

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
John Branigan and Jane Branigan,

FINAL DECISION

Complainants

Docket #FIC83-168

against

February 22, 1984

First Selectman, Town of Woodbury and  
Woodbury Historic District Commission,

Respondents

The above captioned matter was heard as a contested case on October 28, 1983 at which time the complainants and the respondents 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 section 1-18a(a), G.S.

2. The respondent commission held a regular meeting on July 11, 1983 during which it convened in executive session "because of pending litigation."

3. While convened in executive session the respondent voted to authorize the respondent's enforcement officer to enter into an agreement with Dr. Martin C. Ariola regarding parking spaces on Dr. Ariola's property.

4. By letter of complaint filed with the Commission on August 10, 1983 the complainants alleged that the executive session was not held for a proper purpose within the meaning of §1-18a(e)(2), G.S. The complainants further alleged that the respondent commission had been induced to convene in executive session by the respondent selectman and asked that the July 11, 1983 decision, as well as any other action resulting therefrom, be declared null and void. The complainant also requested the imposition of civil penalties pursuant to §1-21i(b), G.S.

5. The respondents claim that the executive session was properly held for strategy and negotiations with respect to pending claims and litigation within the meaning of §1-18a(e)(2), G.S.

6. It is found that the respondents' claim springs from a dispute between the respondent commission and Dr. Ariola regarding the expansion of business parking on Dr. Ariola's property. On or

about November 1, 1982 the respondent commission's enforcement officer issued a cease and desist order citing the creation of a third parking space on Dr. Ariola's property.

7. A dispute over the legality of the parking spaces ensued, which dispute involved Dr. Ariola, the respondent commission and the complainants, the complainants adopting the position that the respondent commission's cease and desist order should be strictly enforced.

8. Threats of lawsuits were exchanged by all parties, but at no time was legal process instituted. Instead, the respondent commission formulated an "enforcement position" requiring concessions on the part of Dr. Ariola in exchange for acceptance of the increases in parking spaces.

9. On July 11, 1983 the respondent commission authorized the enforcement officer to enter into an agreement with Dr. Ariola reflecting such enforcement position. Such agreement was executed by the respondent commission and Dr. Ariola on or about August 31, 1983 and approved by the respondent commission at its September 12, 1983 regular meeting.

10. It is found that discussion in executive session on July 11, 1983 involved consideration of a compromise plan which would satisfy both Dr. Ariola's and the respondent commission's needs, but was not strategy and negotiations with respect to pending claims or litigation.

11. It is concluded that the respondent violated §§1-21, G.S. when it convened in executive session to discuss and take action upon a proposed agreement regarding Dr. Ariola's parking spaces.

12. The complainants' request for the imposition of a civil penalty is hereby declined.

13. The Commission hereby declines to declare null and void the August 31, 1983 and September 12, 1983 actions of the respondent, such actions having occurred subsequent to the filing of the complaint and the respondent having failed to allege any violations of the Freedom of Information Act with respect to the execution of such actions.

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

1. The respondent commission's action on July 11, 1983 with respect to an agreement between the respondent commission and Martin C. Ariola is hereby declared null and void.

Approved by order of the Freedom of Information Commission at its regular meeting of February 22, 1984.

  
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Mary Jo Jolicoeur  
Clerk of the Commission