



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

• (617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

EDWARD A. CUNNINGHAM
ANDREW T. TRODDEN
MICHAEL C. COSTELLO
ROBERT F. SYDNEY
LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

February 20, 1980

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

Re: Term of Mayor of Cambridge

Dear Mr. Sullivan:

On January 28, 1980, the Cambridge City Council voted to request that you instruct me as the City Solicitor to give a legal opinion regarding "the legality of any arrangement to split the Mayoral term...". This opinion was to be based on a comprehensive research project studying the Plan E Charter and all rules, laws and ordinances relative to this matter...".

Specifically, the Council asked the following questions:

- (1) If the Mayor resigns the position of Mayor after being duly elected by the City Council, does the Mayor forfeit his Council seat?
- (2) If the answer to question #1 is yes, then must the City Council declare that seat vacant?

- (3) If the Council does declare the seat vacant, must the City Council request the Election Commission to make a count of the ballots to fill the vacancy?
- (4) Must the City Council proceed to the election of a new Mayor?
- (5) Since the Plan E Charter states that in the absence of the Mayor, the Vice-Chairman will preside at Council meetings, what effect does that have in relation to filling the vacancy on a permanent basis?

In preparing answers to these questions, I have considered the Plan E Charter of the City of Cambridge (G.L., c. 43, §§ 93-116) and the Plan D Charter (§§ 79-92), which is essentially the same as Plan E with regard to the term and power of the Mayor. I have also considered Court opinions interpreting these Charters; the Ordinances of the City of Cambridge; the Rules of the Cambridge City Council as Revised (1980-1981); Hardy Municipal Law and Practice (18 Mass. Practice); McQuillin, Municipal Corporations; and Note, "City Government", 38 B.V. Law Rev. 419 (1958); as well as Corpus Juris Secundum and American Jurisprudence 2nd.

DISCUSSION

Cambridge has a Plan E form of government, and the City Charter is found in G.L., c.43, § 93-116. The law relevant to the term of office of the Mayor is found in G.L., c. 43 § 97, which provides, in part, as follows:

Section 97. City Council; powers and duties;
organization.

The city council, elected as aforesaid, shall meet at ten o'clock in the forenoon of the first Monday of January following the regular municipal election...For the purposes of organization, the city clerk shall be temporary chairman until the mayor or vice-chairman has qualified. Thereupon the city council shall, by a majority vote of all the members elected, elect a mayor and a vice-chairman from its own members....If the office of mayor or vice-chairman becomes vacant, the city council shall in like manner elect one of its members to fill such office for the unexpired term; provided, that no such vacancy shall be filled so long as there is any vacancy in the council.

Section 97 is the only section of the Charter which bears on the Mayor's term of office. The powers of the Mayor are dealt with in § 100, and there have been several court opinions dealing with these powers. See e.g. Opinion of the Justices, Mass. Adv. Sh. (1978) 1495, 378 N.E. 2d 43 (Home Rule amendment not violated if General Court enacted petition from Cambridge City Council, although petition filed without approval of Mayor); Sheahan v. School Committee of Worcester, 359 Mass. 702, 708-9 (1971) discussion of Mayor's role as chairman of School Committee).

Regarding the Mayor's term of office, the only reference to such a term is found in the last sentence of G.L., c. 43 § 97, which provides that, if the office of Mayor becomes vacant, the City Council shall elect one of its members to fill such office "for the unexpired term"...From the context, it is clear that the term referred to is the term of office of Mayor. From the context, it is also clear that

the duration of the term is two years, i.e., the same term as the City Councillors themselves, as provided in the immediately preceding section, § 96.

If there were no statutory provision for a term of office for the Mayor, he would be merely the presiding officer of the Council and could be removed at any time by a majority of the Councillors. See 4 McQuillin, Municipal Corporations (1979), § 13.19:

Where the body has the power to choose its own presiding officer from its own members, the office is held at the will and authority of a majority of the members, and hence the body has the inherent power to remove such officer at any time, unless prohibited by some express constitutional or statutory provision. (cases)...

See also Am. Jur. 2d, Municipal Corporations, etc., § 165.

Having established that the Mayor is elected for a two-year term, let us address the specific questions posed by the Council:

- (1) If the Mayor resigns the position of Mayor after being duly elected by the City Council, does the Mayor forfeit his Council seat?

