

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
The Backus Hospital,
Complainant

Final Decision

against

Docket #FIC79-204

Commission on Hospitals and
Health Care,
Respondent

February 27, 1980

The above captioned matter was heard as a contested case on November 11, 1979, at which time the complainant 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 commission is a public agency within the meaning of §1-18a(a), G.S.
2. By letter filed September 18, 1979, the complainant alleged that on September 1, 1979 the respondent violated §1-21, G.S. when it met in two separate executive sessions.
3. The respondent moved to dismiss on the ground that the hearing by this Commission was not held within twenty days of the filing of the complaint as required by §1-21i(b), G.S.
4. It is found that the time requirements of §1-21i(b), G.S. are directory and not mandatory, and that therefore this Commission has jurisdiction to hear the above entitled matter.
5. The respondent claimed that this Commission lacked jurisdiction because the gathering which is the subject of the complaint is not a meeting of a public agency under §1-18a(b), G.S. because (a) a panel does not constitute a quorum of the respondent commission; and (b) a panel does not act in a manner which binds the respondent commission or which executes any of the functions of the respondent commission.
6. The respondent commission is charged by §19-73 et seq. to review the annual budgets of the acute care general hospitals in the state.
7. §19-73 et seq. are included in Chapter 334a of the Connecticut General Statutes.

8. Any member of the respondent commission is authorized by §19-73g, G.S. to conduct a inquiry, investigation or hearing under provisiosn of Chapter 334a and to administer oaths and take testimony under oath relative to the matter of inquiry or investigation.

9. Pursuant to §19-73g, G.S., and in accordance with §19-73o(a), G.S., three members of the respondent commission were appointed to conduct a hearing on the budget of the complainant hospital.

10. The complainant alleged at the hearing that the respondent commission violated the Freedom of Information Act when its panel met on September 1, 1979 to consider its decision on the budget of the complainant hospital.

11. It is found that the convening of the panel constitutes a proceeding of the respondent commission to discuss or act upon a matter over which it has supervision, control or jurisdiction.

12. It is concluded, therefore, that the convening of the panel on September 1, 1979 constituted a meeting within the meaning of §1-18a(b), G.S.

13. Shortly after the convening of the panel on September 1, 1979, it went into executive session to confer with legal counsel.

14. The respondent claimed that this executive session was proper under §1-18a(e)(2), G.S. which permits an executive session for the purpose of discussion of strategy and negotiations with respect to pending claims and litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled.

15. It is found that the discussion which the panel held concerning the contested case pending before it does not constitute strategy or negotiations with respect to pending claims and litigation within the meaning of §1-18a(e)(2), G.S.

16. When the panel came out of the first executive session with its attorney, it then immediately went into executive session a second time for the purpose of discussing notes which one of the commissioners had made concerning the testimony at hearings on the budget of the complainant hospital.

17. The notes which were discussed contained that particular commissioner's impressions and evaluations of the evidence which was presented at the aforesaid hearing.

18. The commissioner's notes were discussed at some points during the executive session in question.

19. The respondent commission claimed that the executive session was proper because it fell within the meaning of §1-18a(e)(5), G.S. which permits "discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-19."

20. The respondent commission argued that §1-19(b)(1), G.S., which provides an exemption for preliminary drafts or notes applies to the notes which the member of the panel discussed during the executive session and that therefore the entire executive session was held for a proper purpose under §1-18a(e)(5), G.S.

21. It is found that the notes discussed at the executive session did not constitute notes which are exempt from disclosure under §1-19(b)(1), G.S.

22. It is concluded, therefore, that the executive sessions of the respondent commission held on September 1, 1979 were not held for any proper purpose under §1-18a(e), G.S. and therefore that the respondent violated the open meeting requirements of §1-21, G.S.

23. The complainant requested that the final decision of the respondent concerning its budget be declared null and void.


24. The complainant claims it was harmed because, not having been present at the executive session, it lacked information which was essential for it to make a persuasive presentation prior to the adoption of a final decision by the respondent commission.

25. It is found that the complainant failed to prove that its inability to be present at the executive sessions on September 1, 1979 harmed it to such an extent that this Commission should declare the final decision of the respondent commission null and void.

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

1. The respondent commission shall henceforth comply with §1-18a(e) and §1-21, G.S.

Approved by order of the Freedom of
Information Commission on February 27,
1980


Leslie Ann McGuire
Clerk of the Commission