

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Edward Petraiuolo III and
The Jackson Newspapers

Docket #FIC85-67

Complainants

September 18, 1985

against

Board of Directors of the Shubert
Performing Arts Center

Respondent

The above captioned matter was heard as a contested case on May 28, 1985, at which time the complainants 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. By letter filed with the Commission March 7, 1985, the complainants alleged that the respondent held an executive session "for matters of personnel and other matters that might come before the board" on February 9, 1985.

2. The respondent does not dispute the factual allegations concerning the executive session.

3. It is found that §1-18a(e), G.S. does not permit an executive session to be open-ended and, therefore, if the respondent is a public agency, the executive session held on February 9, 1985 was illegal in so far as it was not limited to a proper purpose under §1-18a(e), G.S.

4. At hearing the respondent denied it was a public agency and argued that the matter should be dismissed for lack of jurisdiction.

5. The respondent is the board of the Shubert Performing Arts Center (SPAC hereinafter), a non-stock charitable corporation which has overseen the management of the reopened Shubert Theatre.

6. On March 28, 1983, the city of New Haven and the SPAC entered into a management agreement and assignment of lease.

7. Under the agreement the city agreed to provide substantive support and financial assistance to SPAC.

8. The support and financial assistance included:

- a) assignment of the lease to SPAC;
- b) payment of rent for the theatre to SPAC in advance of its becoming due (annually \$420,050);
- c) an advance of one hundred thousand dollars (\$100,000) to SPAC for start up expenses;
- d) completion of tenant work for the theatre;
- e) agreement to subsidize the operations of SPAC if such subsidy is necessary for as much as \$500,000 per annum.

9. Under the agreement SPAC undertook, inter alia, the following obligations:

- a) responsibility to operate the theatre in a manner which was artistically and financially sound;
- b) submission annually to the city of New Haven of a budget and financial statements;
- c) submission to the board of aldermen of the city for approval of all appointments to the SPAC board and all amendments to the by-laws;
- d) submission to the city of quarterly reports and itemized accounts of expenses and income;
- e) fund raising to support the Shubert Theatre;
- f) compliance with a resolution of the board of aldermen dated April 6, 1981 which gives guidelines for the composition of the board and restricts the place of residence of the executive director of SPAC to New Haven.

10. In January 1985, responding to the widespread concern regarding the financial condition of the Shubert Theatre, the mayor of New Haven assigned a member of the city controller's office to work with the Shubert staff.

11. The purpose of the new arrangement with the city was to insure the financial stability of the theatre.

12. Whether the respondent is the functional equivalent of a public agency and therefore a public agency within the meaning of §1-18a(a) G.S. depends upon its relation to government which can be analyzed here by examining certain criteria utilized by the Supreme Court in Board of Trustees of Woodstock Academy v. Freedom of Information Commission, 181 Conn 544 (1980).

13. The criteria examined by the Supreme Court in that case are: (1) whether the entity was created by government; (2) the extent of government involvement or regulation; (3) the level of government funding (4) whether the entity performs a government function.

14. It is found that, while SPAC was not created by the city of New Haven, nonetheless, without the financial support of the city, SPAC would not have been able to open the theatre.

15. It is found that the financial involvement of the city of New Haven is substantial.


16. It is found that, as a result of the management contract and assignment of lease, the government involvement with and regulation of SPAC is substantial.

17. It is concluded that, so long as the present management contract and assignment of lease between SPAC and the city of New Haven continues, the respondent board is performing a governmental function and is a public agency within the meaning of §1-18a(a), G.S.

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

1. Henceforth the respondent shall comply with the open meetings provisions of §1-21, G.S.

Approved by order of the Freedom of Information Commission at its special meeting of September 18, 1985.


Mary Jo Jolicœur
Clerk of the Commission