

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Manchester Memorial Hospital;
and Connecticut Hospital
Association, Inc.

Complainants

Report of Hearing Officer

against

Docket #FIC79-183

State of Connecticut; Commission
on Hospitals and Health Care;
Commissioners Glenn Moon, Darius
Spain and Howard Wry,

March 26, 1980

Respondents

The above captioned matter was heard as a contested case on October 31, 1979 and November 16, 1979, at which times the complainants and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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

1. The respondents Moon and Spain constitute a quorum of a panel appointed by the respondent commission to conduct a budgetary hearing on the proposed operating and capital expenditures budget submitted by the complainant hospital.
2. The respondents Moon and Spain met on August 20, 1979, August 29, 1979, September 6, 1979, September 8, 1979 and September 13, 1979.
3. The complainants first allege that notice and minutes were not properly filed for the aforesaid meeting of August 20, 1979.
4. It is found that a calendar of hearings, marked Complainant's Exhibit A, which was posted in the office of the Secretary of the State, constitutes a proper notice of meeting within the meaning of §1-21, G.S.
5. It is further found that the transcript of such hearing, Complainant's Exhibit G, more than meets the minimum minutes keeping requirements set forth in §1-21, G.S.
6. The complainants next contend that the aforesaid meeting of August 29, 1979 was held without proper notice and minutes of meeting.
7. Ordinarily, the items of business listed in a notice of special meeting may be taken out of sequence and such variance does not present an FOI question.

8. However, the notice to the meeting of August 29, 1979, Complainant's Exhibit A, committed the respondents to hearing the complainant hospital's budget at 1:00 p.m.

9. In fact, such matter was taken up at 10:30 a.m. in the time slot set for conducting a budgetary hearing on another hospital's budget.

10. Failure to comply with the preordained time schedule for taking up business at its special meeting therefore constitutes a technical failure of notice under §1-21, G.S.

11. The complainants did not show prejudice as a result of such time change. In this regard, the complainant hospital was present for the entire hearing and the complainant association was present for a substantial portion thereof.

12. It is further found that the transcript of such hearing, Complainant's Exhibit G, more than meets the minimum minutes keeping requirements of §1-21, G.S.

13. The complainants next allege that the aforesaid meeting of September 6, 1979 was held without providing sufficient notice and minutes; and further, that an illegal discussion occurred thereat in executive session.

14. It is found that Complainant's Exhibit A constitutes proper meeting notice within the meaning of §1-21, G.S.

15. Votes were taken on September 6, 1979 relating to the insertion or deletion of certain expenses proposed in the hospital's budget.

16. Such votes are not reflected in the minutes of September 6, 1979, Complainant's Exhibit H, as required by §1-21, G.S.

17. Such deficiency, however, is nonprejudicial because such actions are reflected in the decision proposal prepared by the panel pursuant to §4-179, G.S., marked Complainant's Exhibit E.

18. Lastly, 30 minutes of the panel's meeting which lasted 4 hours and 30 minutes, were spent in executive session to discuss some of the legal claims raised by the complainant hospital during the course of the hearings held on the hospital's proposed operating and capital expenditures budget.

19. It is found that such discussion did not constitute strategy and negotiations with respect to pending claims and litigation within the meaning of the purpose defined as proper under §1-18a(e)(2), G.S. In this regard, this Commission has long ago interpreted the applicable scope of such exemption as being limited to matters pending before the courts.

20. It is therefore found that the complainants were wrongfully excluded from that portion of the September 6, 1979 meeting held in executive session.

21. Such exclusion is not prejudicial because the rulings that were made by the panel relative to the hospital's legal claims were made known to the hospital and were inserted in the decision proposal prepared by the panel, pursuant to §4-179, G.S.

22. The complainants next allege that the panel's meetings of September 8 and 13, 1979 were deficient with respect to notice and minutes and the timeliness of filing such minutes.

23. The aforesaid calendar, Complainant's Exhibit A, constitutes good and sufficient notice for the aforesaid meetings, pursuant to §1-21, G.S.

24. Minutes thereof were filed in accordance with the requirements of §1-21, G.S., with the exception of the meeting of September 8, 1979, which failed to reflect a vote to approve the minutes of the September 6, 1979 meeting.

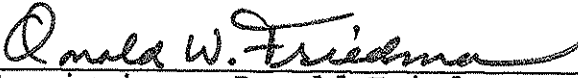
25. It was not proved that such minutes were not filed in a timely fashion.

26. In conclusion, the report of the hearing panel should not be declared null and void, as sought by the complainants, because the respondents substantially complied, during a difficult course of hearings, with the open meeting requirements of the Freedom of Information Act.

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

1. Henceforth, the respondents shall not meet in executive session under §1-18a(e)(2), G.S. while deliberating on the hospital's proposed operating and capital expenditures budget, under facts described in paragraphs 18-20 of the Findings hereinabove.

2. Henceforth, the record of all votes shall be included in the minutes of the meeting at which such votes were taken, as required by §1-21, G.S.



