

BEFORE THE ARKANSAS ETHICS COMMISSION

FILED

JUN 17 2005

**In Re: Raymond Simes
Respondent**

Case No. 2004-CO-027

ARKANSAS ETHICS
COMMISSION
BY X.T.L.

FINAL ORDER

Came for a public hearing on May 20, 2005, and June 13, 2005, the complaint filed in this matter against the Respondent, Raymond Simes, and based upon due consideration of both the evidence presented at that hearing and the applicable law, the Arkansas Ethics Commission (hereinafter the "Commission") hereby makes the following findings:

1. The Commission has jurisdiction over this matter pursuant to Ark. Code Ann. § 7-6-218.
2. The Respondent is a citizen of the State of Arkansas. At all times relevant to this case, the Respondent held the office of President of the Helena-West Helena School Board.
3. The Commission is charged with enforcing Ark. Code Ann. § 21-8-304(a)

which provides as follows:

No public official or state employee shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.

4. The term "special privileges or exemption" is defined in § 400(p) of the Commission's Rules on Conflicts to mean "a particular benefit or advantage unfairly

extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.”

5. On December 21, 2004, the Commission received a complaint against the Respondent in his capacity as President of the Helena-West Helena School Board concerning the hiring of his brother, Ernest Simes, as interim superintendent and his sister, Erma Jewel Hamilton, as assistant principal. The allegations of the complaint were that the Respondent violated Ark. Code Ann. § 21-8-304(a) by using his position as school board president to cast the deciding votes in hiring his brother as interim superintendent and his sister as assistant principal.

6. On December 28, 2004, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify him that an investigation was being commenced concerning the allegations of the complaint. The letter went on to state that the focus of the investigation would be whether or not his actions violated Ark. Code Ann. § 21-8-304(a).

7. On January 21, 2005, staff presented the preliminary results of its investigation to the Commission and was instructed to complete the investigation. On that same date, staff sent a letter to the Respondent, via first class mail, to notify him of the Commission’s decision.

8. On February 1, 2005, staff sent the Respondent a letter, via first class mail and certified mail with a return receipt requested, to notify him that the results of the investigation would be presented to the Commission at its regular monthly meeting on February 18, 2005, for purposes of determining whether or not probable cause existed for the finding of a violation.

9. On February 18, 2005, the Commission considered the results of staff's investigation and determined, by a vote of 4-0, that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 21-8-304(a) in connection with the hiring of his brother as interim superintendent and his sister as assistant principal. This finding was based upon evidence that he cast the deciding votes in their promotions to positions which were created by the removal of the former superintendent, Willie Easter; that customary procedures were not followed in connection with these personnel decisions; and, that his sister was not qualified for the position to which she was promoted.

10. On February 23, 2005, the Commission sent the Respondent a letter, via first class mail and certified mail with a return receipt requested, notifying him of the finding of probable cause. In accordance with the Commission's Rules of Practice and Procedure, said letter contained a written Offer of Settlement. The Respondent was given ten (10) days to accept the written Offer of Settlement or request a public hearing before the Commission.

11. On March 2, 2005, staff received a letter from one of the Respondent's attorneys, E. Dion Wilson, requesting a public hearing. On March 7, 2005, the Respondent was sent a letter, via first class mail and certified mail with a return receipt requested, notifying him that a public hearing would be held on March 18, 2005. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

12. The Respondent, through E. Dion Wilson, subsequently requested a continuance of the public hearing. Said hearing was continued to May 20, 2005, and on April 11, 2005, staff sent another written notice to the Respondent providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

13. The public hearing was commenced on May 20, 2005, and was conducted in accordance with Ark. Code Ann. § 25-15-213. During the course of those proceedings, the Respondent's attorneys, Brian Miller and E. Dion Wilson, indicated that they had a conflict of interest which prohibited them from representing the Respondent from that point forward. By agreement, the hearing was continued until 9:00 a.m., Monday, June 13, 2005. The Respondent was advised to retain new counsel in the interim, resolve any potential conflicts of interest, and appear at the appointed time with his attorney(s) fully prepared to resume the hearing.

