

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by  
Allan J. Grotheer,  
Complainant

Report of Hearing Officer

against

Docket #FIC78-260

Town of Cromwell; and Board of  
Selectmen of the Town of  
Cromwell,

March 27, 1979

Respondents

The above captioned matter was heard as a contested case on February 13, 1979, at which time all of the parties appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondent board is a public agency as defined by §1-18a(a), G.S.
2. By letter filed with this Commission on December 18, 1979, the complainant alleged that his appointment to a public office was the subject of the respondent board's meeting of December 7, 1978.
3. By same letter, the complainant further alleged that the aforesaid executive session discussion was held in violation of his right to have such discussion held at an open meeting.
4. The respondent board has the power to appoint members to a newly created planning and zoning commission.
5. The complainant was the former chairman of the respondent town's zoning commission. Such commission was dissolved under the charter change which created the new planning and zoning commission.
6. The respondent board invited the complainant, together with four other former zoning commission members, to proceed with it into the executive session of December 7, 1978. All five individuals agreed to such session at the time of the respondent board's public vote in favor of an executive session for the stated purpose of discussing appointments to the newly created commission.
7. All five individuals fully participated in the respondent board's executive session discussion. They were provided with an opportunity to contradict any opinion expressed by any person present therein concerning the subject of their appointment.

8. This Commission notes that §1-18a(e)(1), G.S. must be read together with §1-21g, G.S. which requires that attendance at an otherwise properly called executive session shall be limited to agency members with the exception of any "...persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion...."

9. Under §1-21g, G.S., the complainant had no right to be present in executive session to listen to the opinion given by any person invited by the respondent board into its executive session.

10. Similarly, the complainant had no right, under the limitations set forth in §1-21g, G.S., to listen to the executive session deliberations of the members of the respondent board.

11. That portion of §1-18a(e)(1), G.S. which permits the complainant to require an open meeting provides the complainant with the only opportunity to attend, as of right, the kind of discussion that occurred in the aforesaid executive session due to his consensual agreement with the respondent board.

12. The complainant, having received the full benefit of the right accorded under §1-18a(e)(1), G.S., may not now challenge the legality of such executive session by a claim brought under §1-18a(e)(1), G.S.

13. It is therefore concluded that the complainant waived his right to an open meeting, as provided in §1-18a(e)(1), G.S., by failing to assert it at the time of the respondent board's vote to go into executive session.

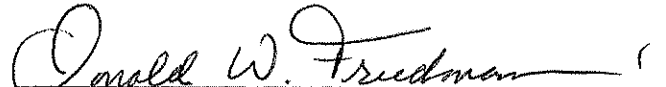
14. It is further concluded that the complainant was not wrongfully denied the right to attend a meeting.

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.


2. §1-18a(e)(1), G.S., like all provisions of the Freedom of Information law, is an access provision and may not be used by a public officer or employee, or a prospective public officer or employee, as an opportunity for deciding for the public what he or she conceives would be good for the public to know. For this reason, the complainant's contention that he had the right to be present throughout the aforesaid executive session, and the right to choose which opinions about him he wished to have aired or rebutted publicly, must fail.

3. The Commission advises the respondents that they must limit attendance at their executive sessions in accordance with §1-21g, G.S., as outlined in paragraphs 8 through 11 of the Findings hereinabove.

  
Commissioner Donald Friedman

as Hearing Officer

Approved by order of the Freedom of Information Commission on April 11, 1979.

  
Leslie Ann McGuire  
Acting Clerk of the Commission