

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by,
Jack Shea, (H+Hd Courant)
Complainant

Report of Hearing Officer

against

Docket #FIC78-247

City and Town of Middletown;
and Board of Education of the
City and Town of Middletown,
Respondents

February 28, 1979

The above captioned matter was heard as a contested case on January 29, 1979, at which time the complainant and the respondent board appeared, stipulated to certain facts, and presented testimony and argument on the complaint.

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

1. The respondent board is a public agency as defined by §1-18a(a), G.S.
2. By letter filed with the Commission on December 11, 1978, the complainant alleged that the respondent board held a meeting on December 5, 1978 without giving the public the notice required under the Freedom of Information law.
3. A quorum of the respondent board met on December 5, 1978 to discuss, among other things, a communication problem that the respondent board felt existed between the school superintendent and the respondent board.
4. Such matter constitutes a matter over which the respondent board has supervision, control, jurisdiction or advisory power.
5. The December 5, 1978 gathering of the respondent board therefore constitutes a "meeting" of a public agency within the meaning of §1-18a(b), G.S., to which all of the public notice requirements set forth in §1-21, G.S. apply.
6. The December 5, 1978 meeting was not one of the regularly scheduled meetings of the respondent board and therefore constitutes a special meeting under §1-21, G.S.
7. The respondent board did not post notice of its December 5, 1978 special meeting, in the office of the clerk of the respondent city and town, at any time prior to the commencement of such meeting.
8. It is therefore found that the respondent board violated the public notice provisions set forth in §1-21, G.S., with respect to its special meeting of December 5, 1978.

9. The respondent board contends essentially that it did not wrongfully deny the public the right to attend its December 5, 1978 discussions because such discussions were a proper purpose for an executive session under §1-18a(e)(1), G.S. §1-18a(e)(1) permits an executive session discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee.

10. An executive session discussion may be held under §1-18a(e)(1) only if it is affirmatively voted on by two-thirds of the respondent board's members present and voting, which vote must be taken at an open meeting. The respondent board is further required to give a public statement of the purpose of such executive session.

11. The respondent board's December 5, 1978 meeting was not an open meeting because of the respondent board's failure to post notice of special meeting as required by §1-21, G.S.

12. It follows that the respondent board should in no event have held its December 5, 1978 discussions and, having done so, it wrongfully denied the public, and more particularly the complainant, the right to attend such discussions.

13. The respondents seek advice concerning whether or not their discussions of December 5, 1978 exceeded the scope of the executive session purpose defined under §1-18a(e)(1), G.S.

14. Although such question need not be reached in the context of the present case, the Commission agrees to render such advice.

15. The record reveals that the following kinds of communications occurred on December 5, 1978:

a. The respondent board expressed to the superintendent of schools disapproval over asserted past failures, on the part of the superintendent, to communicate back to the board with respect to the administrative activities of the superintendent's office.

b. The superintendent spoke with the respondent board, giving some justification for his past actions regarding the cited failure of communication.

c. The respondent board inquired into and received from the superintendent a statement of certain of the administrative activities of the superintendent's office which had not yet been communicated back to the board due to the asserted failure of communication.

16. §1-21g requires that attendance at a properly called executive session be limited to agency members subject only to the following exception: "... persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion...."

17. Referring first to paragraph 14a above, the respondent board gave its negative opinion about the superintendent directly to the superintendent at its closed meeting. Under §1-21g, G.S., the respondent board was required to excuse the superintendent as soon as he was through giving his opinion about himself to the board. The superintendent has no right to hear the positive or negative remarks of the board concerning him except at an open meeting, which the superintendent may require under §1-18a(e)(1), G.S.

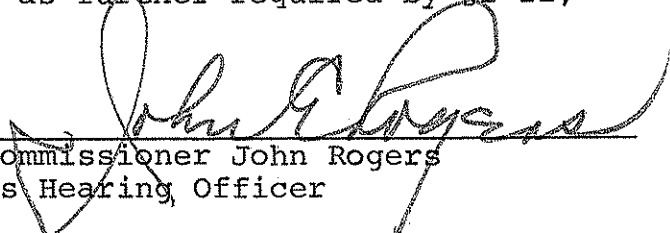
18. Furthermore, once the respondent board went beyond the problem of lack of communication with the superintendent and used the occasion as a means for his reporting, in the first instance, his administrative activities back to the board (par. 14c above), the respondent board went well beyond the scope of the executive session purpose permitted under §1-18a(e)(1), G.S. Such matters are manifestly related to the conduct of the public's business and discussions thereon may not occur at a closed meeting 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:

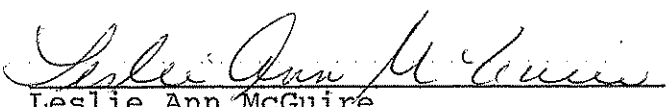
1. Henceforth, the respondent board may not hold a special meeting without first posting notice thereof, no later than twenty-four hours prior to the time of such meeting, in the office of the clerk of the respondent city and town as required by §1-21, G.S.

2. Henceforth, all meetings of the respondent board shall be open to the public, except executive sessions called for a proper purpose under §1-18a(e), G.S.

3. Henceforth, the respondent board may not go into executive session, even for an otherwise proper purpose under §1-18a(e), G.S., unless it first votes to go into executive session upon an affirmative vote of two-thirds of its members present and voting, taken at an open meeting. The respondent board shall, at the time of any such vote to go into executive session, publicly state the purpose for such executive session as further required by §1-21, G.S.


 Commissioner John Rogers
 as Hearing Officer

Approved by order of the Freedom of Information Commission on March 14, 1979.


 Leslie Ann McGuire
 Acting Clerk of the Commission