

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by)	
Harvey F. Wachsman, Maud B.)	Report of Hearing Officer
Knapp and Kathryn M. Wachsman,)	Docket #FIC77-1
Complainants)	
)	January 28 , 1977
against)	
)	
Town of Newtown and the Board)	
of Education of the Town of)	
Newtown,)	
Respondents)	

The above captioned matter was heard as a contested case on January 20, 1977, at which time the complainants and the respondent board appeared and presented testimony and argument on the complaint.

After consideration of the entire record, the following facts are found:

1. The respondents are public agencies as defined in §1-18a(a), General Statutes.
2. The members of the respondent board held a meeting on December 21, 1976.
3. As part of the aforesaid meeting, the members of the respondent board convened in executive session for the purpose of discussing employment contracts and negotiations.
4. After reconvening in public session at such meeting, the members of the respondent board conducted an election by written ballot, pursuant to §10-157, General Statutes, for the position of superintendent of schools.
5. While the total number of ballots for and against the candidate for superintendent was publicly disclosed, the individual ballots of each member of the respondent board have not been disclosed to date.
6. On January 4, 1977, the complainants filed the present appeal with this Commission alleging that the failure of the respondent board to disclose the vote of each of its members at the aforesaid election within 48 hours hereafter constituted a violation of §1-21, General Statutes.
7. The complainants contend that the election of the superintendent constitutes a vote by each member upon an issue before the respondent board and therefore must be reduced to writing and made available for public inspection as required by §1-21, General Statutes. In support of their contention, the complainants suggest that there are economic consequences to such election in terms of the superintendent's salary which

is paid by public funds.

8. The complainants further contend that such non-disclosure also constitutes a wilful attempt by the members of the respondent board to subvert the public's right to know in contravention of the legislative policy embodied in P.A. 75-342.

9. The use of the term "ballot" in §10-157, General Statutes, indicates the legislature's intention that it be treated in a manner different from a vote upon an issue within the meaning of §1-21, General Statutes. It must be presumed that the legislature, in enacting §1-21, was aware of §10-157. If it intended to include an election by ballot in the former statute, it certainly could have done so by the inclusion of appropriate language.

10. The complainants' contention that there are economic consequences to such election that make it tantamount to a vote upon an issue, within the meaning of §1-21, General Statutes, has no merit. The superintendent's salary determination is a separate and distinct issue, not resolved by ballot under §10-157, General Statutes.

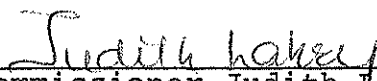
11. It is therefore found that the individual ballots of each member of the respondent board at the election in question need not be disclosed pursuant to §1-21, General Statutes.

12. In view of the above, it is further found that the non-disclosure of such ballots does not constitute a wilful attempt by the members of the respondent board to subvert the public's right to know in contravention of the legislative policy embodied in P.A. 75-342. Indeed, the legislature's use of the term "ballot" in §10-157, General Statutes, indicates its policy to permit secrecy in the election of a superintendent of schools by a school board so that the members of such board can work effectively with its superintendent, notwithstanding their individual opinion of his election.

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

1. The complaint is hereby dismissed.

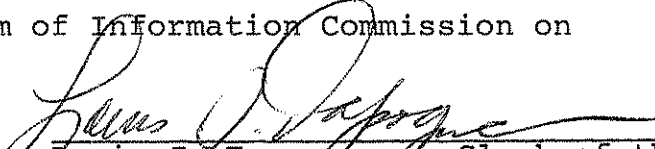
2. Since the parties hereto stipulated that the respondent board elected a superintendent of schools at its December 21, 1976 meeting, nothing herein shall be construed as expressing the opinion of this Commission as to whether or not such election was required by law.



Commissioner Judith Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on
February 9, 1977.



Louis J. Tapogna, as Clerk of the
Freedom of Information Commission