Commissioner Donald Friedman
as Hearing Officer

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Complainants

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Spain and Howard Wry,

Respondents

FINAL DECISION ON
RESPONDENTS' MOTION
TO DISMISS

Docket #FIC79-183

February 13, 1980

The above captioned matter was heard as a contested case on October 31, 1979 and November 16, 1979, at which times both the complainants and respondents appeared and presented testimony, exhibits and argument on the complaint.

On October 26, 1979, the respondents filed a Motion to Dismiss. Before proceeding to a presentation of the evidence on October 31, 1979, argument was heard concerning the merit of the respondents' Motion to Dismiss. It was decided at such time that a decision proposal thereon would be prepared and submitted to the Commission prior to the preparation of a decision proposal relating to matters of evidence.

The factual allegations contained in the complainants' Notice of Appeal were admitted as true only for the purpose of reaching the jurisdictional issues raised in the respondents' Motion to Dismiss.

Written legal arguments on the Motion to Dismiss were filed subsequent to October 31, 1979.

After consideration of the Notice of Appeal, Motion to Dismiss and the oral and written legal arguments on the Motion to Dismiss, the following facts are found:

1. The complainants filed a written notice of appeal with the Commission on September 17, 1979.

2. The Commission issued a Notice of Hearing and Order to Show Cause directing the complainants and the respondents to appear at 30 Trinity Street, Hartford, Connecticut, on October 31, 1979 at 10 a.m., at which time it would hold a hearing on the merits of the complainants' appeal.

3. The first ground of the respondents' Motion to Dismiss concerns the question of whether the Commission has jurisdiction to hear an appeal that is not commenced within twenty days after the Commission's receipt of the notice of appeal in accordance with §1-21i(b), G.S.

4. The twenty-day time period set forth in §1-21i(b), G.S. is directory and not mandatory.

5. It is therefore found that the Commission has jurisdiction to hear an appeal commenced after the twenty day period set forth in §1-21i(b), G.S.

6. Membership of the respondent commission consists of seventeen persons pursuant to §19-73c, G.S.

7. Ten members of the respondent commission constitute a quorum pursuant to §19-73e, G.S.

8. On July 3, 1979, the complainant hospital submitted its proposed operating and capital expenditures budget for the fiscal year October 1, 1979 through September 30, 1980.

9. On August 7, 1979, the respondent commission notified the complainant hospital that a hearing would be held on said budget on August 20, 1979.

10. The respondent commission is required to hold such a budgetary hearing in the event that it denies or modifies the proposed operating and capital expenditures budget submitted by the hospital, if the hospital so requests, in accordance with §19-73o, G.S.

11. The chairman of the respondent commission appointed a panel, consisting of three members of the respondent commission, to conduct the aforesaid budgetary hearing. In this regard, respondents Moon, Spain and Wry were the members so appointed.

12. The aforesaid panel met on August 20, 1979, August 29, 1979, September 6, 1979, September 8, 1979 and September 13, 1979, at which times it made rulings on evidence, issued orders concerning the conduct of its proceedings and decided motions.

13. The complainants allege in their appeal that various requirements of §1-21, G.S. concerning agendas, notice, the recording of votes, minutes and the holding of meetings in executive session, were not followed by the panel on the aforesaid dates.

14. The respondents' Motion to Dismiss presents the question of whether or not the gatherings of the respondent commission's three-member panel on the aforesaid dates constitute meetings of a public agency within the meaning of the Freedom of Information law. The respondents contend that such gatherings are not meetings as defined thereunder and that this Commission is therefore without jurisdiction over the present appeal.

15. The respondents, jointly and severally, constitute public agencies within the meaning of §1-18a(a), G.S.

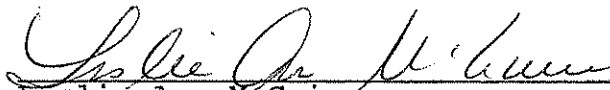
16. The respondents have supervision, control, jurisdiction or advisory power over the complainant hospital's operating and capital expenditures budget.

17. The aforesaid gatherings of the respondent commission's panel are therefore found to constitute meetings of a public agency within the meaning of §1-18a(b), G.S.

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

1. The Motion to Dismiss is hereby denied.

Approved by order of the Freedom of
Information Commission on February 13,
1980



Leslie Ann McGuire
Clerk of the Commission

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5. It is therefore found that the Commission has jurisdiction to hear an appeal commenced after the twenty day period set forth in §1-21i(b), G.S.

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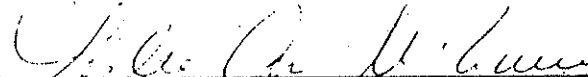
16. The respondents have supervision, control, jurisdiction or advisory power over the complainant hospital's operating and capital expenditures budget.

17. The aforesaid gatherings of the respondent commission's panel are therefore found to constitute meetings of a public agency within the meaning of §1-18a(b), G.S.

