

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Robert Dudley

Complainant

Docket #FIC 85-75

against

Madison Board of Police Commissioners,
Timothy Horan, Margaret Coe,
Edward Guenther and Donald Stone

Respondents

July 9, 1986

The above captioned matter is a contested case which was scheduled pursuant to the order of the Commission in its final decision dated September 18, 1985. The purpose of the scheduled hearing was for the members of the respondent board who were present at the February 18, 1985 meeting to be heard as to whether the illegal emergency meeting was a violation without reasonable ground, whether they were responsible for the violation, or whether pursuant to §1-211(b), G.S. a civil penalty should be imposed. At hearing the named respondents presented evidence and argument.

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

1. The record and the findings of fact and law set forth in Docket #FIC 85-75 are incorporated herein.
2. On February 18, 1985, the named respondents agreed, after talking individually with Chairman Horan, that an emergency meeting should be scheduled immediately to discuss what action should be taken regarding the incident between officers Dudley and Park.

3. In discussing the reasons for scheduling the emergency meeting with members of the respondent board, Chairman Horan did not inform them of the reasons why Captain Darling and Lt. Ferri had chosen not to suspend Park and/or Dudley.

4. In failing to inform the other commissioners of the rationale for the inaction of Darling and Ferri, Horan deprived them of the information they needed to make an informed decision on whether the emergency meeting was warranted.

5. It is concluded therefore that Commissioner Horan was responsible for the illegal emergency meeting on February 18, 1985.

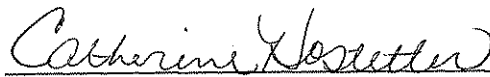
6. It is further concluded that the violation of the law which occurred when the February 18, 1985 emergency meeting was held had no reasonable ground.

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

1. The Commission hereby imposes a civil penalty against Chairman Timothy Horan in the amount of fifty (\$50.00) dollars.

2. Payment shall be tendered by Chairman Timothy Horan at the offices of the Freedom of Information Commission within thirty days of the mailing of a notice of final decision incorporating this order.

Approved by order of the Freedom of Information Commission at its regular meeting of July 9, 1986


Catherine Hostetter
Acting Clerk of the Commission

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Robert Dudley

FINAL DECISION

Complainant

Docket #FIC 85-75

against

Madison Board of Police
Commissioners

September 18, 1985

Respondent

The above captioned matter was heard as a contested case on July 19, 1985 at which time the complainant and the respondent 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 respondent is a public agency within the meaning of §1-18a(a), G.S.

2. By letter filed with the Commission on March 18, 1985, the complainant alleged that a February 18, 1985 meeting of the respondent was not properly noticed and that at a February 25, 1985 meeting, the respondent met in executive session to discuss the complainant's performance, after the complainant requested an open meeting. The complainant alleged that his suspension by the police chief on February 26, 1985 resulted from the February 25th executive session.

3. On the evening of February 17, 1985, shortly before midnight, an argument took place between the complainant, a Madison police officer and a second officer, David Park. Following the incident Park called the chairman of the respondent board and was told to file a written statement in the morning.

4. On the morning of February 18, 1985, Park filed a written complaint with his superior, Lt. David Ferri, charging that Dudley had engaged in improper and threatening conduct.

5. On February 18, 1985, the respondent board's chairman contacted the other board members to inform them of the charges

Park filed against Dudley. The chairman called an emergency meeting at 7:30 p.m. that evening to consider the charges against Dudley.

6. The respondent board did not file a meeting notice 24 hours before the February 18th meeting.

7. Captain Harry Darling telephoned Dudley at approximately 4:30 p.m. on February 18, 1985, and informed him that the respondent board would meet that evening to consider the incident involving Dudley and Park. Dudley informed Captain Darling that because February 18th was a holiday he would not be able to contact his attorney and would not attend the meeting.

8. The respondent board met at 7:30 p.m. on February 18, 1985, and heard testimony from Park. The board then voted that Dudley would be suspended without pay, pending a full investigation by Captain Darling and Lt. Ferri into the charges of conduct unbecoming an officer and threatening a fellow officer.

