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| CV 17 6035943 S | : | SUPERIOR COURT |
| CITY OF MERIDEN | : | JUDICIAL DISTRICT |
| V. | : | OF NEW BRITAIN |
| FREEDOM OF INFORMATION COMMISSION | : | JANUARY 29, 2018 |

**MEMORANDUM OF DECISION**

The plaintiff, the City of Meriden (the city), appeals from a November 16, 2016 final decision of the freedom of information commission (FOIC)[1], holding that an improper meeting of a leadership group of city council members occurred on January 3, 2016, with the results of the meeting made part of the agenda of the city council meeting of January 16, 2016.[2]

The complainants filed their complaint, a hearing was held thereon, and a report of the hearing officer was issued on July 28, 2016. The FOIC heard the parties contentions on the

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[1]The Meriden Record Journal and a reporter were the complainants at the FOIC; they were served by the city in this administrative appeal, but did not take part in the court proceeding.

[2]The court finds that, in light of the FOIC's determination, the city is sufficiently aggrieved under General Statutes § 4-183 (a).

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proposed final decision and issued the final decision on November 16, 2016. The final decision provided in relevant part:

1. The respondents are public agencies within the meaning of § 1-200(1), G.S.

2. By letter filed January 25, 2016, the complainants appealed to this Commission, alleging that the respondents violated the FOI Act by holding an unnoticed and private meeting sometime before their properly noticed meeting of January 19, 2016.

3. Section 1-225(a), G.S., provides in relevant part: "The meetings of all public agencies . . . shall be open to the public."

4. The respondents claim that the gathering at issue, which occurred on January 3, 2016, was not a "meeting" within the meaning of § 1-200(2), G.S., because (a) communication at the gathering was limited to notice of meetings of any public agency or the agendas thereof; or (b) less than a quorum was present at the gathering.

5. Section 1-200(2), G.S., provides in relevant part:

> 'Meeting' means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" does not include: . . . communication limited to notice of meetings of any public agency or the agendas thereof.

6. It is found that a quorum of the respondent city council is seven.

7. It is found that the four political leaders of the respondent council, i.e., the majority and minority leaders and their deputies, gather regularly with the mayor and the city manager. It is found that the purpose of the gathering is for the city manager to inform the leadership about

issues and concerns that the city council may need to address. It is found that the group decides whether an issue requires city council action, and when necessary, the group discusses and drafts a resolution to go on the agenda of a city council meeting.

8. It is found that the group intentionally does not have a quorum of the city council present at their leadership gatherings.

9. It is found that the leadership group met with the city manager and the mayor in January 3, 2016, to discuss, in part, a resolution authorizing the formation of a City Manager Search Committee. It is found that the group drafted the one-page resolution, which included the names of people to be appointed to the committee and detailed the duties of such committee, including recommending to the city council suitable candidates for the position of City Manager.

10. It is found that the leadership group met to discuss or act upon a matter over which the leadership and the city council as a whole has supervision and control.

11. It is found that the leadership brought forward the resolution at the city council meeting of January 19, 2016. It is found that the resolution was placed on the council's consent calendar. Based on the respondents' minutes of the January 19, 2016 meeting, of which the Commission takes administrative notice, it is found that the resolution was adopted at the council meeting without discussion or change.

12. With respect to the respondents' first claim, that the gathering on January 3, 2016 was not a "meeting" within the meaning of § 1-200 (2), G.S., because communication at the gathering was limited to notice of meetings or the agendas thereof, [this was factually not the case].

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14. It is found that the communications at the January 3, 2016 leadership gathering were not limited to notice of meetings or the setting of agendas, within the meaning of § 1-200(2), G.S.

15. With respect to the respondents' [second] claim that the leadership gathering was not a "meeting" within the meaning of § 1-200(2), G.S., because a quorum was not present, § 1-

200(2), G.S. provides three alternate definitions of meeting, of which only two by their terms require the presence of a quorum.

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32. Based on the above review of relevant case law, it is concluded that EMSC and its progeny are more applicable to the facts in this matter than Town of Windham.

33. It is found that the gathering of the council's leadership with the mayor and the city manager was at least implicitly authorized by the city council as a whole. It is also found that the leadership gathering constituted a step in the process of agency-member activity, in that the group decided what issue to bring before the council and drafted a detailed resolution for the council's consideration.

