

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Andrew B. Urban,

Docket #FIC84-2

Complainant(s)

vs.

June 13, 1984

John E. Julian, First
Selectman Town of Stafford
and Ialeen Dunn, Secretary
to First Selectman Town
of Stafford,

Respondent(s)

The above captioned matter was scheduled for hearing February 28, 1984 at which time only the complainant appeared. At that time the complainant presented evidence and argument on his complaint.

The complainant requested pursuant to §1-21i(b) of the Connecticut General Statutes that civil penalties be imposed upon John E. Julian, First Selectman, and Ialeen Dunn, Secretary to the Board of Selectmen for denying him rights created by sections 1-15, 1-18a, 1-19 to 1-19b inclusive, and 1-21 to 1-21k inclusive, without reasonable grounds. Thereafter both Ialeen Dunn, secretary to the board of selectmen and John Julian, first selectman, were ordered to appear at a hearing on March 19, 1984 to show cause why a civil penalty should not be imposed.

On March 19, 1984, the complainant and the first selectman appeared. However at that time Ialeen Dunn did not appear. At this hearing it was further agreed to hear an additional complaint filed by the complainant, #FIC84-43.

1. By complaint filed with the FOIC on January 10, 1984 the complainant alleged that the selectmen violated the Freedom of Information Act by discussing an item which was not on the agenda, by failing to vote to place the item on the agenda, by confusing and misleading him regarding a matter in which he had a personal interest -- the pollution of certain wells in Stafford Hollow.

2. By letter filed January 18, 1984 the complainant amended his complaint alleging that on January 7 he and some neighbors requested that they receive notice of any business having to do with the well pollution in Stafford Hollow, but that on January 12, 1984 the respondent held a meeting at which the well pollution was discussed but the complainant received no notice.

3. At the FOIC hearing which was held February 28, 1984 the complainant asked that the Commission impose a civil penalty upon Ialeen Dunn, secretary to the board of selectmen and upon John E. Julian, first selectman, pursuant to §1-21i(d), G.S.

4. The complainant and his neighbors had polluted wells which have become controversial because of a dispute between the respondent board and the Water Compliance Unit of the State Department of Environmental Protection.

5. The complainant and his wife attempted to have the matter of the well pollution considered at a public meeting of the respondent board.

6. On January 3, 1984 at 1:30 p.m. Ialeen Dunn, secretary to first selectman John Julian, told the wife of the complainant that the matter would not be discussed in public because it was a "delicate subject".

7. On January 3, 1984 at 8:30 p.m. John Julian informed the complainant that he would not discuss the issue in public.

8. Contrary to the professed unwillingness to publicly discuss the matter, the respondent board held a meeting at 7 p.m. on January 3, 1984 at which it discussed the matter of well pollution and voted to employ an outside engineering firm to perform a study of the well pollution problem.

9. The meeting was noticed as a special meeting.

10. The posted agenda for the special meeting listed these items:

1. Call to order
2. Minutes of December 6, 1983
3. Old business
4. New business
 - a. Town Meeting agenda
 - b. Indices of Town Records
 - c. Calendar for 1984
5. Bills/payroll
6. Adjournment

11. The first selectman, John Julian, controlled the business at the January 3, 1984 meeting and limited it to the agenda items except with respect to the discussion and vote relating to well pollution, an item which he personally introduced.

12. §1-21 provides in relevant part:

"Notice of each special meeting of every public agency. . . shall be given not less than twenty-four hours prior to the time of such meeting The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by such public agency."

13. The respondents claim that the meeting was a regular meeting because it was held at the same time as regular meetings were held in 1983, and therefore that the limitation of the meeting to the business listed on the agenda was improper.

14. Inasmuch as the respondents had not filed a schedule of regular meetings for 1984 as required by §1-21, G.S. the meeting was not a regular meeting, and the discussion and action of the meeting was required to be limited to the business listed upon the posted agenda.

15. It is concluded that the respondent violated §1-21, G.S. by considering a matter not included on the posted agenda at the special meeting January 3, 1984.

16. It is further found that, particularly in view of the representations made to the complainant and his wife by Ialeen Dunn and John Julian that the matter of well pollution would not receive public consideration, that the failure of the respondent to limit the January 3, 1984 meeting to the business on the agenda was a violation of §1-21, G.S. which was without reasonable grounds.

17. It is concluded therefore based upon the improper notice and the manner in which the complainant was led to believe that the well contamination matter would not receive public consideration by the respondent, that the vote taken at the January 3, 1984 meeting to hire an outside engineering firm to study well pollution should be declared null and void.

18. On January 7, 1984 the complainant wrote to the respondent board asking to be informed "of any business regarding the matter [the well contamination]".

