

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Lawrence Merly and John
Fabrizi,

FINAL DECISION

Complainant

Docket #FIC84-222

against

May 22, 1985

Bridgeport Civil Service
Commission of the City and
Town of Bridgeport,

Respondent

The above captioned matter was heard as a contested case on February 11, 1985 at which time the complainants 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 October 1, 1984 the respondent held a special meeting, the notice for which indicated that its purpose, among others, was "to take action on the pending lawsuit involving payment of attorneys fees incurred by the Civil Service Commission."
3. At its October 1, 1984 meeting the respondent voted to withdraw a suit against Leonard S. Paoletta "for payment of unpaid attorneys' fees."
4. The complainants, who are members of the respondent, were present at the October 1, 1984 meeting and voted in opposition to the motion to withdraw the suit.
5. On October 9, 1984 the respondent held a special meeting, the notice for which stated that its purpose was "to consider the dismissal of Attorney Joseph Mirsky as attorney for the Civil Service Commission" in its suit against Mr. Paoletta.
6. At its October 9, 1984 meeting the respondent voted to dismiss Joseph Mirsky as counsel in its suit against Mr. Paoletta and to hire other counsel.

7. By letter of complaint filed with the Commission on October 23, 1984 the complainants alleged:

- a) that on October 1, 1984 the respondent discussed and took action on a matter not included in its notice of special meeting;
- b) that notice of the respondent's October 9, 1984 meeting was not provided at least 24 hours prior to such meeting, in violation of §1-21(a), G.S.
- c) that the hiring of counsel on October 9, 1984 was not included in the notice of special meeting.

8. The complainants asked that all actions taken by the respondent at its October 1, 1984 and October 9, 1984 meetings be declared null and void and that civil penalties be assessed against the respondent pursuant to §1-21(b), G.S.

9. It is found that the notice of the respondent's October 1, 1984 meeting provided notice to the public that action would be taken with respect to a pending lawsuit.

10. It is found that "action" on a lawsuit might, conceivably, include withdrawal of such suit.

11. It is concluded that on October 1, 1984 the respondent did not take action on a matter not included in its notice of special meeting.

12. The Commission also notes that the complainants' allegation that at its October 1, 1984 meeting the respondent violated its own rules of order and procedure is not a matter over which this Commission has jurisdiction.

13. It is found that notice of the respondent's October 9, 1984 meeting was provided fewer than 24 hours prior to such meeting.

14. It is found that by letter dated October 2, 1984 the respondent informed Attorney Mirsky of its decision to withdraw its lawsuit against Mr. Paoletta.

15. By letter dated October 4, 1984 Attorney Mirsky informed the respondent that he felt the withdrawal of suit to have been illegal, and expressed his intention to proceed with the trial scheduled for October 9, 1984.

16. The respondent claims that Attorney Mirsky's refusal to withdraw the lawsuit constituted an 'emergency' within the meaning of §1-21(a), G.S.

17. The respondent failed to prove, however, that it could not have provided public notice more than 24 hours prior to its October 9, 1984 meeting.

18. It is concluded that the respondent's failure to provide public notice of its October 9, 1984 meeting at least 24 hours prior to such meeting violated §1-21(a), G.S.

19. The respondent also claims that although the hiring of other counsel was not specifically stated as a purpose for its October 9, 1984 meeting such hiring was the logical outgrowth of the firing of Attorney Mirsky.

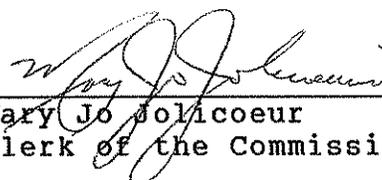
20. It is found that notice of the respondent's October 9, 1984 meeting did not specifically indicate that counsel would be hired on that date, in violation of §1-21(a), G.S.

21. However, under the circumstances, neither an order declaring null and void the October 9, 1984 hiring of counsel nor the imposition of civil penalties is deemed appropriate.

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 strict compliance with §1-21(a), G.S. regarding the filing and posting of timely, specific notices of special meetings.

Approved by order of the Freedom of Information Commission at its regular meeting of May 22, 1985.



Mary Jo Policoeur
Clerk of the Commission