

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Philip J. O'Brien and SONO
Improvement Association

Complainants

Docket #FIC 85-215

against

Norwalk Kiwanis Emergency Shelter Inc.

Respondent

April 23, 1986

The above captioned matter was heard as a contested case on March 13, 1986, 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. On October 2, 1985 the complainant O'Brien renewed a request he made to the respondent for copies of certain records pursuant to the Freedom of Information Act.
2. On October 15, 1985 the complainants filed their complaint with the Commission.
3. The respondent did not provide the records because it claimed it was not a public agency, and that, therefore, the Freedom of Information Act did not require it to disclose various public records.
4. Thus, the primary issue in this case is whether the respondent is a public agency within the meaning of §1-18a(a), G.S.
5. The Commission is guided in its consideration of this issue by the reasoning of the Connecticut Supreme Court in Board

of Trustees of Woodstock Academy v. Freedom of Information Commission, 181 Conn. 544 (1980).

6. In Woodstock the Supreme Court announced four criteria which it adopted as a test to determine whether hybrid public/private entities are the functional equivalent of a public agency which falls within the definition of agency set forth at §1-18a(a), G.S.

7. The criteria employed by the Supreme Court are:

- a. whether the entity performs a governmental function;
- b. the level of government involvement or regulation;
- c. the extent of government involvement or regulation;
- d. whether the entity was created by the government.

8. In order to apply the criteria and to determine whether the respondent is the functional equivalent of a public agency, the findings of fact and law herein will be organized under headings corresponding to each of the standards set forth in the Woodstock Academy decision.

I. Whether the Entity was Created by Government:

9. The respondent is a non-profit corporation created to provide an emergency shelter for the homeless; to work with the other agencies and groups to develop a network of services for the homeless population in the area, and to raise funds for the shelter.

10. The respondent corporation replaces an effort to provide emergency shelter for the homeless which had been carried out by the Benedictine Grange, a charitable, non-governmental organization.

11. It was created as a result of the efforts of a variety of community groups including, but not limited to, the Greater Norwalk Community Council, the Kiwanis, and a committee created by the mayor of Norwalk to look into the problem of homelessness.

12. It is concluded that, while there is governmental concern with the problem of homelessness, the respondent was not created by government.

II. The Extent of Government Involvement or Regulation:

13. The city of Norwalk and the state of Connecticut provide funds to house the homeless and for this reason, among others, have an ongoing concern with the problem of housing homeless people.

14. The city of Norwalk pays for housing homeless people in motels and for some of the housing provided by the respondent.

15. After the respondent was incorporated, the mayor of Norwalk appointed an ad hoc site selection committee to assist the shelter to find a permanent location.

16. After a building was purchased by the respondent as its permanent location, the mayor ceremonially signed the deed, and the city corporation counsel volunteered his services and represented the shelter at the closing.

17. Aside from the complex legal provisions governing distribution of state and local funds to organizations which provide housing for homeless people, no evidence was presented, or law cited, which showed that the shelter was in any way differently regulated by the city or the state than any other non-profit corporation which is created for a charitable purpose.

18. While reserving discussion of the respondent's use of state, federal, and local funds for the next section, it is concluded that, when finances are excluded, there is some, but not substantial, governmental involvement with the respondent.

III. The Level of Government Funding:

19. The respondent owns its own building which was purchased with forty thousand dollars donated by the Kiwanis, and a two hundred and fifty-three thousand dollar mortgage.

20. The rehabilitation of the permanent facility cost two hundred and thirteen thousand dollars and was paid for with funds from public sources: a community development block grant, matching funds from the Connecticut department of housing, and funds from the city of Norwalk.

21. Public sources of funding for the operations of the respondent include the Department of Human Resources, the Department of Mental Health, and general assistance reimbursement from the city of Norwalk.

22. The general assistance reimbursement mentioned at paragraph 22, is 15 per cent of the current budget and constitutes a fee for assistance rendered to the Department of Social Services for the city of Norwalk under a contract to shelter the homeless men and women of the city of Norwalk.

23. Approximately 60 percent of the operating budget of the respondent comes from governmental sources, the remainder is received in the form of cash contributions or services.

24. It is found that the public funding received by the respondent is substantial.

IV. Whether the Entity Performs a Governmental Function:

25. The respondent was not created by government, nor is its activity required by state statute or local ordinance.

26. If the respondent were to dissolve its corporation, its by-laws provide that its assets shall be disposed of exclusively for the purposes of the corporation (cited above at paragraph 10), rather than for any other governmental purpose.

27. The board of directors is not appointed by any governmental official or body, but rather by the board of directors, and members may be terminated by a vote of the board of directors.

28. The finances of the corporation are administered by the board of directors.

29. It is found that, while the city of Norwalk, the state of Connecticut, and the federal government implement a variety of programs which assist some of the homeless in the city of Norwalk, the emergency shelter provided by the respondent is not a governmental function.

V. The Respondent is not a Public Agency:

30. It is concluded, therefore, despite the substantial amount of public funding received by the respondent, because the respondent was not created by government, because governmental regulation and involvement in the day to day operations of the respondent is limited, and because the respondent does not perform a governmental function, that the respondent is not 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. The complaint is hereby dismissed.

Approved by order of the Freedom of Information Commission at its special meeting of April 23, 1986.



Karen J. Haggett
Clerk of the Commission