

no role in crafting the budget, and was absent at the meeting on May 12, 2015, when the Board voted to adopt the budget. Finally, the Respondent maintains that all Elizabeth residents can avail themselves of the services offered by the various educational programs at the Edison Academy, including the Automotive Tech Program.

The Complainant failed to submit a response to the Respondent's assertion that the Complaint is frivolous.

FINDINGS OF PROBABLE CAUSE

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. That is, the Commission must determine, based on the evidence before it, whether probable cause exists to credit the allegations in the Complaint. A finding of probable cause is not an adjudication on the merits, but rather an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits or whether further review is not warranted.

The Complainant alleges that on March 30, 2015, the Respondent violated N.J.S.A. 18A:12-24(b), (c), and (e) of the Act when she participated in and voted on the tentative 2015-2016 annual school budget which included a line item for the Thomas A. Edison Academy for Career and Technical Services' Automotive Technology Program. The Complainant maintains that because sometime in January 2013 the Respondent benefitted from services rendered by the Program, she is prohibited from engaging in any discussion on the school budget. Thus, the question before the Commission is whether the Complainant alleged facts, which, if true, could support a finding of probable cause to credit the allegations that the Respondent violated the Act.

The Complainant alleges in the sole Count of the Complaint that the Respondent violated N.J.S.A. 18A:12-24(b), (c), and (e) of the Act, which provide, respectively:

- b. 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;
- c. 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 involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;
- e. No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other

thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

The Complainant asserts that in January 2103, the bumper of Respondent's personal vehicle was repaired by the students in the Program. Although the labor is free of charge to all residents of Elizabeth, patrons must defray the costs of parts and materials. The Complainant maintains that the Respondent, a resident of Elizabeth, was not charged for some repairs and for the repainting of a portion of her car, and that she paid only \$100 for the paint, but not for the primer, sealer or any other materials. The Complainant asserts this "constituted an unfair advantage to the Respondent because of her status as a Board member." (Complaint, p. 2) The Complainant also asserts that the Respondent has refused to disclose whether she filed an insurance claim for the damages to her car. Complainant contends that if Respondent received insurance proceeds for the same free repair, then she has benefitted twice for the same services. By virtue of these benefits, the Complainant contends that the Respondent should not have participated in or voted on Elizabeth's tentative school budget for 2015-2016 on March 30, 2015.

In her Answer, the Respondent admits that she had her car repaired by students in the Program. She states that patrons can provide auto supplies for the repairs, or can be charged by the Program. The Respondent used auto parts from the Program and was charged for them, and produced an invoice, attached to her Answer as Exhibit A. Moreover, she denies that she asked students for free supplies or that she submitted a claim to her insurance company for the damages. She states that she is a resident of Elizabeth, and as such, she is entitled to avail herself of any of the services offered by the Program. Her Board member position does not bar her from doing so, and she gained no greater benefit than any other resident would have for these services. The Respondent also argues that she had no involvement in the development or preparation of the 2015-2016 budget, and most importantly, on the evening of March 30, 2015 she voted "No" on the tentative budget, so any alleged benefits that the Complainant asserts the Respondent wanted to preserve for herself evaporated. Finally, the Respondent contends that the filing of this Complaint was politically motivated as she was running for re-election within two weeks of the filing.

In order to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(b), the Complainant would have to show that Respondent used or attempted to use her official position to obtain an unwarranted privilege, advantage or employment for herself, a member of her immediate family, or others. In order to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(c), the Complainant would have to provide evidence that the Respondent had either: 1) taken action in her official capacity in a matter where she, or a member of her immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment, or 2) acted in her official capacity in a matter where she or a member of her immediate family had a personal involvement that is or created some benefit to her or the member of her immediate family. In order to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(e), the Complainant would have to demonstrate that the Respondent, a member of her immediate family, or a business organization in which she has an interest, solicited or

accepted something of value for the purpose of influencing her, directly or indirectly, in the discharge of her official duties.

In its review of the Complaint, the Commission determines that the Complainant failed to provide sufficient facts that the Respondent violated Subsection (b) of the Act. He did not demonstrate that the Respondent garnered any greater benefit for herself than any other resident of Elizabeth who chose to use the services of the program, nor has he shown that the Respondent was precluded from availing herself of the services of the Program simply because she is a Board member. Consequently, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(b).

Similarly, the Commission determines that the Complainant failed to provide sufficient facts that the Respondent violated Subsection (c) of the Act. The Complainant's assertion that the Respondent's objectivity and independence of judgment were impaired in March 2015 because she had her car repaired over two years prior, in January 2013, is unreasonable and strains credibility. Moreover, a simple reading of the Board minutes for the vote on the tentative budget would have revealed to the Complainant that the Respondent voted "No," thus clearly forgoing any purported future benefit the Complainant alleges the Respondent wanted to protect. Consequently, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(c).