9. The respondent claimed that the February 18th meeting was an emergency meeting under §1-21, G.S., because the possibility of violence existed between Park and Dudley and the situation required the board's immediate attention.

10. The respondent also claimed that the board needed to meet in emergency session because the police chief was away on vacation.

11. Pursuant to §1-21, G.S., emergency meetings may be held without a special meeting notice only if the meeting must be held within 24 hours; otherwise, there is time to file a special meeting notice. Lebanon v. Wayland, 39 Conn. Sup. 56 (1983).

12. In the absence of the police chief, Captain Darling and Lt. Ferri had the power to suspend officers for 24 hours if necessary to deal with serious disciplinary infractions.

13. Because the senior police officers were authorized to issue 24 hour suspensions, it is concluded that there was no emergency which justified the February 18th emergency meeting.

14. The respondent was informed at the February 18th meeting that Dudley was not scheduled to work until February 21.

15. Therefore, the respondent's claim that its action on February 18th was necessary to keep the two officers apart is without merit, because the meeting could have been postponed after the board was informed that Dudley was not scheduled to work for two days.

16. Dudley was prejudiced by the meeting of the board on February 18th because it was a state holiday and Dudley was unable to contact an attorney to represent him before the board.

17. It is concluded that the respondent board illegally convened on February 18, 1985, without providing special meeting notice pursuant to the provisions of §1-21, G.S.

18. On February 25, 1985, the respondent board held a special meeting for the purpose of receiving the report from Captain Darling and Lt. Ferri on the charges against Dudley.

19. At the February 25th meeting, there was a motion to go into executive session to consider the report. Dudley's attorney requested that discussion of his performance take place in an open meeting, pursuant to the provisions of §1-18a(e)(1), G.S.

20. The motion to go into executive session to consider the report was withdrawn, and instead it was moved to go into executive session to receive the advice of counsel as to what should be done with the report.

21. The investigative report from Captain Darling and Lt. Ferri, which was distributed to the board in the executive session, recommended that both Dudley and Park be disciplined for the incident on February 17th.

22. In the executive session, the board discussed the contents of the report, and then, on the advice of counsel, took no disciplinary action, leaving the decision on discipline to the police chief.

23. It is concluded that the discussion of the report's contents constituted a discussion of the performance of Dudley and Park, and that such discussion was distinct from the discussion with counsel concerning whether the board should take disciplinary action or refer the report to the police chief.

24. When two employees are involved in one incident, each employee has the right under §1-18a(e)(1), G.S., to require that discussion concerning his performance be conducted at an open meeting. Upon Dudley's request, discussion of charges against him must be conducted at an open meeting even if the performance of other employees is thereby incidentally discussed.

25. It is concluded that the respondent violated §§1-18a(e)(1) and 1-21, G.S., by discussing Dudley's performance in executive session.

26. On February 26, 1985, the police chief suspended both Dudley and Park for three days for conduct unbecoming an officer.

27. The complainant Dudley requested that the Commission declare his suspension on February 26, 1985, to be null and void because the suspension resulted from the executive session on February 25, 1985.

28. The Commission declines to declare Dudley's suspension null and void because it finds that the suspension did not result from the executive session on February 25th but from the independent action of the police chief on February 26th.


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 strictly with the provisions of §1-21, G.S., concerning emergency meetings.

2. With respect to the illegal emergency meeting on February 18, 1985, the members of the respondent present at the meeting (Timothy Horan, Margaret Coe, Edward Guenther and Donald Stone) are ordered to appear at a supplemental hearing so that they may be heard as to whether the violation was without reasonable ground, whether they were responsible for the violation, and whether civil penalty(ies) of not less than twenty nor more than one thousand dollars should be imposed for the violation.

3. Henceforth, the respondent shall comply strictly with the provisions of §§1-18a(e)(1) and 1-21, G.S., concerning an employee's right to require that a discussion of an employee's performance be held at an open meeting.

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



Mary Jo Jolicoeur
Clerk of the Commission