

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
David Halberstam,

FINAL DECISION

Complainant

Docket #FIC83-142

against

March 28, 1984

Sherman Planning and Zoning
Commission,

Respondent

The above captioned matter was heard as a contested case on November 7, 1983 at which time the complainant and the respondent appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.

2. On July 7, 1983 the respondent held a meeting during which it convened in executive session to discuss candidates to fill two vacancies on the respondent created by resignations.

3. Upon reconvening in public session the members of the respondent filled the two vacancies and replaced an alternate who had been chosen to fill one of the vacancies.

4. All positions filled were elective positions.

5. By letter of complaint filed with the Commission on July 12, 1983 the complainant alleged that the conduct of the respondent on July 7, 1983, including the interviewing of a candidate in executive session and the failure of the respondent to ask each candidate if he or she wished all discussions to be held in public session, violated the Freedom of Information Act. The complainant requested that the actions taken by the respondent in filling the vacancies be declared null and void.

6. The respondent claims that the executive session was held pursuant to §1-18a(e)(1), G.S. for discussions concerning the appointment or employment of a public officer or employee.

7. It is found, however, that the discussion on July 7, 1983 was not held to appoint a public officer or employee within the meaning of §1-18a(e)(1), G.S. but rather to fill a vacancy on the respondent which is under ordinary circumstances an elective office.

8. It is concluded that the discussion did not constitute a proper purpose for an executive session within the meaning of §1-18a(e)(1), G.S. and that holding such discussion in executive session violated §1-21, G.S.

9. It is also found that at least one of the candidates for the vacant positions was not given the opportunity to require that all discussions concerning him be held in public session. The respondent failed to prove that any other candidate was given such an opportunity.

10. It is concluded that the respondent violated §§1-21 and 1-18a(e)(1), G.S. when it failed to provide candidates with the opportunity to request that all discussions concerning them be held in public session.

11. It is found, however, that on July 7, 1983 no candidates were interviewed in executive session, although the candidate participated in the executive session in his capacity as an alternate member of the respondent.

12. It is noted that prior to the date of hearing the respondent voted to rescind the votes taken at its July 7, 1983 meeting.

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

1. The respondent shall henceforth act in strice compliance with the requirements of §§1-18a(e)(1) and 1-21, G.S.
2. The July 7, 1983 votes of the respondent to fill vacancies in its membership are hereby declared null and void.

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



Mary Jo Jelicœur
Clerk of the Commission
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