

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Christopher Bielik,

Complainant

against

Docket #FIC 2015-772

Donna Cullen, Chairman, Board
of Education, Regional School,
District 16; and Board of Education,
Regional School District 16,

Respondents

July 13, 2016

The above-captioned matter was heard as a contested case on February 1, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

Prior to the contested case hearing, on January 27, 2016, the respondents filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. In the motion, the respondents contended, that while they may have published an agenda containing an insufficiently described agenda item, this was a harmless error that did not infringe upon the complainant's rights and any such insufficiency was cured during a subsequent meeting. The respondents also contended that they convened in executive session for a proper purpose. On January 28, 2016, the complainant filed an objection to the motion.

At the start of the February 1, 2016 contested case hearing, the hearing officer entertained oral argument from the parties on the respondents' motion to dismiss the complaint. The hearing officer denied the respondents' motion, determining that a resolution of the arguments raised in the case could only be accomplished through the submission of evidence.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter dated November 12, 2015 and filed November 13, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act in the following ways:

- a. By publishing an agenda for the October 14, 2015 meeting that contained agenda items that failed to sufficiently apprise the public of the business to be transacted at such meeting; and
- b. By entering into an executive session at the October 14, 2015 meeting for an improper purpose.

3. The complainant requested that the Commission consider declaring null and void the respondents' action authorizing the sale of a particular school, and imposing a civil penalty.

4. Section 1-200(2), G.S., provides, in relevant part, as follows:

“Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. . . .

5. Section 1-225(a), G.S., provides, in relevant part, that “[t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. . . .”

6. Section 1-200(6), G.S., provides, in relevant part, as follows:

“Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: . . . (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned. . . .

7. Section 1-225(f), G.S., provides as follows: “[a] public agency may hold an executive session as defined in subdivision (6) of section 1-200, upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reasons for such executive session, as defined in section 1-200.”

8. It is found that the complainant is the First Selectman for the town of Beacon Falls.

9. It is found that the town of Beacon Falls is one of two town members of Regional School District 16. It is found that the town of Prospect is the other town member of Regional School District 16.

10. It is found that, on or around October 14, 2015, Regional School District 16 owned excess school property known as "Community School." It is found that Community School is a vacant elementary school located in Prospect, Connecticut.

11. It is found that the respondents held a regular meeting on October 14, 2015. It is found that the agenda for said meeting contained the following items: "Community School Update" and "Executive Session: Re: appointment of interim BOE member and a real estate issue."

12. The complainant contends that agenda items referenced in paragraph 11, above, were insufficient to give the public notice that the respondents planned to discuss and possibly act upon the sale of Community School at the October 14, 2015 meeting.

13. In addition, the complainant contends that the respondents improperly convened in executive session to discuss the sale of Community School generally and the sale price of the property specifically.

14. It is found that the complainant attended the October 14, 2015 meeting. It is further found that the primary reason the complainant attended such meeting was to ensure that, if there was a discussion of the sale of Community School, he be included in such discussion on behalf of the town of Beacon Falls. In fact, it is found that, at the start of the October 14th meeting, during the "Town Official Comment" section, the complainant urged the respondents not to act on the sale of Community School until the towns of Prospect and Beacon Falls could discuss such sale collaboratively.

15. Superintendent Michael P. Yamin appeared and testified at the contested case hearing on behalf of the respondents.

16. It is found that, after calling the meeting to order, the respondents convened in executive session to discuss the sale of Community School. It is found that the complainant was not invited into the executive session discussion. It is further found that, when the executive session concluded, the respondents reconvened the public portion of the meeting, discussed the sale of Community School, voted to appoint a consultant to handle the sale of the property, and disclosed the sale price.

17. With regard to the complainant's contention that the October 14th meeting agenda failed to sufficiently apprise the public that the sale of Community School might be taken up at the meeting, this Commission has repeatedly looked to the reasoning in Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., No. 99-0497917-S, 2000 WL 765186, *3-4 (Conn. Super. Ct. May 3, 2000), reversed on other grounds, 66 Conn. App. 279 (2001) ("Zoning Board"). In Zoning Board, the court observed that one purpose of a meeting agenda "is that the public and interested parties be apprised of matters to be taken up at the meeting in order

to properly prepare and be present to express their views,” and that “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.”

18. It is found that the agenda for the October 14th meeting was sufficient to apprise the public of the matters the respondents intended to consider during the meeting. Specifically, it is found that, in addition to the agenda items raised by the complainant, see ¶ 11, the October 14th agenda also included the following matter under the heading “Action Items”: “Approve Tom Hill Realty as a consultant to Region 16 for the sale of Community School.” It is found that the October 14th meeting agenda fairly apprised the public that the Community School was going to be discussed and that action with regard to the sale itself might be taken up at the meeting. Accordingly, it is found that, by way of the October 14th agenda, members of the public who were interested in the matters concerning Community School would have been able to properly prepare and be present at the meeting to express their views. In fact, it is found that the complainant was so prepared, attended the meeting, and expressed his views.

19. With regard to the complainant’s contention that the discussion of the sale of Community School during executive session was not permitted under the FOI Act, it is found, in the first instance, that in the complaint filed with the Commission, the complainant cited the prior language of §1-200(6)(D), G.S., which allowed, in relevant part, the discussion of the “sale or purchase” of real estate by a political subdivision of the state in executive session when publicity regarding such sale or purchase would cause “a likelihood of increased price.” However, in 2013, the language of §1-200(6)(D), G.S., was amended to allow public agencies to enter into executive session to discuss, in relevant part, the sale of real estate when publicity (by way of a discussion in open session) “would adversely impact the price” of such sale. See P.A. 13-263. In this case, it is found that the respondents initially discussed the sale¹ of Community School in executive session because they were concerned that a discussion in the open session would have a negative impact on the sale price. In fact, it is found that the property had been valued three different ways and the respondents wanted to discuss the various valuations in a closed setting so as not to harm their ability to set an asking price.

20. Finally, it is found that, on October 28, 2015, the respondents held a regular meeting during which all of the matters that were discussed during the October 14, 2015 meeting (and are at issue in the instant case) were re-discussed in public. It is found that the respondents did not convene in executive session during the October 28th meeting.

21. It is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.

¹ The Commission advises the respondents that, in the future, rather than indicating an executive session will be conducted for the purpose of discussing a “real estate issue,” they should instead indicate that public agency officials plan to discuss the purchase or sale of real estate, as the case may be.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 13, 2016.

Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

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Donna Cullen, Chairman, Board of Education,
Regional School, District 16; and Board of
Education, Regional School District 16
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Cynthia A. Cannata
Acting Clerk of the Commission