



CITY OF CAMBRIDGE

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LEGISLATIVE AGENT

January 16, 1970

Paul E. Healy, Temporary City Clerk
City Hall
Cambridge, Massachusetts

Dear Mr. Healy:

You have asked in behalf of the City Council my legal opinion concerning the following four questions:

1. Is there presently a vacancy in the office of City Manager?
2. If there is no vacancy in the office of City Manager, can the City Council legally proceed to the election of a City Manager?
3. Under the terms of the City Charter should the City Council now proceed to the election of a City Manager?
4. If the City Council wants to retain the present incumbent as City Manager should the Council affirm his appointment as City Manager?

In accordance with the provisions of General Laws, Chapter 43, Section 103, the City Council in 1968 duly appointed a city manager. Once appointed and qualified, the city manager serves during the pleasure of the city council, but without a fixed term. His appointment survives the term of office of the city council that made the appointment. Thus, there is no vacancy at present in the office of City Manager.

The city manager cannot be removed from office by the city council except by following the procedure established by Chapter 43, Section 103. This provides that if the city manager demands, the city council must provide the city manager with a written statement of the reasons for removal and before a final vote on removal, the city council must accord the city manager an opportunity to answer publicly the reasons for removal.

As long as there is an incumbent city manager, the city council cannot lawfully consider appointing either the incumbent or any other person to the position of city manager. The incumbent city manager has already been appointed and remains in office until removed. Reappointment would be legally meaningless. The council

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could not appoint any other person to the position until the incumbent city manager has been removed in accordance with Section 103 and therefore a vacancy exists in the office.

Apparently in the past, the practice developed in Cambridge after certain municipal elections of re-electing or re-appointing the city manager. On February 4, 1946, the city council asked the city solicitor: "When a new City Council takes office, is the election of a City Manager mandatory?" The city solicitor replied on February 9, 1946: "Where there is already in office a Manager, an appointment of a Manager is not mandatory upon an incoming Council."

This answer, however, does not support the proposition that the City Council could lawfully appoint a city manager when the incumbent has not been removed. Indeed, such a view would seem inconsistent with a fundamental purpose of the Plan E Charter which is to provide for the selection of a city manager on the basis of his administrative and executive qualifications only.

Accordingly the specific answers to the City Council's questions are as follows:

1. There is no vacancy at present in the office of City Manager.
2. Since there is no vacancy in the office of City Manager, the City Council cannot legally proceed to the election of a City Manager.
3. Under the terms of the City Charter, the City Council should not proceed now to the election of a City Manager.
4. If the City Council wants to retain the present incumbent as City Manager, there is no action that the City Council should take.

Very truly yours,

Philip M. Cronin

Philip M. Cronin
City Solicitor

PMC:ja

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OPINION

Relative to office of City Manager

Table

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Summ noted in Post
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