

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Anthony Gennaro Sr.,

Complainant

against

Docket #FIC 2024-0033

Chair, Common Council, City of
Middletown; Common Council, City of
Middletown; and City of Middletown,

Respondents

January 8, 2025

The above-captioned matter was heard as a contested case on August 2, 2024, at which time the complainant and the respondents appeared. The complainant presented testimony and exhibits during the hearing, and both the complainant and respondents presented argument on the complaint.

On September 19, 2024, the Commission issued a Notice of Deviation from Regulation informing the parties that Attorney Kevin Munn, the hearing officer who presided over the contested case hearing in this matter, was leaving his employment with the Commission and that the Commission would designate a new hearing officer. On December 23, 2024 the Commission notified the parties that it had designated the undersigned as hearing officer in this matter.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By letter of complaint dated January 18, 2024, the complainant¹ appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by amending a resolution to name a different appointee to the City of Middletown's Board of Education (the "BOE") than the appointee named in the notice for the special meeting held on January 11, 2024 (the "January 11 special meeting").
3. With respect to the notice provisions for special meetings, §1-225(d), G.S., provides in relevant part, that:

¹ The complainant is a member of the respondent Common Council.

Notice of each special meeting of every public agency . . . shall be given not less than twenty-four hours prior to the time of the special 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.***” (Emphasis added.)

4. It is found that on January 8, 2024, the respondents noticed a special meeting to be held on January 11, 2024.²

5. It is found that the relevant portion of the January 8 notice indicated the following business would be before the respondents during their January 11 special meeting:

Approving the appointment of Robin L. Goss as a regular member of the Board of Education of the City of Middletown to a term ending November 11, 2025, filling the minority party^[3] vacancy created by the resignation of Board of Education regular member Charles Wiltsie III.

6. It is found that the resolution before the respondents at the January 11 special meeting provided, in relevant part:

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MIDDLETOWN: Approving the appointment of Robin L. Goss as a regular member of the Board of Education of the City of Middletown to a term ending November 11, 2025, filling the minority party vacancy created by the resignation of Board of Education regular member Charles Wiltsie III. [(the “Original Resolution”)]

7. It is found that prior to taking any action on the Original Resolution at the January 11 special meeting, the respondents provided for a public hearing wherein a number of individuals spoke in support of the appointment of Robin Goss (hereinafter “Goss”) to the BOE. It is further found that based upon the comments made, the individuals who spoke during the public hearing were aware that the respondents intended to amend the Original Resolution to substitute Callie Grippo (hereinafter, “Grippo”) as the prospective appointee to the BOE.⁴

² Hereinafter, the January 8 notice

³ Chapter II, Section 8 of the Charter for the City of Middletown provides that “[e]xcept for vacancies in the Office of the Mayor and/or Deputy Mayor, the Common Council at a regular or special meeting duly warned for that purpose and next following a Declaration of Permanent Vacancy in Elective Office, shall, by majority of those present and voting, fill any such vacancy. Such appointee shall be a member of the same political party as the predecessor in said office and shall serve the remainder of the term of office of the elected official whose position he/she resigned his position effective immediately, has been appointed to fill.”

⁴ The Commission notes, however, that the administrative record is unclear as to when the individuals who spoke at the public hearing became aware of the respondents’ intent to amend the Original Resolution. While some comments appear to indicate that the amendment was discussed prior to the public hearing portion of the meeting,

8. It is found that after the conclusion of the public hearing portion of the January 11 special meeting, the respondents deliberated and voted on an amendment to the Original Resolution, substituting Grippo as the prospective appointee to fill the BOE vacancy. The respondents voted to amend the Original Resolution by a 7-2 vote, with 2 abstentions and 1 absence (the “Amended Resolution”).

9. It is found that the complainant, along with one other council member, abstained from voting on the amendment to the Original Resolution based on their assessment that the motion was out of order.

10. It is found that the respondents then adopted the Amended Resolution by a 5-4 vote, with 2 abstentions and 1 absence. The complainant voted against adoption of the Amended Resolution.

11. It is found that the respondent Common Council adjourned the January 11 special meeting shortly after adopting the Amended Resolution.

12. The gravamen of the complaint to this Commission is that by: (i) amending the Original Resolution to change the prospective BOE appointee from Goss to Grippo, and (ii) acting on the Amended Resolution, the respondents considered “other business” not specified in the January 8 notice, in contravention of §1-225(d), G.S., as set forth in paragraph 3, above.

13. The respondents maintain that amending the Original Resolution to change the name of the prospective appointee was proper because the public was sufficiently apprised that the respondents would be acting to fill the vacant BOE position at the January 11 special meeting, and that such amendment did not add a new item unrelated to what had been noticed for the January 11 special meeting.

14. Notices for special meetings must “sufficiently specify the business to be transacted.” See Docket #FIC 2005-344, Sarah King et al. v. Board of Education Waterford Public Schools (June 8, 2005) (hereinafter, “King”) (concluding that a notice for a special meeting stating, “Interview with Superintendent’s Recommended Candidate for Human Resources Director (BOE enclosure),” did not sufficiently apprise the public that a human resources director would be *hired* at that meeting.)

