

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Glenora G. Forbes,
Complainant
against

Report of Hearing Officer

Docket #FIC79-180

City and Town of Ellington; and
Board of Education of the City and
Town of Ellington,
Respondents

January 18, 1980

The above captioned matter was heard on November 1, and November 8, 1979 at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

After consideration of the record, the following facts are found:

1. The respondents are public agencies as defined by §1-18a(a), G.S.
2. By letter filed with the Commission on August 21, 1979, the complainant alleged that the respondent board voted to ask the superintendent of schools for his resignation, without recording such vote in the minutes of the meeting at which such vote was taken.
3. By way of general background, the superintendent of schools has a three year contract of employment with the respondent board. The respondent board traditionally decides whether or not to renew such contract for another three year term in the second year of the contract.
4. The superintendent of schools is presently serving the second year of his three year contract with the respondent board.
5. The respondent board, on June 20, 1979, met in executive session to discuss whether or not to renew the superintendent's contract.
6. In executive session, the respondent board reached a consensus that it would invite the superintendent to submit his resignation. The chairman of the respondent board volunteered to communicate the aforesaid consensus to the superintendent on behalf of the board.

7. The consensus of the board was not recorded in the minutes of the board's meeting of June 20, 1979.

8. The respondent board contends that its consensus did not have to be recorded in the minutes of its meeting, as claimed, because such consensus did not have the legal effect of terminating the superintendent's contract.

9. While agency action, in a legal sense, necessarily requires a vote on an issue by a majority of the membership thereof at a public meeting, a vote on an issue before a public agency, pursuant to §1-21, G.S., may encompass more than an action in this strict legal sense. In this regard, had the respondent board voted not to renew the superintendent's contract on June 20, 1979, as contemplated, such vote would have constituted a vote on an issue pursuant to §1-21, G.S. However, in the strict legal sense the respondent board could have accomplished the same thing by merely allowing the superintendent's contract to expire.

10. It is therefore found that the respondent board's consensus of June 20, 1979 constituted a vote on an issue before a public agency within the meaning of §1-21, G.S.

11. The complainant, by way of relief, asks this Commission to declare null and void the respondent board's illegal consensus of June 20, 1979.

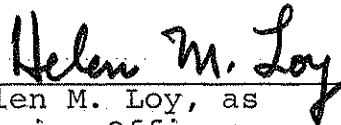
12. Such a declaration by this Commission is inappropriate because the board's consensus was without legal consequence. This is particularly true because it is impossible to undo a communication previously made, in this case the chairman's communication to the Superintendent of the board's consensus and invitation to resign.

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, at its next meeting following the date of Notice of Final Decision hereof, amend the minutes of its June 20, 1979 meeting in order to reflect the board's consensus as outlined in paragraph 6 of the Findings above.

2. Insofar as the board's consensus consisted of a unanimous vote of its members present and voting on June 20, 1979, paragraph 1 of this Order may be complied with by using amendatory language which reflects a vote to communicate to the superintendent, through its chair, an invitation to resign.

3. Insofar as the consensus found in this decision involved a majority vote of the board's membership present on June 20, 1979, the amendment to the board's minutes ordered in paragraph 1 of this Order must also contain language which reflects the negative votes of its dissenting membership.



Helen M. Loy, as
Hearing Officer

Approved by order of the Freedom of Information Commission on February 13, 1980.



Leslie Ann McGuire
Clerk of the Commission