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

1. The Motion to Dismiss is hereby denied.

Approved by order of the Freedom of
Information Commission on February 13,
1980



Leslie Ann McGuire
Clerk of the Commission

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2. The respondents Moon and Spain met on August 20, 1979, August 29, 1979, September 6, 1979, September 8, 1979 and September 13, 1979.
3. The complainants first allege that notice and minutes were not properly filed for the aforesaid meeting of August 20, 1979.
4. It is found that a calendar of hearings, marked Complainant's Exhibit A, which was posted in the office of the Secretary of the State, constitutes a proper notice of meeting within the meaning of §1-21, G.S.
5. It is further found that the transcript of such hearing, Complainant's Exhibit G, more than meets the minimum minutes keeping requirements set forth in §1-21, G.S.
6. The complainants next contend that the aforesaid meeting of August 29, 1979 was held without proper notice and minutes of meeting.
7. Ordinarily, the items of business listed in a notice of special meeting may be taken out of sequence and such variance does not present an FOI question.

8. However, the notice to the meeting of August 29, 1979, Complainant's Exhibit A, committed the respondents to hearing the complainant hospital's budget at 1:00 p.m.

9. In fact, such matter was taken up at 10:30 a.m. in the time slot set for conducting a budgetary hearing on another hospital's budget.

10. Failure to comply with the preordained time schedule for taking up business at its special meeting therefore constitutes a technical failure of notice under §1-21, G.S.

11. The complainants did not show prejudice as a result of such time change. In this regard, the complainant hospital was present for the entire hearing and the complainant association was present for a substantial portion thereof.

12. It is further found that the transcript of such hearing, Complainant's Exhibit G, more than meets the minimum minutes keeping requirements of §1-21, G.S.

13. The complainants next allege that the aforesaid meeting of September 6, 1979 was held without providing sufficient notice and minutes; and further, that an illegal discussion occurred thereat in executive session.

14. It is found that Complainant's Exhibit A constitutes proper meeting notice within the meaning of §1-21, G.S.

15. Votes were taken on September 6, 1979 relating to the insertion or deletion of certain expenses proposed in the hospital's budget.

16. Such votes are not reflected in the minutes of September 6, 1979, Complainant's Exhibit H, as required by §1-21, G.S.

17. Such deficiency, however, is nonprejudicial because such actions are reflected in the decision proposal prepared by the panel pursuant to §4-179, G.S., marked Complainant's Exhibit E.

18. Lastly, 30 minutes of the panel's meeting which lasted 4 hours and 30 minutes, were spent in executive session to discuss some of the legal claims raised by the complainant hospital during the course of the hearings held on the hospital's proposed operating and capital expenditures budget.

19. It is found that such discussion did not constitute strategy and negotiations with respect to pending claims and litigation within the meaning of the purpose defined as proper under §1-18a(e)(2), G.S. In this regard, this Commission has long ago interpreted the applicable scope of such exemption as being limited to matters pending before the courts.

20. It is therefore found that the complainants were wrongfully excluded from that portion of the September 6, 1979 meeting held in executive session.

21. Such exclusion is not prejudicial because the rulings that were made by the panel relative to the hospital's legal claims were made known to the hospital and were inserted in the decision proposal prepared by the panel, pursuant to §4-179, G.S.

22. The complainants next allege that the panel's meetings of September 8 and 13, 1979 were deficient with respect to notice and minutes and the timeliness of filing such minutes.

23. The aforesaid calendar, Complainant's Exhibit A, constitutes good and sufficient notice for the aforesaid meetings, pursuant to §1-21, G.S.

24. Minutes thereof were filed in accordance with the requirements of §1-21, G.S., with the exception of the meeting of September 8, 1979, which failed to reflect a vote to approve the minutes of the September 6, 1979 meeting.

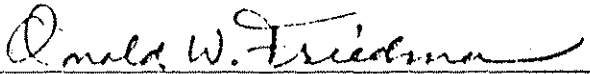
25. It was not proved that such minutes were not filed in a timely fashion.

26. In conclusion, the report of the hearing panel should not be declared null and void, as sought by the complainants, because the respondents substantially complied, during a difficult course of hearings, with the open meeting requirements of the Freedom of Information Act.

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

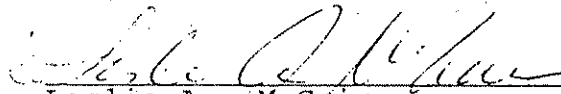
1. Henceforth, the respondents shall not meet in executive session under §1-18a(e)(2), G.S. while deliberating on the hospital's proposed operating and capital expenditures budget, under facts described in paragraphs 18-20 of the Findings hereinabove.

2. Henceforth, the record of all votes shall be included in the minutes of the meeting at which such votes were taken, as required by §1-21, G.S.



Commissioner Donald Friedman
as Hearing Officer

Approved by order of the Freedom of Information Commission on
April 9, 1980.



Leslie Ann McGuire
Clerk of the Commission