwarranted employment for Mr. Faulkner and finds no probable cause to credit the allegation that she violated N.J.S.A. 18A:12-24(b) in connection with the hire of Mr. Faulkner.

#### CONCLUSION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismisses the complaint against them.

Paul C. Garbarini, Chairperson

## **Resolution Adopting Decision -- C19-98**

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

**Whereas**, the Commission finds no probable cause to credit the allegations in the complaint that respondent Albert Alexander violated N.J.S.A. 18A:12-24(b) or (c) of the School Ethics Act; and

**Whereas**, the Commission finds no probable cause to credit the allegations that respondent Diana Lobosco violated N.J.S.A. 18A:12-24(a) or (b) of the School Ethics Act; and

**Whereas**, the Commission set forth at its June 21, 1999 meeting the reasons for its conclusion and directed staff to draft this decision; and

**Whereas**, the decision comports with the Commission's reasoning;

**Now Therefore Be It Resolved** that the Commission hereby dismisses the complaint alleging that Mr. Alexander and Mrs. Lobosco violated the School Ethics Act and adopts this decision as its decision in this matter.

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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 June 21, 1999.

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Lisa James-Beavers  
Executive Director

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