19. The letter written by the complainant was signed by nine residents of Stafford.

20. The letter, which follows, communicated the serious concern of the individuals who signed to have the matter considered at a public meeting and to be informed of any such meeting:

Please be advised that we the undersigned still would like a response to our communication dated January 4, 1984 in which we requested the Stafford Hollow well contamination issue to be placed on the next agenda. While you feel a meeting at this time would be unproductive, we feel we are entitled to be fully informed of what is transpiring in this serious matter. This is public business, it involves wells on our property, it involves the water we drink. Therefore, we feel we should be informed of any business regarding this matter. It is not a subject to be swept under the carpet or discussed behind closed doors. It involves us and we choose to have it discussed in the open.

21. On January 12, 1984 the selectmen held a special meeting and considered a public statement of their position regarding their position regarding the pollution of the wells.

22. The complainant was never notified of the matter on the agenda by any official of the town.

23. The respondent first selectman claimed that no notice of the January 12, 1984 meeting was given to the complainant or any of the other townspeople who had signed the letter because there was no time to mail notice to them.

24. Section 1-21c provides in relevant part that:

The public agency shall, where practicable, give notice by mail of each regular meeting, and of any special meeting which is called, at least one week prior to the date set for the meeting, to any person who has filed a written request for such notice with such body, except that such body may give notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting.

25. It is found that the January 7, 1984 letter to the respondent board of selectmen constituted a written request for notice of meetings within the meaning of Section 1-21c.

26. It is further found that the respondent board was obligated under Section 1-21c to provide the complainant with notice by telephone of special meetings where mailed notice would be ineffective.

27. It is concluded that the respondent violated §1-21c when it failed to provide the complainant with notice of the special meeting on January 12, 1984.

28. On January 6, 1984 the complainant telephoned Ialeen Dunn, the secretary to the respondent board and requested that she provide him with a copy of the agenda for the January 3, 1984 meeting.

29. Ialeen Dunn told the complainant that she had destroyed the agenda.

30. On January 17, 1984 Aileen Dunn responded to the complainant's personal request for the agenda by saying that she had it, but it was scribbled on and that he should get a copy from the town clerk.

31. On that same day, January 17, the town clerk told the complainant that he should get the copy of the agenda from Ialeen Dunn.

32. The complainant went a second time to request the agenda from Mrs. Dunn and was sent back down to the town clerk to get it.

33. After the second request made by the complainant on January 17, 1984, the town clerk provided the complainant with a copy of the agenda for the January 3, 1984 special meeting.

34. The policy of keeping the records of respondent at the town clerk's office is a policy of the first selectmen.

35. §1-19(a) provides in relevant part that:

All records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect such records promptly during regular office or business hours or to receive a copy of such records in accordance with the

provisions of section 1-15. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the secretary of the state, as the case may be.

36. It is found that the agenda requested was a public record within the meaning of §1-19(a) and §1-18a(d), G.S.

37. It is further found that the respondent board has a regular office where its secretary Ialeen Dunn works.

38. It is concluded that the respondents' secretary Ialeen Dunn, and the respondent board, should have made the agenda available to the complainant at the office of the secretary of the board of selectmen and that failure to do so constituted a violation of §1-19(a), G.S.

39. It is found that the first selectman, John Julian, was the official responsible for introducing the improper item on the agenda at the meeting of January 3, 1984 and for failing to notify the complainant that the matter of the polluted wells would be considered at the meeting of January 12, 1984.

40. It is found that the first selectman John Julian was directly responsible for not having the agenda of the January 3, 1984 meeting at the proper place.

41. It is concluded that a civil penalty of five-hundred dollars (\$500) should be imposed upon John Julian, first selectman.

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 comply with §1-21, 1-21c, and 1-19(a), G.S.

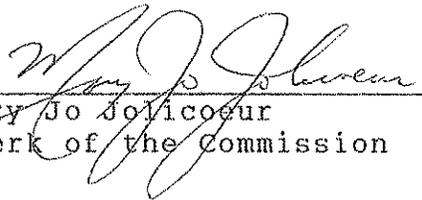
2. The vote described at paragraphs 8 and 17 is hereby declared null and void.

3. The Commission hereby imposes a civil penalty against John Julian, the first selectman, in the amount of five-hundred dollars (\$500).

4. The payment shall be tendered by John Julian at the offices of the Freedom of Information Commission within thirty days of the mailing of the notice of final decision incorporating this order.

5. The Commission cautions Ialeen Dunn, secretary to the first selectman, to become aware of her duties and obligations under the Freedom of Information Act since a denial of the rights granted members of the public under the act which occurs without reasonable grounds could lead to the imposition of a civil penalty.

Approved by order of the Freedom of Information Commission at its regular meeting of June 13, 1984.



Mary Jo Jolicœur
Clerk of the Commission