Finally, the Commission determines that the Complainant failed to provide sufficient facts that the Respondent violated Subsection (e) of the Act. The Complainant has failed to demonstrate that the Respondent engaged in a plan or solicited or accepted something of value for the purpose of influencing her, directly or indirectly, in the discharge of her official duties for the promise of some future mutual benefit. There is simply no evidence to support the Complainant's allegation that a bargain was struck between the Program coordinators and the Respondent to enable the Respondent to receive a benefit in the form of car repairs in 2013 in exchange for her vote on the 2015-2016 budget. In fact, as the Board minutes reflect, the Respondent voted "no" on the tentative 2015-2016 budget and was not present for the final budget vote on May 12, 2015. Consequently, the Commission finds no probable cause to credit the allegation that the Respondent violated N.J.S.A. 18A:12-24(e).

REQUEST FOR SANCTIONS

In her Answer to the within Complaint, the Respondent included an allegation that the Complaint was frivolous and factually incorrect. The Respondent requested that the Commission impose penalties against the Complainant, pursuant to N.J.S.A. 18A:12-29(e). (Answer at p. 5).

The Commission's regulations state, in relevant part at N.J.A.C. 6A:28-7.2:

(b) Where an answer alleges that a complaint is frivolous, pursuant to N.J.S.A. 18A:12-29(e), the complainant shall have 20 days from receipt of the answer to respond to the allegation.

As noted above, by notice of November 6, 2015, the Complainant was accorded an opportunity to respond to the allegation of frivolous Complaint. N.J.A.C. 6A:28-8.2(a). The Complainant failed to submit his reply to the allegation of frivolous Complaint. Unless the parties

are otherwise notified, the Complaint, Answer and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the frivolous Complaint allegation was considered by the Commission at its December 15, 2015 meeting.

Where there are allegations of frivolous Complaint, the Commission's regulations specifically state:

(a) Upon receipt of the complainant's response to an allegation that the complaint was frivolous pursuant to N.J.A.C. 6A:28-7.2(b) or 8.2(a) or the expiration of the time for filing such a response, the Commission shall make a determination by majority vote as to whether a complaint is frivolous.

1. **Where the Commission finds that a complaint is frivolous, such a finding shall constitute sole grounds for dismissal. Such dismissal shall constitute final agency action.**

(b) Pursuant to N.J.S.A. 18A:12-29(e), the Commission may impose a fine not to exceed \$500.00. (N.J.A.C. 6A:28-10.4; emphasis added).

A "frivolous complaint" is defined as a complaint determined by the Commission to be *either*:

- 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) One which the complainant knew, or should have known, was without any reasonable basis in law or equity and 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).

As per the language of the regulation, the Commission need only find that one prong is applicable to support a finding of violation. In so doing, the Commission considers the totality of the circumstances in determining whether a complaint meets the above standard. See, Patricia Lee et al. v. Barri Beck, Union Township Bd. of Ed., Union County, C01-05 (September 27, 2005). Here, on the basis of the record before it, the Commission finds that this complaint satisfies both prongs of the standard.

In her Answer, the Respondent:

1. Included an invoice thus demonstrating that she paid for the auto services rendered.
2. Referenced the public minutes of the Board meeting of March 30, 2015 at which she voted "No" on the tentative 2015-2016 school budget. (Answer, p.2)
3. Referenced the public minutes of the Board meeting of May 12, 2015 at which the final vote for the 2015-2016 school budget was passed without the Respondent in attendance. (Answer, p.2)

4. Alleged the Complaint was filed for political reasons and to influence her re-election bid for a new term.

As discussed above, the Complainant's allegations are based on conjecture, suspicion and surmise. In contrast, the Respondent produced the bill for the repairs to her automobile and is supported by the minutes of meetings of March 30, 2015 and May 12, 2015, which demonstrate that, respectively, she voted "No" on the tentative school budget and was absent for the vote on the final budget. Based on the evidence presented, the Commission finds that Complainant's allegations are specious and damaging to the Respondent's reputation and to those District personnel whom the Complainant intimates were part of a quid pro quo arrangement for free services. Such spurious, unsupported allegations taint both Respondent and District personnel.

It is particularly noteworthy in this analysis that at any time before the filing of his original Complaint on August 10, 2015, the Complainant could have taken the opportunity to actually investigate his own claims by reading the minutes of the meetings, which were made public May 12, 2015 and July 23, 2015, and learn that his allegations were unfounded. Moreover, he had an additional opportunity to do so after the filing of the Respondent's Answer to verify her statements on her voting record. Again, he did not do so. The Complainant had a responsibility to perform his due diligence by gathering the facts in support of his claims. He failed to do so before filing or during the pendency of the matter before the Commission. The facts were available if he genuinely wanted to file a valid Complaint. Yet he swore an oath that the facts in the Complaint were true and was aware that if the Complaint were deemed frivolous, he would have 20 days from filing of the Answer to respond to the allegation. He failed to do that as well.

