

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Robert H. Boone,

Complainant

Report of Hearing Officer

against

Docket #FIC78-249

Town of Vernon; and Town Council
of the Town of Vernon,

Respondents

February 28, 1979

The above captioned matter was heard as a contested case on January 31, 1979 at which time the complainant and respondents appeared 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 within the meaning of §1-18a(a), G.S.

2. On December 11, 1978 the respondent town council voted to go into executive session citing as its reason the discussion of pending claims and litigation relating to a sewer use charge dispute with Amerbelle Corporation.

3. On December 13, 1978 the complainant filed a complaint with the Commission alleging that the aforesaid executive session violated the Freedom of Information Act in that on December 11, 1978 no litigation involving Amerbelle Corporation and the respondent council had been filed in court.

4. The respondent council claimed by way of defense that the executive session was held for a proper purpose because it was held for discussion of strategy and negotiations with respect to pending claims within the meaning of §1-18a(e)(2), G.S. and that a closed session was also proper to protect communications privileged by the attorney-client relationship under §1-19(b)(10).

5. There has been a continuing controversy between Amerbelle Corporation and the respondent town with respect to sewer assessments.

6. In 1956 the City of Rockville (now consolidated with the Town of Vernon) and the American Dyeing Corporation (now known as the Amerbelle Corporation) signed an agreement in which American Dyeing granted the city a sewer easement and the city agreed to allow the company to connect into the city sewer system without assessment.

7. In 1968 Amerbelle Corporation stopped paying sewer user charges, apparently in reliance on the 1956 agreement.
8. The matter was referred to the town attorney in 1971.
9. Although litigation was threatened, a compromise between the town and Amerbelle was negotiated.
10. During the 1970's the respondent town built a new sewage treatment plant which had the effect of increasing user charges.
11. On or about December 4, 1978 when increased user charges were being announced an attorney for Amerbelle Corporation announced that because of the 1956 agreement Amerbelle Corporation did not have to pay its estimated bill for sewer user charges, and that the corporation would pursue all legal remedies to avoid paying the bill.
12. The estimated bill was in the amount of \$286,000.
13. At approximately the same time, the state department of environmental protection was advised that federal EPA regulations would require the federal government to stop grant payments totalling approximately three million dollars if Amerbelle Corporation did not pay its share of sewer fees.
14. On December 7, 1978 the mayor of Vernon stated that the town had the options of settling with Amerbelle or going to court.
15. The executive session which was held on December 11, 1978 included council members and the sewer authority chairman, an engineer, the treatment plant supervisor, the director of administration and the town attorney.
16. Some of the discussion during the executive session concerned the factual background relevant to the present controversy over sewer user charges with Amerbelle Corporation.
17. Some of the discussion concerned the strategies which the town might follow for handling the Amerbelle claim.
18. On January 11, 1979 Amerbelle Corporation filed suit in Superior Court seeking a declaratory judgment as to whether the 1956 agreement precludes the town of Vernon from levying a sewer user charge on it.
19. The respondent council did not prove that the factual background of the Amerbelle controversy which was discussed during the executive session was confidential and of such a nature as to be privileged by the attorney-client relationship.

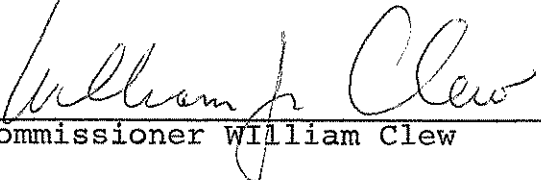
20. It is concluded that the portion of the executive session where those present discussed the factual background relevant to the controversy over sewer user charges was not a proper purpose for an executive session under either §1-19(b)(10) or §1-18a(e)(2), G.S.

21. It is further concluded that under the facts found herein, the Amerbelle Corporation claim that it did not have to pay the sewer user charges was a pending claim within the meaning of §1-18a(e)(2), G.S.

22. It is found, therefore, that the portion of the executive session which dealt with strategies which the respondent council might employ with respect to the Amerbelle claim was a proper purpose for an executive session under §1-18a(e)(2), G.S.

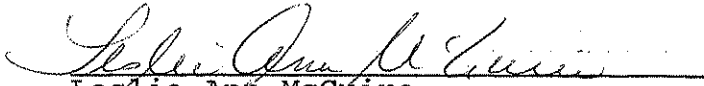
The following order by the Commission is hereby recommended on the basis of the record concerning the above captioned complaint:

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



Commissioner William Clew
as Hearing Officer

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



Leslie Ann McGuire
Acting Clerk of the Commission