

Can There be a “Meeting” Under the FOIA in the Absence of a Quorum? The Appellate Court Just Spoke (but stay tuned).

Education Law Notes

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By Mark Sommaruga

A common view has been that in the absence of a quorum, a “meeting” of a public agency that would be subject to Connecticut’s Freedom of Information Act (“FOIA”) cannot occur. For example, the Connecticut Appellate Court previously ruled that a gathering of four members of an eleven-member board of selectmen to discuss procedural strategy for an upcoming board meeting was not a “meeting” subject to the FOIA due to lack of a quorum. *Town of Windham v. FOIC*, 48 Conn. App. 529 (1998), *appeal dismissed*, 249 Conn. 291 (1999). However, what has created a quandary is the provision in the FOIA’s definition of a “meeting” that includes “**any hearing or proceeding of a public agency**”, which, unlike the rest of the definition, does **not** require the presence of a quorum.

Both Connecticut’s Freedom of Information Commission (“FOIC”) and the courts have found in various instances that a “proceeding” constituted a “meeting” covered by the FOIA, even in the absence of a quorum. For example, a Superior Court judge ruled that a recess in a school board meeting for the purpose of reviewing *Robert’s Rules of Order* was a “proceeding” of the board from which the public was unlawfully excluded, even though less than a quorum of the board was involved in the review and the reviewing board members reported to the full board in public session after the recess. *Meriden Board of Education v. FOIC*, 2000 WL 804597 (Conn. Super. 2000). In *McCreven v. Conservation Commission, Town of Woodbridge*, #FIC 2012-113 (February 21, 2013), a commission did not have a quorum present and thus adjourned its meeting, but the members who were present remained and discussed the matters on the meeting agenda. The FOIC concluded that this “informal information session” held by the remaining members constituted a “hearing” or “proceeding” under the FOIA, and thus was a “meeting” requiring the production of minutes.

Now, however, in *City of Meriden v. FOIC*, 191 Conn. App. 648 (August 6, 2019), the Appellate Court appears to have narrowed the circumstances in which a “proceeding” (or “hearing”) covered by the FOIA will be found to have taken place. In this case, the four political leaders of the Meriden City Council (the majority and minority leaders and their deputies) gathered at City Hall with the Mayor and the retiring City Manager to discuss the search for a new City Manager. This City Council “leadership group”, which (supposedly) met with the Mayor and the City Manager regularly to remain informed about issues that the City Council might need to address, reached a consensus to submit a resolution to create a City Manager search committee; the

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resolution was adopted by the City Council at its next meeting without any discussion. The FOIC found that the leadership group’s gathering was a “proceeding” of the City Council, despite the absence of a quorum of the Council, because the gathering 1) took place with at least the implicit authorization of the City Council as a whole, and 2) “constituted a step in the process of agency-member activity.” In passing, the FOIC noted that the leadership group may, in its own right, constitute a “committee” of the City Council”, which (as a separate agency under the FOIA) would then be subject to the FOIA.

The Appellate Court reversed the FOIC’s decision. The Appellate Court looked to the ordinary meaning of the terms “proceeding” and “hearing” and noted that they refer “to a process of adjudication” that is done by courts and administrative agencies that usually involves the taking of testimony, the consideration of evidence, and the issuance of findings (and even remedies). The Court noted that such a process “falls outside the scope of activities conducted during the leadership group gathering”. Since the leadership group’s gathering was not a “hearing” or “proceeding,” it would instead be covered by the portions of the FOIA “meeting” definition that require a quorum, and the gathering of the leadership group consisting of less than a quorum of the City Council members thus did not constitute a “meeting” under the FOIA.

So do we have an answer? In my recent book on the FOIA, I noted that there was some inconsistency between the courts and the FOIC on the issue of quorums, and that until there is a final judicial resolution of this inconsistency, public agencies are cautioned that a non-quorum gathering could constitute a “proceeding” and thus a “meeting” under the FOIA, especially where it is deemed to have been part of the overall conduct of the agency’s business. *Understanding Connecticut’s Freedom of Information Act*, (order form) by Mark J. Sommaruga, Esq. (5th Edition, 2018), at p. 8. *City of Meriden v. FOIC*, with its apparent limitation of the terms “hearing” and “proceeding” to almost trial-like endeavors, could constitute such a resolution. However, as of the date of this post, the FOIC is seeking review of the Appellate Court’s decision by the Connecticut’s Supreme Court, so this issue may not yet be settled. Stay tuned.

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