

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by                      FINAL DECISION

Donald H. Schiller and the  
Meriden Record Company,

Complainants

against

Docket #FIC 85-259

Robert Lockert, Chairman, Frank  
Dallesander and William Krock,  
Members of the World War II  
Veterans' Memorial Hospital  
Board of Trustees,

Respondents

August 27, 1986

The above-captioned matter was heard as a contested case on February 5, 1986, 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 board is a public agency within the meaning of §1-18a(a), G.S.

2. On December 12, 1985 the respondent held a special meeting "for the purpose of presenting and acting on a Chairman's Proposal." At such meeting the respondent convened in executive session for the purpose of discussing "negotiation strategies for affiliation."

3. By letter of complaint filed with the Commission on December 23, 1985 the complainants alleged that at its December 12, 1985 meeting the respondent failed to obtain and record a two-thirds affirmative vote prior to convening in executive session and that the respondent lacked a proper purpose for so convening. The complainants alleged that the actions of the respondent were without reasonable ground and asked that the Commission impose a "substantial" civil penalty.

4. At hearing the respondent moved to dismiss the complaint on the ground that the Commission failed to hold a hearing on the matter within 20 days of receipt of the complaint. The respondent's motion was denied on the basis of the pendency of legislation which would address the Supreme Court's decision in Zoning Board of Appeals of the Town of North Haven v. FOIC, 198 Conn. 498 (1986).

5. At the time that the respondent convened in executive session on December 12, 1985, nine of its eleven members were present. Another member, Mr. Cadden, joined the executive session after it commenced.

6. A draft of the December 12, 1985 meeting minutes shown to a representative of the complainant Meriden Record on December 16, 1985 did not indicate how the members of the respondent voted on the motion to convene in executive session, although votes on other matters were recorded.

7. It is found, however, that fewer than 48 hours, excluding a weekend, had elapsed between the meeting and the request to examine the record of votes. The evidence at hearing, therefore, did not support a finding that the respondent violated §1-21(a), G.S. by failing to provide a record of votes within 48 hours of the December 12, 1985 meeting.

8. The minutes of the December 12, 1985 meeting indicate that the motion to convene in executive session was passed unanimously. The minutes, however, inaccurately indicate the presence of 10 members at the time of the unanimous vote when only 9 were present, in violation of §1-21(a), G.S.

9. It is found that the respondent's discussion of negotiation strategies regarding the possibility of affiliating with another hospital was not a proper purpose for an executive session, as such purposes are defined at §1-18a(e), G.S.

10. While convened in executive session the respondent discussed a written proposal regarding a possible affiliation between Memorial Hospital and one of four other Connecticut hospitals. The respondent claims that the document, entitled "Rationale and Overview--Request for Affiliation Proposals," was a draft document within the meaning of §1-19(b)(1), G.S. and that the executive session was therefore proper pursuant to §1-18a(e)(5), G.S.

11. It is found that the document discussed in executive session was drafted by the chairman of the respondent and the hospital's chief executive officer approximately four days prior to the December 12, 1985 meeting and was discussed by a planning committee of the respondent the night before such meeting. The document, which recommended that Memorial Hospital affiliate itself with another hospital or hospital system, included the names of four candidates and listed those criteria which candidate-hospitals would be expected to meet.

12. Following the December 12, 1985 executive session the document in question was revised and such revised version was sent to each of the four hospitals being considered by the respondent.

13. The document discussed in executive session was an intra-agency memorandum, letter, advisory opinion, recommendation or report comprising part of the process by which governmental decisions and policies are formulated within the meaning of §1-19(c), G.S.

14. It is concluded that, although subsequently revised, the document discussed in executive session on December 12, 1985 was not exempted from disclosure by §1-19(b)(1), G.S., and that discussion of such record in executive session was not a proper purpose for an executive session within the meaning of §1-18a(e)(5), G.S.

15. The respondent also claims that while convened in executive session it discussed confidential information regarding the four hospitals being considered as candidates for affiliation.

16. It is found that to the extent that while convened in executive session the respondent discussed commercial or financial information given in confidence to it by other hospitals, which information was not required by statute within the meaning of §1-19(b)(5), G.S., such discussion in executive session did not violate §1-21(a), G.S.

17. The respondent further claims that, although not stated as a purpose for the executive session, it discussed two possible sites for an office building, publicity regarding which would have inflated the cost of such sites, and that such discussion was therefore a proper purpose for an executive session within the meaning of §1-18a(e)(4), G.S.

18. It is found that to the extent that while convened in executive session the respondent discussed the selection of a site for an office building, publicity regarding which could have caused an increase in price, such discussion in executive session did not violate §1-21(a), G.S. It is found, however, that failure to state such purpose prior to convening in executive session violated §1-21(a), G.S.


19. The Commission declines to impose a civil penalty as requested by the complainants.

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 convene in executive session only for one or more of the proper purposes listed at §1-18a(e), G.S. and shall, prior to so convening, announce such proper purpose, as required by §1-21(a), G.S.

2. The respondent shall henceforth prepare minutes which accurately reflect the votes of its members on any issue before it.

Approved by order of the Freedom of Information Commission at its regular meeting of August 27, 1986.

  
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Karen J. Haggett  
Clerk of the Commission