

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
William Bieluch,

FINAL DECISION

Complainant

Docket #FIC85-139

against

December 11, 1985

Board of Selectmen of the
Town of Darien,

Respondent

The above captioned matter was heard as a contested case on September 19, 1985 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 is a public agency within the meaning of §1-18a(a), G.S.

2. On June 17, 1985 the respondent convened in executive session at approximately 7:30 p.m. The minutes of the session indicate that the respondent met to discuss police contract negotiations and to discuss retaining outside counsel "to investigate Sec. 7-131n of the Connecticut General Statutes and advise whether or not it applies to Cherry Lawn park."

3. At some time prior to June 17, 1985 the respondent prepared an agenda for a meeting scheduled for June 17, 1985 at 8:00 p.m. The respondent's scheduled meeting convened at 8:23 p.m. on June 17, 1985.

4. During the respondent's scheduled meeting the first selectman read a memorandum to be sent to the planning and zoning commission requesting a mandatory referral for the use of the southwest quadrant at Cherry Lawn for moderate income housing for the elderly. The respondent voted to approve the forwarding of the memorandum.

5. Also at the June 17, 1985 meeting a member of the respondent announced that the respondent was planning to retain a Mr. Fuller as counsel, on the recommendation of town counsel.

6. By letter of complaint filed with the Commission on June 19, 1985 and supplemented on June 20, 1985 the complainant alleged that the executive session which preceded the respondent's June 17, 1985 meeting was held without notice to the public and that

discussion and action upon the Cherry Lawn matter and the hiring of outside counsel improperly took place in the unnoticed executive session. The complainant asked that the actions taken to approve the mandatory referral resolution and to hire outside counsel be declared null and void.

7. The respondent did not dispute the complainant's allegation regarding the unnoticed executive session but claimed that such sessions were routinely held to avoid making members of the public "wait around" while business was conducted behind closed doors and that it is now aware of and follows proper procedures.

8. It is found that the respondent failed to provide notice of the executive session convened at 7:30 p.m. on June 17, 1985, in violation of §1-21(a), G.S.

9. It is also found that while convened in executive session the respondent took action to hire Mr. Fuller as counsel, in violation of §§1-18a(e)(1) and 1-21(a), G.S., which permit only discussion when an executive session is convened to consider the hiring of public officers or employees.

10. Neither the Cherry Lawn resolution nor the hiring of outside counsel appeared on the agenda for the June 17, 1985 meeting of the respondent.

11. The respondent did not vote at the June 17, 1985 meeting to consider business not included on the agenda of the meeting.

12. It is concluded that the respondent violated §1-21(a), G.S. when it discussed and acted upon the Cherry Lawn matter at its June 17, 1985 meeting.

13. The respondent further claims that because the matter of the Cherry Lawn resolution was discussed and "more or less" passed at the respondent's May 20, 1985 meeting, any impropriety with respect to the June 17, 1985 meeting is of little consequence.

14. It is found, however, that the Cherry Lawn issue involved some controversy and was a matter in which there was a fair degree of public interest. Under the circumstances, the Commission finds the respondent's action with respect to Cherry Lawn to be a significant violation.

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

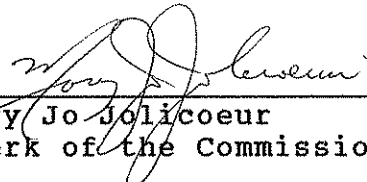
1. The respondent shall henceforth act in strict compliance with the requirements of §1-21(a), G.S. regarding notices of public meetings.

2. The respondent shall henceforth limit the conduct of its business to the announced purposes of its meetings, except where, at a regular meeting, the respondent takes a 2/3 vote to consider other matters as provided in §1-21(a), G.S.

3. The action taken by the respondent at its June 17, 1985 unnoticed executive session with respect to the hiring of counsel is hereby declared null and void.

4. The action taken by the respondent at its June 17, 1985 scheduled meeting with respect to the Cherry Lawn referral is hereby declared null and void.

Approved by order of the Freedom of Information Commission at its regular meeting of December 11, 1985.



Mary Jo Jolicoeur
Clerk of the Commission