

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Francis Withington

FINAL DECISION

Complainant

Docket #FIC 85-3

against

June 26, 1985

City and Town of West Haven  
and the West Haven Planning  
and Zoning Commission

Respondents

The above captioned matter was heard as a contested case on April 12, 1985 at which time the complainant and the respondents appeared, stipulated as to certain facts 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. By letter filed with the Commission on January 8, 1985, the complainant alleged that the respondent commission held a special meeting on December 26, 1984 and committed the following violations of the Freedom of Information Act:

- a. A member of the respondent commission did not receive notice of the meeting;
- b. The minutes of the meeting were not filed within seven days;
- c. The mayor's attendance at an executive session was improper;
- d. The executive session was not held for a proper purpose;
- e. A vote on a permit for the Casino Restaurant was not on the agenda for the special meeting.

3. It is found that the respondent commission held a special meeting on December 26, 1984.

4. It is concluded that the complainant, who is not a member of the respondent commission, does not have standing to raise the lack of proper delivery of notice of special meeting to a member of the respondent commission, as required by §1-21, G.S.

5. It is found that the notice of special meeting for December 26, 1984 included two items of business: (1) discussion of "the Special Permit Procedure required under Section 32-2.7 Use Group 10;" and (2) "discussion of PZC staff status."

6. The Special Permit Procedure concerns the issuance of extra hours nightclub liquor permits.

7. At the special meeting in question the respondent commission discussed and acted upon an extra hours nightclub liquor permit for the Casino Restaurant.

8. It is found that the listing of discussion of the Special Permit Procedure on the meeting notice did not constitute notice that the Casino Restaurant permit would be considered or acted upon at the special meeting in question.

9. It is concluded that the discussion and vote concerning the Casino Restaurant permit was in violation of §1-21, G.S., because it was not included in the notice of the special meeting.

10. During the special meeting the respondent commission held an executive session for a discussion of personnel matters.

11. It is found that in the executive session the respondent commission discussed the performance of its chairman.

12. It is found that the chairman is not a member of the respondent commission's staff.

13. It is found that the item "discussion of PZC staff status" in the meeting notice did not constitute notice that the performance of the chairman would be discussed.

14. It is concluded that the discussion of the chairman's performance was in violation of §1-21, G.S., because the matter was not included in the notice of the special meeting.

15. It is found that the mayor was invited by the respondent commission to attend the executive session to present opinion pertinent to the performance of the chairman and that the mayor's attendance at the executive session was limited to the period necessary to present such opinion.

16. It is concluded that the presence of the mayor in the executive session was not in violation of §1-21g, G.S.

17. It is found that minutes of the December 26, 1984 meeting were not available for public inspection until January 4, 1985.

18. It is concluded that the minutes of the December 26, 1984 meeting were not available for public inspection within seven days of the meeting, in violation of §1-21, G.S.

19. It is noted that City of West Haven agencies have been found to be in substantive violation of the Freedom of Information Act in the following cases:

FIC 77-128 (2/21/77) Parks & Recreation Comm'n: failed to file minutes;

FIC 78-143 (3/14/79) Zoning Board of Appeals: excluded public from discussion and vote on 2 zoning variance applications; votes declared null and void;

FIC 81-131 (2/24/82) Allington Bd of Fire Comm'rs: minutes violation and improper procedure for executive session;

FIC 82-128 (3/21/83) Mayor [affirmed in Superior Court]: denial of access to hearing on status of police comm'rs; failed to move to room large enough for all interested persons to attend; warning on civil penalty;

FIC 83-45 (8/26/83) City Council: unnoticed meeting at mayor's house, attended by Republican members, town chairman, mayor and an attorney to discuss Council rescission of redevelopment land sale; gross disregard of open meetings law;

FIC 83-249 (5/9/84) Bd of Police Comm'rs: failed to provide notice of special meeting pursuant to a §1-21c, G.S. request;

FIC 83-253 (5/9/84) Mayor and Republican Councilmen [court appeal pending]: closed meeting at mayor's home at which Council business was decided; vote at next Council meeting declared null and void;

FIC 84-76 (10/24/84) Bd of Police Comm'rs: failed to notify job applicants that they would be discussed in executive session; failed to record votes in the minutes;

FIC 84-91 (12/12/84) Majority Members of City Council [court appeal pending]: closed meeting of Council quorum was not a caucus because consensus reached to add private trash collection to city budget.

