

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Jeffrey S. Silverstein,
Complainant

Report of Hearing Officer

against

Docket #FIC78-233

Town of Westport; and the
Planning and Zoning Commission
of the Town of Westport,
Respondents

February 15, 1979

The above captioned matter was heard as a contested case on January 17, 1979, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and/or stipulated to:

1. The respondents are public agencies within the meaning of §1-18a(a), G.S.
2. Members of the respondent planning and zoning commission are elected officials.
3. On October 26, 1978 the respondents commission undertook to fill a vacancy on the commission.
4. The commission's agenda for its work session of October 26, 1978 listed as an item: "Discussion: New Members and Alternates."
5. During the October 26, 1978 meeting, the respondent commission separately interviewed candidates for the vacancy.
6. The commission did not formally declare or vote on an executive session, but the complainant was asked by the chairman of the commission to leave the room during the interviews because the commission would be discussing personnel matters.
7. The respondent commission interviewed three candidates and then told the complainant that he could re-enter the room and he did so.
8. Later, when a fourth candidate arrived, the complainant was again asked to leave the room while an interview was conducted and he did so.
9. Upon the conclusion of the fourth interview the candidate left the room leaving the door open.

10. The respondent commission then voted to elect a regular member.

12. The complainant was then told he could re-enter the room.

13. By complaint filed with this Commission November 24, 1978, the complainant alleged violations of the Freedom of Information Act claiming that the respondent commission failed to vote to convene the executive session on October 26, 1978 and furthermore that the agenda was inadequate and was not properly amended to reflect the business of the meeting as required by §1-21, G.S.

14. The respondent commission admitted that it failed to vote to go into executive session.

15. The respondents commission claimed, however, that the executive sessions were held for a proper purpose within the meaning of §1-18a(e)(1), G.S. in that it was discussion concerning the appointment of a public officer.

16. It is found that the agenda item pertaining to the discussion of new members did not satisfy the requirements of §1-21, G.S. in that the requirements pertaining to notices and agendas set forth at §1-21, G.S. are intended to provide the public with notice of when public agencies meet, and what business they will transact at their meetings.

17. It is further found that the failure of the respondent commission to vote to go into executive session violated the requirement of §1-21, G.S. that "a public agency may hold an executive session as defined in subsection (e) of section 1-18a upon an affirmative vote of two-thirds of the members of such body present and voting, taken at a public meeting and stating the reason for such executive session...."


18. It is further found that a member of an elected agency is not a "public officer or employee" within the meaning of §1-18a(e)(1), G.S.

19. It is concluded that the October 26, 1978 interviews and discussion and the vote to fill a vacancy on the respondent commission did not constitute a proper purpose for an executive session under §1-18a(e)(1), G.S.

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

1. The vote taken at the October 26, 1978 meeting is hereby declared null and void.

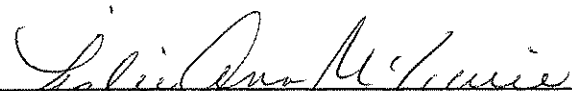
2. The respondent commission shall henceforth comply with the requirements of §1-18a(e)(1), G.S. and §1-21, G.S.



Commissioner Judith Lahey

as Hearing Officer

Approved by order of the Freedom of Information Commission on February 28, 1979.



Leslie Ann McGuire
Acting Clerk of the Commission