15. In determining whether a notice of a special meeting sufficiently specifies the business to be transacted, the Commission considers whether the public and interested parties are apprised of matters to be taken up at the meeting in order to properly prepare and be present to express their views. See Docket #FIC 2013-737, George Schober v. Chairman, Board of Finance, Town of Somers et al. (August 27, 2014) (hereinafter, “Schober”), citing Zoning Board of Appeals of the Town of Plainfield, et al. v. FOIC, et al., Superior Court, Docket No. 99-0497917-S, Judicial District of New Britain, (May 3, 2000), reversed on other grounds, 66 Conn. App. 279 (2001). Moreover, “[a] notice is proper only if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing.” Id.

16. Accordingly, in the instant matter, the Commission must consider whether the January 8 notice sufficiently apprised the public that the respondents would consider and vote on whether to appoint Grippo instead of Goss to fill the vacant position on the BOE.

17. Applying Schober to the matter currently before the Commission, it is found that the January 8 notice proposed the appointment of a specific individual (i.e., Goss) as a regular member of the BOE.

18. It is found that by naming a specific individual as the prospective appointee in the January 8 notice, the public could reasonably expect that if any other individual would be considered for appointment to the position, such person would be identified in a manner equally explicit as the way Goss had been identified.

19. Accordingly, it is found that the January 8 notice did not sufficiently apprise the public that another prospective appointee to the BOE would be considered during the January 11 special meeting, and thereby prevented the public from the ability to conduct “intelligent preparation for participation in the hearing” with respect to the appointment of Grippo to the BOE. Id.

20. It is found, therefore, that by amending the Original Resolution to make Grippo the prospective appointee to the BOE, and thereafter voting on the Amended Resolution, the respondents considered business that was not specified in the January 8 notice.

21. Based on the foregoing, it is concluded that the respondents violated §1-225(d), G.S., by considering “other business” at the January 11 special meeting that had not been specified in the January 8 notice.

22. The complainant requests that the Commission declare null and void the respondents’ vote to appoint Grippo to fill the vacancy on the BOE at the January 11 special meeting.

23. It is found that on February 1, 2024, the respondents filed a revised agenda for its upcoming February 5, 2024 regular meeting, and that agenda item 15.M. provided as follows:

Approving that rescission of Resolution No. 12-24, appointing Callie Grippo to fill vacancy in elected office on (Board of Education), as approved by the Common Council on January 11, 2024, because it is defective. . .⁵

24. It is found that, at the February 5 regular meeting, the respondents considered the following resolution:

NOW, THEREFORE, BE IT RESOLVED THAT THE COMMON COUNCIL OF THE CITY OF MIDDLETOWN:
rescinds Resolution No. 12-24, appointing Callie Grippo to fill a

⁵ Agenda item 15.M also provided a summary of what occurred during the January 11 special meeting with respect to the respondents’ actions concerning the Original Resolution and Amended Resolution.

vacancy in elected office on (Board of Education), as approved by the Common Council on January 11, 2024, because it is defective[.]

25. It is found, that during the February 5 regular meeting, the respondents provided a public hearing on all agenda items, including the resolution described in paragraph 24, above.

26. It is found that while several members of the public spoke during the February 5 public hearing, the only comments relevant to the resolution described in paragraph 24, above, came from Grippo herself, who spoke generally about her looking forward to serving on the BOE.

27. It is found that after the public hearing, the respondents voted at the February 5 regular meeting on the resolution referenced in paragraph 24, above, which failed by a 4-8 vote, with the complainant voting in favor of the resolution. Thus, the appointment of Grippo remained in effect.

28. While the actions at the February 5 regular meeting do not *cure* the respondents' violation of §1-225(d), G.S., as concluded in paragraph 21, above, it is found that the availability of an additional opportunity for the public to be heard regarding the appointment of Grippo to the BOE and the failed vote to rescind the appointment mitigates the negative repercussions of such violations to a degree.

29. The Commission also notes that the BOE did not meet between the respondent Common Council's January 11 special meeting and its February 5 regular meeting.⁶ It is found that the negative repercussions of the respondents' violation in this matter were further mitigated by the fact the BOE did not take any official action until after the public had an additional opportunity to comment on the respondent Common Council's appointment of Grippo to the BOE.

30. Based on the facts and circumstances of this case, the Commission, in its discretion, declines to declare null and void the respondents' actions at the January 11 special meeting.

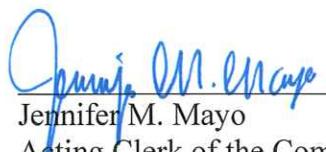
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall strictly comply with the notice provisions of §1-225(d), G.S.

2. Within fourteen (14) days of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's public education officer to schedule training regarding the requirements of the FOI Act.

⁶ The Commission takes administrative notice of the fact that the next meeting of the Board of Education after the January 11 special meeting was February 15, 2024, ten days after the respondents' February 5, 2024 regular meeting. See <https://meetings.boardbook.org/Public/Organization/2423>.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 8, 2025.



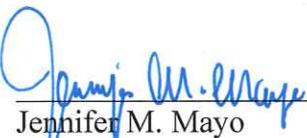
Jennifer M. Mayo
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

ANTHONY GENNARO SR., Office of the Common Council, 245 DeKoven Drive, Middletown, CT 06457

CHAIR, COMMON COUNCIL, CITY OF MIDDLETOWN; COMMON COUNCIL, CITY OF MIDDLETOWN; AND CITY OF MIDDLETOWN, c/o Attorney Nicholas R. Bamonte, Berchem Moses PC, 1221 Post Road East, Suite 301, Westport, CT 06880



Jennifer M. Mayo
Acting Clerk of the Commission