

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David M. Razler,
The Chronicle

Docket #FIC83-170

Complainant(s)

March 28, 1984

Windham Board of Selectmen
and Windham Energy Recovery
Facility Advisory Committee

Respondent(s)

The above captioned matter was scheduled for hearing November 1, 1983 at which time the parties appeared and presented evidence and argument on the complaint. The matter was consolidated with #FIC83-171 which concerned the same subject matter.

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

1. The respondents are a public agency within the meaning of §1-18a(a), G.S.
2. By complaint mailed on or about August 10, 1983 the complainant alleged that on August 9, 1983 the respondents jointly attended a meeting at which an illegal executive session was held.
3. The complainant alleged further that the notice for the special meeting was improper because it failed to indicate the business which was to be transacted.
4. The meeting was scheduled by the Windham Energy Recovery Facility Advisory Committee (WERF Committee).
5. Seven of eleven members of the board of selectmen then appeared at the WERF Committee meeting and were invited into an executive session "to discuss contract negotiations."
6. The discussion which took place in the executive session pertained to a change in a proposed contract between the town and Oakwood Energy Co. for construction and operation of a power generating station run on steam generated by the town's waste incinerator.

7. The respondent claimed that the discussions were proper under §1-18a(3)(4), §1-18a(e)(5), §1-19(b)(5) and §1-19(b)(7), G.S.

8. The contract had been made public on August 8, 1983.

9. The contract dealt with a lease of land belonging to the town and an equipment lease.

10. The paragraph which was the subject of the discussion in executive session dealt with the amount of capital required to start this, and how default would be handled.

11. §1-18a(e)(4), G.S. permits a public agency to hold an executive session for the purpose of

"discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned.

12. It is found that the respondent failed to prove that the executive session fell within the exemption for executive session at §1-18a(e)(4), G.S.

13. §1-18a(e)(5), G.S. permits a public agency to hold an executive session where discussion in public would result in "the disclosure of public records or information contained therein described at subsection (b) of section 1-19."

14. The respondent failed to prove that the exemptions stated at §1-19(b)(5), G.S. and §1-19(b)(7), G.S. were applicable.

15. The respondent claimed in addition that the discussion was permitted in executive session because the content of the proposed revisions was protected by the attorney-client privilege.

16. It is found that discussion of revisions to the already public contract was not protected by the attorney-client privilege.

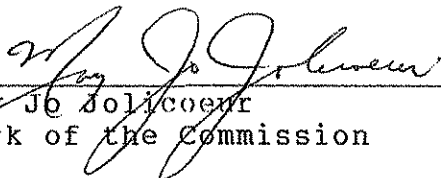
17. The respondent WERF Committee failed to prove that the notice of the special meeting stated the business to be transacted as required by §1-21, G.S.

18. Since the appearance of the respondent selectmen at the meeting was entirely accidental, it is found the selectmen failed to post proper notice of the meeting as required by §1-21, G.S.
(?????? is this ok Connie?)

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 the notice and open meetings requirements of §1-21, G.S.

Approved by order of the Freedom of Information Commission at its regular meeting of March 28, 1984.



Mary Jo Jolicœur
Clerk of the Commission