

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Sandra Belliveau,

FINAL DECISION

Complainant

Docket #FIC81-32

against

September 30, 1981

City and Town of Bloomfield; Town  
Manager of the City and Town of  
Bloomfield; and Town Council of  
the City and Town of Bloomfield,

Respondents

The above-captioned matter was heard as a contested case on March 23, 1981, and continued to April 16, June 9, and July 15, 1981, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

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

1. The respondents are public agencies as defined by § 1-18a(a), G.S.
2. The complainant is a member of the respondent council.
3. By letter filed with the Commission on February 18, 1981, as corrected by letter dated March 4, 1981, the complainant alleged that on or about February 6, 1981, the respondent council conducted a meeting which violated §§ 1-18a(a), (b), and (e), and 1-21, G.S.
4. The respondent council has nine members, of which five would normally constitute a quorum.
5. The respondents moved to dismiss, alleging first, that the complainant lacks standing because she is a member of the respondent council; second, that she had been denied no right conferred by the Act; third, that the events described in the complaint did not constitute a meeting; and fourth, that the complaint lacks standing because of the communications complained of by the complainant constituted a meeting, she herself would have been the fifth council member necessary to constitute a quorum.
6. It is concluded that the complainant does not lack standing to file a complaint against a public agency of which she is a member and that the other grounds of the respondents' motion to dismiss concern the merits of the complaint, rather than the Commission's jurisdiction.

7. The motion is accordingly denied.

8. Prior to February 6, 1981, the respondent manager was engaged in a search for candidates to fill the position of police chief in the respondent town after the retirement of the former chief of police in October, 1980.

9. In the course of his search, the manager located a candidate who, in his opinion, was ideally qualified for the position and should be hired by the town as expeditiously as possible.

10. The town manager had the authority to hire the new police chief without the approval of the respondent council, but subject to the personnel rules contained in the town charter.

11. The manager determined that the hiring process could be expedited if the respondent council voted to waive the personnel rules at its meeting scheduled for February 10, 1981.

12. On or about February 6, the respondent manager told the mayor of the respondent town, who is also a town council member, that he planned to request the council to waive the personnel rules in order to facilitate the appointment of the new police chief.

13. The mayor left the manager with the impression that he would endorse the request.

14. The mayor spoke with several different councilmen and had substantive discussions concerning the request for a waiver.

15. The manager then discussed the waiver request with council member Leavitt on one or more occasions on or about February 6, 1981.

16. Leavitt indicated that he whole-heartedly approved the manager's candidate for the chief of police job, but stated he would not be present at the February 10, 1981 council meeting.

17. On or about February 6, 1981, the manager contacted council members Kline, Giller, and Belliveau to discuss the waiver proposal.

18. Giller indicated support for the waiver.

19. Kline indicated reluctant support for the waiver.

20. Belliveau, the complainant, left him with no impression of whether she supported the waiver.

21. The respondent manager did not consult any other council members concerning the waiver request.

22. At the completion of the conversations described above, the town manager was left with the impression that council members Goodman, Kline, and Giller were in favor of waiving the personnel rules and that Leavitt would not be present at the meeting; he had no idea how the complainant felt about the waiver.

23. It is concluded that the respondent manager's conversation with the five council members constituted a communication to a quorum of the respondent council, and therefore a meeting, as defined by § 1-18a(b), G.S.

24. It is concluded that because the manager's communications with the five council members technically constituted a meeting, said meeting violated § 1-21, G.S., because it was not properly noticed, and because the council took no minutes of the meeting.

25. In a public meeting held on February 10, 1981, the respondent council voted to waive the personnel rules by a 7 - 1 majority, the sole vote against the waiver being that of the complainant.

26. The complainant asks the Commission to declare the respondent council's February 10, 1981 vote null and void.

27. The complainant failed to establish that a majority of the respondent council reached a consensus that the personnel rules should be waived as a result of the town manager's communications to the five council members.

28. The respondent manager contacted the five council members primarily to learn whether his proposal for a rule waiver was feasible, and not for the purpose of obtaining commitments from a majority of the council prior to the public meeting scheduled for February 10, 1981.

29. With the possible exception of Leavitt, none of the council members other than Belliveau realized that the manager had communicated to a quorum of the council; the majority of the council was unaware that a "meeting" had taken place.

30. It was extremely unusual, if not unprecedented, for the town manager to personally communicate with a quorum of the council other than by memorandum or at a public council meeting.

31. It is concluded, on the basis of the findings stated above in paragraphs 28 - 30, that the violation of the Freedom of Information Act here at issue was of a purely technical nature, and that it would not be in the public interest to declare the respondent council's vote concerning the personnel rules waiver null and void.

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

1. The respondents shall henceforth comply with § 1-21, G.S.

2. The Commission cautions the respondents concerning informal meetings between members of the council to discuss the business of the agency. In a case where the facts show that such discussions resulted in the formation of a consensus among a majority of the council on a matter which is subsequently formalized by a vote taken at a public meeting, the Commission may find it appropriate to declare such a vote null and void. See, for example, Docket #FIC81-41.

Approved by order of the Freedom of Information Commission at its regular meeting of September 23, 1981.

  
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Mary Jo Jolicœur  
Clerk of the Commission