Thus, the Commission finds that the Complaint is frivolous for the following reasons. First, the Commission determines that by failing to diligently investigate the factual background, the Complainant commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury. Even assuming that the Complainant may not have *commenced* this proceeding in bad faith, solely for the purpose of harassment, delay or malicious injury, once he became aware that his facts were incorrect, *i.e.*, that the Respondent had actually voted "No" on the tentative budget and not at all on the final budget, he should have notified the Commission that he did not wish to proceed with the Complaint. Instead, he received the Respondent's Answer in December 2015, which included the copies of the Minutes demonstrating she voted "No" on the tentative budget and not at all on the final budget, and continued to pursue his cause of action, failing to withdraw the matter.

Based on these circumstances, the Commission finds that the Complainant continued this action in bad faith, solely for the purpose of harassment or malicious injury to the respondent. His failure to actually fact check his allegations by reading the minutes of the meetings, his subsequent failure to do so after the Answer was filed, and his failure to request a withdrawal of the complaint after it was apparent on the record that his facts were erroneous suggests that he was pursuing the Complaint for reasons other than a good faith intent to seek redress of an ethics violation. In *I/M/O Persi, et al., Edison Twp. Bd. of Ed., Middlesex County*, C29-96 (April 8, 1997), the Commission noted that although it became apparent during the pendency of the complaint that there was no violation of the Act, the complainant did not seek to withdraw his complaint. Rather, he filed a reply to the respondent's response to the complaint which demonstrated that he continued to pursue

the complaint not because of the incident in question, but because the complainant had some ongoing battle with respondent. The complaint was dismissed and the complainant was fined \$500. In Rogers v. Somjen, Roxbury Bd. of Ed., Morris County, C37-08 (December 15, 2009), the Commission found that the complainant commenced the action in bad faith, having compiled a series of documents through Open Public Records Act requests that painted a picture of the respondent's business activities *prior* to his election to the Board, but which had no relevance to his actions as a Board member. The complaint was dismissed and the complainant was fined \$500. Likewise, in Valdes v. Morejon, Union City Bd. of Ed., Hudson County, C39-10 (February 22, 2011), Aff'd App. Div. 10/02/2012, A-3894-10T3, the Commission found that although the complainant may not have commenced the proceeding in bad faith, once he became aware that his facts were incorrect, he should have notified the Commission that he did not wish to proceed with the complaint. Instead, he pressed on. Viewing the totality of the circumstances, the Commission found that the complainant *continued* this action in bad faith, solely for the purpose of harassment or malicious injury to the respondent. The Commission also found that the Complainant knew, or should have known, that this Complaint was without any reasonable basis in law or equity since the Complainant was unable to set forth any facts to support a claim of violation. The Complaint was dismissed, and the Complainant was fined \$500.

Furthermore, the Commission finds that Complainant Gaitens knew, or should have known, that this complaint was without any reasonable basis in law or equity since the complainant was unable to set forth any facts to support a claim of violation. (See, Young v. Kreimer, Moorestown Twp. Bd. of Ed., Burlington County, C02-08 (January 27, 2009), where the Commission found no probable cause, dismissed the complaint as frivolous and fined the complainant \$500.) More specifically, when he filed his Amended Complaint and received Respondent's Answer, he knew or should have known that the Complaint was without any *reasonable* basis in law or equity. In Kreimer, supra, the Commission underscored that:

[T]he School Ethics Act, and the specific prohibitions set forth therein, were intended to establish ethical standards for school officials along with a mechanism "to weed out the few people who would use our schools for personal gain." (Office of the Governor, News Release, January 16, 1992, "Governor Florio Signs Law Imposing Greater Accountability for School Districts") The Commission recognizes that Board members are volunteers who make considerable sacrifices to hold their public offices. (Kreimer, supra, emphasis added)

Recognizing its duty to the public, the School Ethics Commission acknowledges its responsibility to hear litigants with legitimate claims of unethical conduct of a school official. This tribunal is not, however, a forum where parties seek recourse for political feuds or as a way to thwart the electoral process or redirect its natural path. The Commission cannot allow itself to become an instrument for the community to launch baseless claims against school officials. For the foregoing reasons, the Commission finds the Complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and orders that the Complainant pay a fine in the amount of \$500.00.

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the Complainant and Respondent that it finds no probable cause to credit the allegations that the Respondent violated N.J.S.A. 18A:12-24(b), (c), and (e), further finds the Complaint frivolous in accordance with the standard set forth at N.J.A.C. 6A:28-1.2, imposing a penalty of \$500.00 and dismisses the Complaint. 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: January 27, 2016

Resolution Adopting Decision – C29-15

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 December 15, 2015, the Commission found no probable cause to credit the allegations that the Respondent violated N.J.S.A. 18A:12-24(b), (c), and (e), voted to dismiss the complaint on the grounds that it is frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2 and to impose a penalty of \$500.00 on the Complainant; and

Whereas, at its meeting on January 26, 2016, the Commission has reviewed and approved the decision memorializing said action;

Now Therefore Be It Resolved, that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 26, 2016.

Joanne M. Restivo
Acting Executive Director