14. On May 23, 2005, the Commission sent the Respondent a letter, via first class mail and certified mail with a return receipt requested, notifying him that the public hearing commenced on May 20, 2005, would resume on June 13, 2005. Said letter again contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

15. On June 13, 2005, the public hearing was resumed in this case. The Respondent's attorney at that hearing was Alvin Simes. Commissioner Herschel Cleveland recused from the case because he was not present at the previous meeting when the hearing was commenced.

16. Based upon the evidence presented at the public hearing which was held on May 20, 2005, and June 13, 2005, the Commission makes the following findings of fact and conclusions of law:

Findings of Fact

a. On October 11, 2004, the Helena-West Helena School Board held its first regular meeting following the annual school board election;

b. The Respondent was elected President of the Helena-West Helena School Board at that meeting;

c. After the Respondent was elected President of the Helena-West Helena School Board, Willie Easter was removed from the position of superintendent and transferred to another position by a 4-3 vote of the board. The Respondent voted with the majority in that decision;

d. After the removal of Willie Easter from the position of superintendent, Ernest Simes was hired as interim superintendent by a 4-3 vote of the board. The Respondent voted with the majority in that decision;

e. At the time he was hired as interim superintendent, Ernest Simes was not certified to be hired as a superintendent. He subsequently filed an Additional Licensure Completion Plan with the Arkansas Department of Education;

f. Within minutes after Ernest Simes was hired as interim superintendent, Erma Jewel Hamilton was hired as assistant principal by a 4-3 vote of the board. The Respondent voted with the majority in that decision;

g. At the time she was hired as assistant principal, Erma Jewel Hamilton was not certified to be hired as an assistant principal;

h. At the time the votes were taken to hire Ernest Simes as interim superintendent and Erma Jewel Hamilton as assistant principal, other members of the Helena-West Helena School Board advised the Respondent that he was not permitted to participate in those decisions. The Respondent was advised by the school board's attorney, Brian Miller, that he could participate in the votes provided he did not personally have a financial interest in the outcome;

Conclusions of Law

i. The removal of Willie Easter did not comply with written policies of the Helena-West Helena School District (Policy Code: CED) because Mr. Easter was not given written notice that his services were unsatisfactory and an opportunity to cure;

j. Willie Easter's contract of employment with the Helena-West Helena School District was for the position of superintendent and made no provision for the transfer to any other position;

k. Ernest Simes and Erma Jewel Hamilton are related to the Respondent in the first degree;

l. The board's decision to hire Erma Jewel Hamilton as assistant principal did not comply with written policies of the Helena-West Helena School District (Policy Codes: GBA and GBC) because that decision was not based upon a recommendation actually made by the superintendent;

m. The hiring of Ernest Simes as interim superintendent constituted a special privilege or exemption;

n. By voting with the majority in a 4-3 decision to hire Ernest Simes as interim superintendent, the Respondent used his official position as President of the Helena-West Helena School Board to secure a special privilege or exemption for a person standing in the first degree of relationship;

o. The hiring of Erma Jewel Hamilton as assistant principal constituted a special privilege or exemption;

p. By voting with the majority in a 4-3 decision to hire Erma Jewel Hamilton as assistant principal, the Respondent used his official position as President of

the Helena-West Helena School Board to secure a special privilege or exemption for a person standing in the first degree of relationship; and

q. The legal advice (i.e., that the Respondent could participate in the votes to hire Ernest Simes and Erma Jewel Hamilton provided he did not have a financial interest in the outcome) which the Respondent received from the school board's attorney, Brian Miller, was incorrect.

17. Based upon the foregoing, the Commission found, by a vote of 4-0 with Commissioner Cleveland having recused, that the Respondent committed a violation of Ark. Code Ann. § 21-8-304(a) in connection with the hiring of Ernest Simes as interim superintendent and Erma Jewel Hamilton as assistant principal but that no sanction be imposed because the Respondent was incorrectly advised by the school board's attorney, Brian Miller, that he could participate in the votes provided he did not personally have a financial interest in the outcome.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, Raymond Simes, committed a violation of Ark. Code Ann. § 21-8-304(a) in connection with the hiring of his brother, Ernest Simes, as interim superintendent and his sister, Erma Jewel Hamilton, as assistant principal, but that no sanction be imposed based upon a showing of good cause in the form of incorrect legal advice from the school board's attorney.

IT IS SO ORDERED this 17th day of June, 2005.


TED DICKEY, Vice Chairman
Arkansas Ethics Commission