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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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Paul Baer,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-781

William Witkowski, Chairman, Board of
Education, Thompson Public Schools; and
Board of Education, Thompson Public Schools,
Respondent(s)

September 12, 2014

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, September 24, 2014**. 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 September 19, 2014**. 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 September 19, 2014**. **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 September 19, 2014**, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: Paul Baer
Anne H. Littlefield Esq. and Jessica Soufer, Esq.

2014-09-12/FIC# 2013-781/Trans/wrbp/LFS//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Paul Baer,

Complainant

against

Docket #FIC 2013-781

William Witkowski, Chairman, Board of
Education, Thompson Public Schools; and
Board of Education, Thompson Public
Schools,

Respondents

September 12, 2014

The above-captioned matter was heard as a contested case on August 7, 2014, at which time the complainant and the 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. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.

2. By e-mail filed December 18, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to make available to the public within 48 hours certain votes taken at their meeting of November 12, 2013, and by failing to record certain votes in the minutes of such meeting.

3. Section 1-225(a), G.S., provides in relevant part:

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. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available, except that no public agency of a political subdivision of the state shall be required to post such minutes on an Internet website. Each public agency shall make, keep and maintain a record of the proceedings of its meetings.

4. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives notice in fact that such meeting was held.

5. It is found that the record of votes of the November 12, 2013 meeting was filed in the town clerk's office and made available to the public on November 13, 2013.

6. The complainant contends that he had 30 business days, not 30 calendar days, from November 13, 2013, to file his notice of appeal. He cites §§1-206(a) and 1-225(g), G.S., to support his claim.

7. Section §1-206(a), G.S., provides in relevant part:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made ... within four business days of such request [.]

8. Section 1-225(g), G.S., provides in relevant part:

In determining the time within which or by when a notice, agenda, record of votes or minutes of a special meeting or an emergency special meeting are required to be filed under this section, Saturdays, Sundays, legal holidays and any day on which the office of the agency, the Secretary of the State or the clerk of the applicable political subdivision or the clerk of each municipal member of any multitown district or agency, as the case may be, is closed, shall be excluded.

9. The complainant claims that because §§1-206(a) and 1-225(g), G.S., use a business day count, it is reasonable to conclude that the "thirty days" limitation period in §1-206(b)(1), G.S., also refers to 30 business days.

10. It is concluded, however, that had the legislature intended to include only business days in the 30-day period within which an appeal must be filed, it would have expressly done so, as it did in §§1-206(a) and 1-225(g), G.S., and also in §1-230, G.S. ("If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day.")

11. Moreover, §1-21j-15 of Regs. Conn. State Agencies provides:

Computation of any period of time referred to in sections 1-21j-1 to 1-21j-57, inclusive, of the Regulations of Connecticut State Agencies begins by first counting the day after the day on which the precipitating event occurs, and ends on the last day of the period so computed. The last day of the period is to be included unless it is a day on which the principal office of the commission is closed, in which event the period shall run until the end of the next following business day. If the period of time, including the intervening Saturdays, Sundays and legal holidays, is five (5) days or less, such Saturdays, Sundays and legal holidays shall be excluded from the computation; otherwise such days shall be included in the computation.

12. It is concluded, therefore, that §1-206(b)(1), G.S., requires that an appeal be filed within 30 calendar days of the alleged violation.

13. It is found that thirty days from November 13, 2013, when the record of votes was filed in the town clerk's office and made available to the public, was December 12, 2013.

14. It is found that the complainant failed to file his notice of appeal by December 12, 2013.

15. It is concluded, therefore, that the Commission is without jurisdiction to hear the allegations concerning the failure to record and make available to the public certain votes taken at the respondents' meeting of November 12, 2013.

16. With respect to the complainant's allegation that the respondents failed to record votes in the minutes of the November 12, 2013 meeting, it is found that such minutes were filed in the town clerk's office on November 19, 2013.

17. It is found that the complainant filed his notice of appeal within thirty days of November 19, 2013.

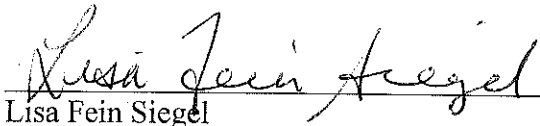
18. It is concluded, therefore, that the Commission has jurisdiction to hear the complainant's allegation that the respondents failed to record certain votes in the minutes of their meeting of November 12, 2013.

19. It is found that the votes that the respondents failed to record in their minutes were taken in response to a motion to enter executive session.

20. It is found that the respondents concede that they did not record such votes. It is concluded that the respondents violated §1-225(a), G.S., by failing to record such votes in the minutes of their meeting of November 12, 2013.

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

1. Henceforth, the respondents shall comply with the requirements of §1-225(a), G.S.



Lisa Fein Siegel
as Hearing Officer