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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Bert Bosse,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-252

Chairman, Board of Finance, Town of Lebanon; Board of
Finance, Town of Lebanon; and Town of Lebanon,
Respondent(s)

January 13, 2015

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 11, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE January 30, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE January 30, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE January 30, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Bert Bosse
Edward B. O'Connell, Esq.

2015-01-13/FIC# 2014-252/Trans/wrbp/PSP//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Bert Bosse,

Complainant

Docket # FIC 2014-252

against

Chairman, Board of Finance,
Town of Lebanon; Board of Finance,
Town of Lebanon; and Town of Lebanon,

Respondents

January 9, 2015

The above-captioned matter was heard as a contested case on October 14, 2014, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. By email dated April 25, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act at its March 27, 2014 special meeting (the "March 27th meeting") by failing to record the votes taken by the respondents concerning adjustments to the Town of Lebanon Board of Education's budget for the 2014-2015 fiscal year.
3. Section 1-225(a), G.S., provides in relevant part that:

[t]he meetings of all public agencies...shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours and shall also be recorded in the minutes of the session at which taken....

4. It is found that the respondent Board of Finance is responsible for preparing and adopting an annual town budget in compliance with Title 7 of the Connecticut General Statutes. It is found that, as part of the budget process, the Board holds regular or special meetings at which the proposed annual budget is deliberated, discussed and compiled. It is found that the Board is statutorily required to present a draft budget to the public at a public hearing.¹ It is further found that after the statutorily required public hearing and receipt of public comment, it has been the practice of the Board to hold additional meetings at which possible revisions to the draft budget may be discussed. It is also found that the Board is statutorily required to vote on a finalized budget to be submitted at the annual town budget meeting.²

5. It is found that the respondents held more than 20 regular or special meetings between December 10, 2013 and March 31, 2014, for the purpose of reviewing the budget estimates submitted by various Town of Lebanon departments and agencies, including the Board of Education, and compiling a draft budget for the Town's 2014-2015 fiscal year.

6. It is found that the respondents held a special meeting on March 27, 2014.

7. It is found that the agenda for the March 27th meeting indicates that the respondents intended to "Consider and act on the 2014-2015 Budget Proposal for the public hearing."

¹ Conn. Gen. Stat. §7-344 provides, in relevant part, that:

Not less than two weeks before the annual town meeting, the board shall hold a public hearing, at which itemized estimates of the expenditures of the town for the ensuing fiscal year shall be presented and at which all persons shall be heard in regard to any appropriation which they are desirous that the board should recommend or reject. The board shall, after such public hearing, hold a public meeting at which it shall consider the estimates so presented and any other matters brought to its attention....

In addition, Conn. Gen. Stat. §7-345 provides that "[e]ach town agency which has expended any appropriation during the past year or is requesting any appropriation for the ensuing year shall report to the board of finance such information as said board requires for its purposes under section 7-344, and said board shall, for such purposes, have access to the books and records of any such agency."

² Conn. Gen. Stat. §7-388 provides, in relevant part, that:

Any municipality complying with the provisions of this chapter shall, at its annual meeting or at a special meeting thereof warned and held for such purpose, fix the date of a special meeting to be held prior to the beginning of the next ensuing fiscal year for the purpose of acting upon its budget, which meeting shall be designated as the annual budget meeting of such municipality. The budget-making authority of such municipality shall thereafter submit any estimates and recommendations required by section 7-344, section 12-122 or any provisions of special acts to the annual budget meeting rather than to the annual town meeting....

8. It is found that the minutes of the March 27th meeting reflect that the respondents discussed various line items in the proposed budget including the Board of Education budget. The minutes also reflect that no action was taken on the budget proposal.

9. At the hearing, the complainant claimed that at the March 27th meeting the respondent Chairman polled each member of the Lebanon Board of Finance regarding certain proposed increases to the Board of Education's budget and that each member answered with a "yes" or "no." The complainant maintained that such action taken by the respondents was in fact a "vote" and that the vote of each respondent board member should have been recorded in the meeting minutes. The complainant also testified that he requested the results of each member's vote and was told that no votes were taken, except for one Board member who informed the complainant that he had voted "yes."

10. The respondents contended that the Board of Finance annually undertakes a time-consuming deliberative process to prepare an annual budget that includes a systematic review of each budget area over the course of several meetings, with inquiries made to Board members as to whether they would likely support a particular budget number presented. They contended that preliminary amounts or placeholders are set, but no formal motion is made or vote taken at the meetings until the Board's review and analysis of the entire proposed budget is completed. One vote is taken on the draft budget proposal in its entirety prior to presenting such proposal to the public at the statutorily required public hearing.

11. It is found that in an attempt to build consensus on certain amounts by which the Board of Education budget might be adjusted and to determine whether additional discussion was necessary, the Chairman asked individual Board members if they *could support* such amounts and they responded with a "yes" or "no." It is found that such inquiries and responses were part of the Board's general discussions and deliberations and not a poll or vote on adjustments to the Board of Education budget.

12. It is further found that the respondents adjourned the March 27th meeting without a motion having been made to amend the Board of Education budget, or the proposed budget in its entirety, and without having taken any action.

13. It is found that on March 31, 2014, the respondents held a special meeting, at which time they unanimously voted, in public, to approve the 2014-2015 Fiscal Year Budget proposal to be presented to the public at the statutorily required public hearing. It is found that this vote was reflected in the minutes for the March 31st meeting and was the only vote taken on the budget prior to the public hearing.

14. It is found that the actions taken by the respondents at the March 27th meeting did not constitute a vote within the meaning of the FOI Act, and therefore, the respondents were not required to record such action in the minutes of the March 27th meeting.

15. It is concluded that the respondents did not violate §1-225(a), G.S., in this matter.

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.


Paula S. Pearlman
as Hearing Officer