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


1. Henceforth, the respondent commission shall strictly comply with the provisions of §1-21, G.S., with respect to only considering business at a special meeting which is on the notice for the meeting.

2. With respect to the violations in paragraphs 9 and 14 of the findings, the members of the respondent commission present at the December 26, 1984 meeting (Martin Forbes, Clement Diana, David P. Salibar and Donald J. Lewis) are ordered to appear at a supplemental hearing in this case so that they may be heard as to whether they were responsible for said violations and whether civil penalty(ies) of not less than twenty dollars nor more than one thousand dollars should be imposed for said violations.

3. Henceforth, the respondent commission shall strictly comply with the provisions of §1-21, G.S., with respect to the timely filing of minutes.

4. It is strongly recommended that the respondent City schedule a workshop on the requirements of the F.O.I.A. for members of city boards and employees.

Approved by order of the Freedom of Information Commission at its regular meeting of June 26, 1985.

  
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Mary Jo Jolicoeur  
Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Francis Withington

FINAL DECISION  
Supplemental Report of  
Hearing Officer

Complainant

Docket #FIC 85-3

against

October 2, 1985

West Haven Planning and Zoning  
Commission; Martin Forbes,  
Clement Diana, Donald J. Lewis,  
David P. Saldibar; and the  
City and Town of West Haven

Respondents

In its June 26, 1985 decision in the above-captioned matter, the Commission ordered the respondents Forbes, Diana, Lewis and Saldibar to appear at a supplemental hearing on the imposition of civil penalties. The supplemental hearing was held on August 8, 1985 at which time the respondents appeared, presented argument and the respondent Lewis testified.

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

1. Paragraphs 1, 3, and 5 - 14 of the findings in the June 26, 1985 decision are incorporated herein.

2. With respect to paragraph 14 of the June 26 decision, it is found that the chairman's resignation was unplanned and resulted from a confrontation with the mayor. The resignation was not discussed by other members of the respondent commission.

3. It is concluded that civil penalties should not be imposed for the resignation discussion because it was unexpected, brief, and no other commissioners participated.

4. With respect to paragraph 9 of the June 26 decision, it is found that Forbes, Diana, Lewis and Saldibar voted to affirm a specific Casino Restaurant permit when the meeting notice only stated that permit procedure would be discussed.

5. A problem concerning the Casino Restaurant permit had been reported in a newspaper. As a result of the specific permit problem, the Planning and Zoning Commission meeting was called to discuss permit approval procedure.

6. At the meeting, Saldibar suggested that action on the specific permit should be taken at another special meeting.

7. Lewis moved to affirm the Casino Restaurant permit. Saldibar seconded the motion and it was voted unanimously by Lewis, Saldibar, Forbes and Diana.

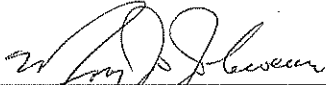
8. It is concluded that the discussion and vote on the Casino Restaurant permit violated §1-21(a), G.S., without reasonable grounds.

9. It is noted that this is the first F.O.I.A. violation found against the respondent commission.

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

1. Pursuant to the provisions of §1-21i(b), G.S., civil penalties are hereby imposed against: Clement Diana, fifty dollars (\$50.00); Martin Forbes, fifty dollars (\$50.00); Donald J. Lewis, fifty dollars (\$50.00); and David P. Saldibar, fifty dollars (\$50.00).

Approved by order of the Freedom of Information Commission at its special meeting of October 2, 1985.

  
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Mary Jo Jolicoeur  
Clerk of the Commission