



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

• (617) 498-9020

LAW DEPARTMENT

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CITY SOLICITOR

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LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

June 25, 1979

Mr. James L. Sullivan
City Manager
City Hall
Cambridge, Massachusetts

Dear Mr. Sullivan:

As per the request of Councillor Wylie, I have investigated the law regarding the practicability of utilizing fire fighters on details presently manned solely by police during the period of the Red Line construction.

It is the duty of the Police Department to enforce the street traffic regulations of the City. This policy is reflected by the traffic regulations of 1971, sec. 2.1. Members of the police force are specially trained in the areas of vehicular and pedestrian traffic control, the primary purpose of which is the prevention of accidents and maintenance of the public safety. Fire fighters have no such special training. As a consequence, the City has prudently required that contractors performing work in public areas, hire off duty police officers to maintain an orderly flow of pedestrian and vehicular traffic around construction sites.

The nature of the duties assumed by a member of the Fire Department is such that it cannot be anticipated when he will be called upon to assist in the extinguishment of fires. Even when off duty, a fireman is subject to be summoned in case of a conflagration and kept on duty while the conflagration continues. To restrict a fireman from employment in other occupations during his time off duty is rationally related to the maintenance and administration of an efficient fire fighting force. Bell v. District Court of Holyoke 314 Mass. 622. In conjunction with this it is stated that, "No city or town having a population of 40,000 persons or more shall require a permanent member of its fire department to perform the duties of a police officer during his tour of duty." Mass. G.L., Ch.48, section 88.

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OFFICE OF THE
CITY MANAGER

Mr. James L. Sullivan

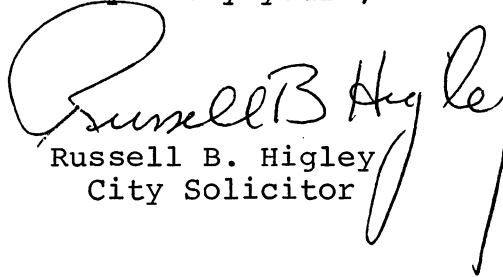
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June 25, 1979

Considerations of municipal tort liability are noteworthy in that Mass. G.L., Ch. 258 provides for \$100,000.00 maximum recovery for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment. Under strict principles of the agency law, it is arguable that municipal employees either fire fighters or police officers, assigned to details in the Red Line construction during off duty hours are still acting within the scope of their employment with the City and under the control of the City. As such, the provisions of Mass. G.L., Ch. 258 would apply.

In view of the foregoing, it is my opinion that the interests of both the public at large and the City would best be served by utilizing police officers on details during the period of the Red Line construction.

Very truly yours,


Russell B. Higley
City Solicitor

RBH:cp



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Tel. 498-9011

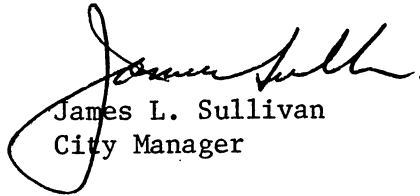
EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

September 10, 1979

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 22 relative to
utilizing Fire Fighters on Police details during the Red Line
Construction, enclosed please find copy of report from Russell B.
Higley, City Solicitor.

Very truly yours,



James L. Sullivan
City Manager

JLS/mbf
Enc.

S-472

Response to Awaiting Report No. 22 re:
utilizing Fire Fighters on Police details
during the Red Line Construction.

In City Council,
Sept. 10, 1979

Placed on file