34. It is found, therefore, that the leadership gathering on January 3, 2016 was a "proceeding" within the meaning of § 1-200(2), G.S., and that such proceeding constituted a "meeting" within the meaning of § 1-200(2), G.S.

35. It is concluded that the respondents violated § 1-225(a), G.S., by failing to properly notice such meeting of January 3, 2016.

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 strictly comply with the open meeting requirements of § 1-225(a), G.S.

2. Although not raised in the complaint, the respondents are advised that the leadership group may in its own right constitute a "committee of" the city council, pursuant to § 1-200(1), G.S. (Record, pp. 107-112).

In this appeal, the city has raised only what the FOIC deemed the second argument (see Finding of Fact # 15), namely that as a matter of law, the meeting by the leadership group was

not a meeting under the Freedom of Information Act, and that the FOIC erred in holding otherwise when a quorum of members was not present.

"Under the [Uniform Administrative Procedure Act, § 4-166 et seq.], it is [not] the function [of the trial court or] of this court to retry the case or to substitute its judgment for that of the administrative agency. Even for conclusions of law, the court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . [Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . .

"Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . .

has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation. . . .

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such test in plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Citations omitted; internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, 310 Conn. 276, 281-283 (2013).

With regard to the factual findings of the FOIC, our Supreme Court has stated: "[T]he scope of that review is very restricted . . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's finding of basic fact and whether the conclusions drawn from those facts are reasonable." *Board of Selectmen* v. *Freedom of Information Commission*, 294 Conn. 438, 446 (2010) (one issue raised was whether the FOIC had properly determined that an emergency meeting was not justified).

The city claims that the definition of "meeting" in § 1-200 (2) has been decided conclusively by our Appellate Court in the *Town of Windham* litigation. The requirement of a quorum for all meetings has been settled. Therefore neither this court, as a trial court, nor the FOIC may overrule the binding precedent of an appellate body.

However, in *Meriden Board of Education* v. *Freedom of Information Commission*, Superior Court, judicial district of New Britain, Docket No. CV 99 0496503 (June 6, 2000), this court stated as follows: "Two Appellate Court cases show the distinction in these definitions. In *Emergency Medical Services Commission* v. *Freedom of Information Commission*, 19 Conn. App. 352 (1989), the Appellate Court held that attendance by less than a quorum of members of the Emergency Medical Services Commission at a presentation in the mayor's office did constitute a 'proceeding' of the agency. Finding a 'proceeding,' the Appellate Court concluded that the definition of meeting might be satisfied without the requirement of a quorum. As a matter of fact, however, the court concluded that FOIC had failed to establish that a 'meeting' had occurred. *Id.*, 356. On the other hand, in *Town of Windham* v. *FOIC*, 48 Conn. App. 529, cert. granted, 245 Conn. 913 (1998), appeal dismissed, 249 Conn. 291 (1999), the Appellate Court held that a 'gathering' of less than a quorum of a town board of selectmen was not a meeting. This decision relied on the phrase 'convening or assembly of a quorum of a multimember public agency' in the second sentence of § 1-200(2) to reach its decision."

The court continues to adhere to the statutory interpretation set forth in *Meriden Board.* The court concludes that the *Windham* holding is not completely determinative and therefore not binding on the issue. Rather, there are times, factually, where certain agency members are merely "convening" and there is a requirement of a quorum under § 1-200 (2); and there are times, factually, where agency members, in the language of the FOIC in Finding of Fact 33, are gathering with the implicit authorization of the city council as a whole and this gathering "constituted a step in the process of agency-member activity."

The record here supports the FOIC determination in Finding 33 that "the group decided what issue to bring before the council and drafted a detailed resolution for the council's consideration." The FOIC's factual findings and its conclusions thereunder are supported by substantial evidence. See transcript, Record pages 57, 64, 72, and 84 that illustrate that the leadership group reached the merits of the selection of the city manager, including discussing appropriate applicants.

Since the FOIC properly concluded that a meeting did occur here, the appeal is dismissed.

So Ordered

Henry S. Cohn, J.T.R.