

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Danbury News-Times and David
O'Reilly,

Complainants

Final Decision

against

Docket #FIC78-128

Town of Brookfield; and the
Board of Education of the Town
of Brookfield,

October 25, 1978

Respondents

The above captioned matter was heard as a contested case on September 12, 1978 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 respondents are public agencies within the meaning of §1-18a(a), G.S.
2. Pursuant to §10-219, G.S. the respondent board undertook to fill a vacancy resulting from the resignation of one of its members.
3. The respondent board scheduled interviews with persons who had been recommended or who had volunteered to fill the vacancy on May 31, 1978 and June 7, 1978.
4. Most of the persons who were interviewed were given the option of being interviewed at a closed meeting which was held on May 31, 1978 or at a public meeting on June 7, 1978.
5. The interviews with the candidates for the board conducted on May 31, 1978 and June 7, 1978 consisted of questions posed by the board members to the candidates and answers provided by those candidates to the board members, and did not include discussion among board members.
6. None of the candidates interviewed for the vacancy were informed by the board that their candidacies for the vacancy would be discussed at the closed session held following the interviews on June 7, 1978 and no candidate was afforded an opportunity to request that such discussion be held in open session.
7. After the public interviews on June 7, 1978 the respondent board went into executive session to discuss the question of who should fill the vacancy.

8. On June 9, 1978, without prior discussion, the board voted to name one of the persons interviewed to fill the vacancy.

9. By letter filed with this Commission on June 28, 1978, the complainant O'Reilly alleged a denial of his rights under the Freedom of Information Act and the complainants claimed that the closed portions of the May 31, 1978 and June 7, 1978 meetings were held in violation of §1-21, G.S. and asked that the vote which was taken to fill the vacancy be declared null and void.

10. The respondent board claimed that the executive session and the closed meeting were proper under §1-18a(e)(1), G.S. as discussions concerning the qualifications of applicants for appointment as a public officer and member of the board of education.

11. §10-219, G.S. provides that if a vacancy occurs in the office of any member of the board of education, unless otherwise provided by charter or special act, it may be filled by the remaining members of said board until the next regular town election, at which election a successor shall be elected for the unexpired portion of the term.

12. It is found that the interviews and the discussion on May 31 and June 7, 1978 were not held to appoint a public officer or employee within the meaning of §1-18a(e)(1), G.S. but rather to fill a vacancy on the respondent board which is under ordinary circumstances an elective office.

13. It is concluded that the interviews and the discussion of the six persons who volunteered or who were recommended to fill the vacancy did not constitute a proper purpose for an executive session under §1-18a(e)(1), G.S. and that therefore the aforesaid executive sessions and/or closed meetings of the respondent board were held in violation of §1-21, G.S.

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

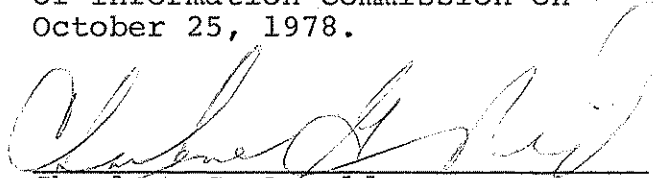
1. The respondent board shall henceforth comply with the requirements of §1-21, G.S.

2. The vote of the respondent board on June 9, 1978 to fill the vacancy is hereby declared null and void.

3. The Commission notes that it has declared the aforesaid vote null and void, not because of any bad faith on the part of the respondent board, but rather because the discussions and interviews which constituted an essential portion of the decision making process were closed to the public. Public access to the decision making process in this instance is particularly important

because the decision making process involved filling a position on a board which is usually an elective office.

Approved by order of the Freedom
of Information Commission on
October 25, 1978.

A handwritten signature in cursive script, appearing to read "Charlene G. Arnold", written over a horizontal line.

Charlene G. Arnold
Clerk of the Commission