The answer to this question also depends on an interpretation of the last sentence of G.L., c. 43, § 97. This sentence provides for two different kinds of vacancy - a vacancy in the office of Mayor or Vice-Chairman, and a vacancy in the Council itself. From this I conclude that there can be a vacancy in the office of Mayor without necessarily having a vacancy in the Council. Likewise, there can be a vacancy in the Council without necessarily having a vacancy in the office of Mayor. The final clause of the sentence -

"provided, that no such vacancy shall be filled so long as there is any vacancy in the council" - seems to address the Council's question precisely. I take this proviso to mean that a vacancy in the/of Mayor cannot be filled so long as there is any vacancy in the Council. But it follows from this that a vacancy in the office of Mayor can be filled so long as there is no vacancy in the Council. How could there be a vacancy in the office of Mayor, but no vacancy in the Council? The most likely case is one where the Mayor resigns the office of Mayor but not his seat on the Council.

In short, § 97 does not provide that a Mayor who resigns the office of Mayor must forfeit his Council seat. Rather, it seems to have been written to provide for the contingency that a Mayor might resign his office but still retain his seat.

I would answer question no. 1 "No".

- (2) If the answer to question no. 1 is Yes, then must the City Council declare that seat vacant?

Not applicable.

- (3) If the Council does declare the seat vacant, must the City Council request the Election Commission to make a count of ballots to fill the vacancy?

Not applicable.

- (4) Must the City Council proceed to the election of a new Mayor?

I would answer this question "Yes".

G.L., c. 43, § 97 states:

...If the office of Mayor...becomes vacant, the City Council shall in like manner elect one of its members to fill such office for the unexpired term;...

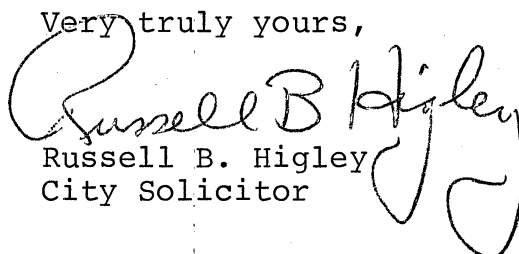
- (5) Since the Plan E Charter states that in the absence of the Mayor the Vice-Chairman will preside at Council meetings, what effect does that have in relation to filling the vacancy on a permanent basis?

It is true that G.L., c. 43 § 99 provides that, at meetings of the City Council, "In the absence of the Mayor, the vice-chairman of the city council shall preside....

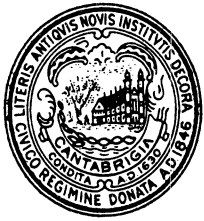
"It seems clear that this provision relates only to the Mayor's absence from a particular meeting of the Council and does not relate to the question of filling a vacancy in the office of Mayor which is dealt with in § 97.

As noted above, § 97 states that, if the office of Mayor becomes vacant the Council shall "in like manner" elect one of its members to complete the unexpired term. It seems clear that the phrase "in like manner" refers back to the manner in which the Mayor was chosen at the Council's organizational meeting. This is set forth in an earlier sentence of § 97: "For the purposes of organization, the city clerk shall be temporary chairman until the mayor or vice-chairman has qualified." From this, I conclude that, when the Council fills a vacancy in the office of Mayor, the City Clerk should act as temporary chairman of the meeting until the new Mayor has qualified.

Very truly yours,


Russell B. Higley
City Solicitor

RBH:cp



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

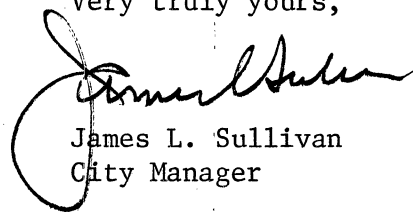
EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

February 25, 1980

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 6 relative to the splitting of the two-year term of Mayor, enclosed please find copy of the legal opinion of Russell B. Higley, City Solicitor.

Very truly yours,



James L. Sullivan
City Manager

JLS/mbf
Enc.

Response to Awaiting Report no. 6 re:
splitting of the two-year term of Mayor.

In City Council,
February 25, 1980

Placed on file

f

Placed on File