

October 28, 2016

165 Slice Drive  
Stamford, CT 06907  
Freedom of Information Commission  
18-20 Trinity Street  
Hartford, CT 06106

RE: Inappropriate use of Executive Session by Stamford's BOR to exclude permitted members

I am asking that Connecticut's Freedom of Information Commission issue a Declaratory Opinion ordering Stamford's Board of Representative to conform their behavior to the findings of the commission referenced below and allow all members of the Board of Representatives to attend and to participate in any Executive Session committee meeting of Stamford's Board of Representatives.

The Stamford Board of Representatives Rules of Order provide in Sec. IV C 2. "All members of the Board of Representatives shall have the right to attend and to participate in any meeting of any committee of which they are not regular members, but without the right to vote."

An "ex officio" member is a member of a body (a board, committee, council, etc.) who is part of it by virtue of holding another office. The term is Latin, meaning literally "from the office", and the sense intended is "by right of office"; its use dates back to the Roman Republic.

While the language does not use the words "ex officio", the language does confer upon a member of the Board of Representative, by virtue of their office, the right to attend and to participate in any meeting of any committee of the Board of Representatives conforming in every way with the definition of an ex officio member.

It has been clearly established by the Freedom of Information Commission, in the Matter of a Complaint by Angelo J. DeLeon and Fairfield Police Union, IBOP, Local 530, against Fairfield Board of Police Commissioners (Docket #FIC 90-350), that an ex officio member of a body is entitled to participate in the Executive Sessions of that body.

Stamford's Board of Representatives has been acting contrary to the findings of Connecticut's Freedom of Information Commission and Stamford Board of Representatives own Rules of Order by restricting access to Executive Session meetings to those members specifically assigned by the President of Stamford's Board of Representatives and to guests invited to give testimony. Ex officio members of these committees have been inappropriately excluded based on a July 28 opinion provided by Stamford's Corporation counsel.

The reason a Declaratory Opinion has become urgent is the Steering Committee of Stamford's Board of Representatives allows items to appear before the Board of Representatives' that require members to cast uninformed votes. Those actions are contrary to the concept of representative government and to the movement that ultimately resulted in the passing of the Freedom of Information Act and the formation of your commission.

As a point of reference you may want to review item F29.436 which can be found on the Fiscal Committee's July 25<sup>th</sup> and August 1<sup>st</sup> meeting agendas and was voted on by the Board of Representatives on August 1<sup>st</sup> of 2016. This item involved lending a third party, the Urban Redevelopment Commission (URC), City funds to settle a dispute the City apparently is not party to.

In Stamford it is an extraordinary event for the City to lend taxpayer funds to a third party for any reason. It is not enough to demonstrate the party has adequate assets or credit to sustain the loan. In fact, if such is the case it begs the question of why the URC failed to secure such loan without this diversion of taxpayer funds. One has to assume those questions, the basis for casting an informed vote, were answered in the Executive Session held on the item. My constituents, the constituents of every other member excluded from this particular Executive Session, have every right to expect us to cast informed votes, especially when taxpayer funds are being used for such an unorthodox purpose.

Again, I am not asking the Commission to issue a finding that the Fiscal Committee Chairperson violated any specific provision of the Freedom of Information Act. After all she sought advice of counsel. Unfortunately counsel seems to have focused solely on the appearance of the word "ex-officio" in the text of the rules and failed to consider that the authority granted by the language used conforms to the definition of "ex-officio". One can describe a "donkey" or call it an "ass" but at the end of the day it is still the same animal. I am expecting you to use your authority to take corrective action that ensures Stamford residents enjoy the representative form of government contemplated by the Freedom of Information Act. Please issue a declaratory Ruling that reviews and corrects Stamford's Corporation Counsel's opinion and directs Stamford's Board of Representatives to follow their own "Rules of the Board" by opening committee level Executive Session meetings to all members of Stamford's Board of Representative.

Sincerely,

J. R. McMullen – District 18 Representative

cc:

Randall Skigen – President      Elaine Mitchell – Majority Leader      Mary Fedeli – Minority Leader

Attached:

1. Stamford Board of Representatives Rules of Order (<http://www.boardofreps.org/rules-of-order.aspx>)
2. July 28, 2016 Corporation Counsel Executive Session Opinion ([http://www.boardofreps.org/Data/Sites/43/userfiles/legal\\_opinions/170728\\_executive\\_session.pdf](http://www.boardofreps.org/Data/Sites/43/userfiles/legal_opinions/170728_executive_session.pdf))