

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

LAW DEPARTMENT

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JOHN A. SERINO
LEGISLATIVE AGENT

September 2, 1969

Mr. Francis P. Burns, Executive Secretary
Board of Election Commissioners
362 Green Street
Cambridge, Massachusetts 02139

Dear Mr. Burns:

You have asked in behalf of the Cambridge Election Commission my opinion of the wording that should appear on the November 4, 1969 ballot relative to the initiative petition for a temporary rent control ordinance submitted to you.

It is my opinion that under the present circumstances the proposed ordinance is unconstitutional and that as drafted, it is illegal. Accordingly, the petition should not appear on the ballot in any form.

The proposed ordinance declares that there exists in Cambridge "a serious public emergency, exigency, and distress" in housing. It purports to create a Rent Board with power to enforce the ordinance. The maximum rent that can be charged for controlled housing accommodations is the rent charged on January 1, 1968 if occupied by the tenant on that date or if not occupied, then the rent charged for similar accommodations in the immediate area. The ordinance provides for adjustments in the rent for major capital improvements, low income return, and unavoidable increases in operating costs. There is a provision for an appeal to the rent board and from its decision, to the courts. Tenant eviction is restricted.

In my opinion to the City Council of June 12, 1969, I pointed out that under Article LXXXIX of the Articles of Amendment to the Constitution of Massachusetts, the City Council has broad powers to enact local ordinances which are not inconsistent with the constitution or laws of the Commonwealth. I also pointed out that the rent control law enacted by the Commonwealth which was upheld in Russell v. Treasurer & Receiver General,

331 Mass. 501, 507 was emergency legislation enacted under Article XLVII of the Articles of Amendment which provides in part that "The maintenance and distribution at reasonable rates, during time of war, public exigency, emergency or distress, of a sufficient supply of food and other common necessities of life and the providing of shelter, are public functions." It was my opinion at that time, and it remains my opinion, that before a municipality can legally adopt rent control, it must demonstrate by expert investigation which is rational, detailed and impartial that there is in fact in the community a public emergency of such great magnitude that drastic exercise of the police power is required to assure shelter for the city's inhabitants. Expert advice is needed in this instance because economic analysis of a complex of circumstances is necessary.

Otherwise, a rent control ordinance as proposed by the initiative petition would constitute a deprivation of property in violation of Articles 1, 10, 12 and Part II, Cl. 1, sec. 1, art. 4 of the Massachusetts Constitution.

Normally legislation must bear a real and substantial relation to the public health, safety, morals or some other phase of the general welfare. If it does not, it is unconstitutional. Coffee-Rich Inc. v. Commissioner of Public Health, 348 Mass. 414, Sperry & Hutchinson Co. v. Director of the Division on the Necessaries of Life, 307 Mass. 408. A rent control ordinance must not only bear a real and substantial relation to the general welfare, but it must arise out of an emergency that is depriving citizens of shelter.

The declaration in the initiative petition that there is a serious public emergency does not prove the fact of an emergency. In an era of inflationary pressures on the dollar, increasing taxes and wages, and an ever-rising cost of living, it is inevitable that rents will be affected. If however, the greater number of rental increases in the city were the reasonable result of such economic pressures which were beyond the control of landlords, it would be unreasonable and unconstitutional to impose on landlords a maximum rental. Such an ordinance would deprive an owner of his property without due process of law and just compensation.

Furthermore, there must be a demonstration that the ordinance is reasonably related to providing housing for those in distress, as opposed to providing an economic benefit to some tenants at the expense of property owners.

The proposed ordinance also provides that "the City Council shall appropriate \$150,000 for the initial administration and enforcement of this ordinance and thereafter such further monies as shall be required to operate, administer, and enforce this ordinance in accordance with its purposes and provisions."

This is patently illegal. It is the duty of the City Manager under General Laws, C. 43, Sec. 90 to prepare and submit to the City Council the budget. The preparation of the budget is an executive function. Flood v. Hodges, 231 Mass. 252.

Once the City Manager submits the budget to the Council, the Council under General Laws, C. 44, sec. 32 may reduce any amount in the budget but cannot increase the budget. The City Council can increase the budget only by making a specific request to the City Manager for an item and in the absence of action by the Manager, the City Council can add to the budget only by a two-thirds vote.

An initiative petition cannot appropriate money. Under General Laws, C. 43, sec. 37, there can be a referendum on an ordinance resolution, order or vote. The Court in Dooling v. City Council of Fitchburg, 242 Mass. 599 pointed out that "it is manifest that these words although of broad signification, are necessarily limited to subjects vested by law in the City Council." But the preparation of the budget is not within the legislative powers. It is an executive function. Bell v. Assessors of Cambridge, 306 Mass. 249. The limited power of the Council to increase the budget after a specific request by a two-thirds vote cannot be the basis for the initiative petition. Gilet v. City Clerk of Lowell, 306 Mass. 170. Even if it were, there has been no request for such an appropriation to the City Manager.

The proposed ordinance also provides that "if such monies are unavailable in the initial fiscal period, the Rent Board shall be empowered and authorized to incur liabilities until such monies shall be made available to the City Council." But General Laws, C. 44, sec. 31 prohibits the City from incurring liabilities in excess of appropriations. Shannon v. Rockwood, 231 Mass. 322.

The inclusion of a severability clause in section 10 of the proposed ordinance does not save the ordinance from the infirmities that result from the illegal appropriation and attempt to incur liabilities in excess of

Mr. Francis P. Burns

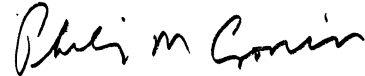
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appropriation. Under General Laws, C. 43, sec. 40, an initiative measure must be submitted without alterations to the voters. Therefore, were the proposal to appear on the ballot, it would necessarily contain the illegal provisions.

Accordingly, the proposed temporary rent control ordinance should not appear on the ballot.

Very truly yours,



Philip M. Cronin
City Solicitor

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CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 876-6800

EXECUTIVE DEPARTMENT

James L. Sullivan
City Manager

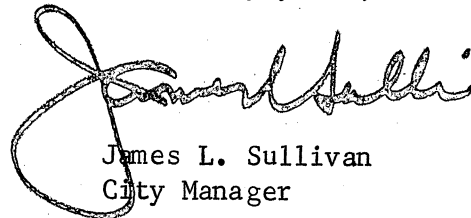
John H. Corcoran
Assistant City Manager

September 8, 1969

To the Honorable, the City Council:

I transmit herewith communication from Philip M. Cronin, City Solicitor, to Francis P. Burns, Executive Secretary, Board of Election Commissioners, dated September 2, 1969, pertaining to the initiative petition for a temporary rent control ordinance.

Very truly yours,



James L. Sullivan
City Manager

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COMMUNICATION
from the City Manager trans-
mitting one from Philip M. Cronin,
City Solicitor addressed to Francis P.
Burns, Executive Secretary, Board of Elec-
tion Commissioners dated September 2, 1969
pertaining to the initiative petition for
a temporary rent control ordinance

September 8, 1969

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