



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 876-6800

LAW DEPARTMENT

PHILIP M. CRONIN
CITY SOLICITOR

EDWARD D. MCCARTHY
ROWENA E. TAYLOR
ASSISTANT CITY SOLICITORS

JOHN A. SERINO
LEGISLATIVE AGENT

S-205

May 14, 1973

TO THE HONORABLE, THE MEMBERS OF THE CITY COUNCIL:

You have asked my opinion regarding the appointment of a City Messenger and Clerk of Committees and the authority of the City Manager for said appointment.

Section 2-126 of the present City Ordinances, as adopted June 28, 1948, provides as follows:

"The City Messenger - Clerk of Committees' Department shall be in charge of the City Messenger and Clerk of Committees. He shall be appointed by the City Manager for the term of one (1) year from June 1, in the year of his appointment, and until his successor is appointed and qualified. He shall perform the duties of City Messenger and shall act as Clerk of all Committees, standing or special, of the City Council, not otherwise provided for by Ordinance or Order. He shall receive such salary as the Council from time to time shall determine."

Chapter 43, Section 95 of the General Laws (The City Charter) provides, in part, as follows:

"The Government of the City in the general management and control of all its affairs shall, except as otherwise provided in this Chapter, be vested in a City Council, . . ."

Section 18 of Chapter 43 provides, in part:

"Except as otherwise provided in this Section, the legislative powers of the City Council may be exercised as provided by Ordinance or Rule adopted by it."

The general authority of the City Manager to make appointments is contained in Section 105 of Chapter 43 and reads as follows:

"Such officers and employees as the City Council, with the advice of the City Manager, shall determine are necessary for the proper administration of the departments, commissions, boards and offices of the City for whose administration the City Manager is responsible, shall



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-2-

May 14, 1973

be appointed, and may be removed, by the City Manager."

Section 103 of Chapter 43 specifically excludes from the responsibility of the City Manager "any body elected by the voters of the City".

It is, therefore, my opinion that under the existing Ordinance, the City Manager and the City Manager alone may appoint the Clerk of Committees. However, there would appear to be ample authority in the Charter and other case law to support the proposition that this position is one reserved under the general legislative power of the City Council and could be effectuated by a repeal of that portion of the existing Ordinance which provides for appointment by the City Manager. It is of interest to note that the 1943 Ordinances in effect at the time of the adoption of the Plan E Charter did not provide for this appointment by the City Manager.

As a matter of general information, General Laws, Chapter 44, Section 33A contains certain restrictions on the creation of new positions as follows:

"No new position shall be created or increase in rate made by Ordinance, vote or appointment during the financial year subsequent to the submission of the annual budget unless provision therefor has been made by means of a supplemental appropriation. No Ordinance, vote or appointment creating a new position in any year in which a municipal election is held shall be valid and effective unless said Ordinance, vote or appointment is operative for more than three (3) months during said municipal election year."

If I can provide you with any additional information, please let me know.

Respectfully submitted,

Edward D. McCarthy,
Acting City Solicitor

EDM:jma



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May 14, 1973

TO THE HONORABLE, THE MEMBERS OF THE CITY COUNCIL:

You have requested my opinion relative to whether or not the City of Cambridge may phase out the Office of Civil Defense, effective June 30, 1973.

Massachusetts General Laws, Chapter 33 app., Section 13-13 provides as follows:

"Each political subdivision of the Commonwealth is hereby authorized and directed to establish a local organization for Civil Defense in accordance with the State Civil Defense Plan and Program. Each local organization for Civil Defense shall have a Director."

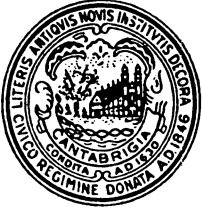
Section 8 of the City Ordinances, dealing with Civil Defense, in Section 8-13 provides as follows:

"This Chapter shall become of no effect when Acts of 1950, Chapter 639 shall by action of the legislature become inoperative or upon the expiration of any time limit for the operation of said Chapter 639 now or hereafter imposed by the legislature. Any part of this Chapter shall become inoperative when any Section or provision of said Chapter 639 upon which such part depends for its validity shall become inoperative by act of the legislature or by the expiration of any time limit now or hereafter imposed by the legislature."

The Commonwealth of Massachusetts operates an overall State Civil Defense Plan in accordance with the requirements of the Defense Civil Preparedness Agency of the Department of Defense, which requires that a City with over 25,000 population have a full-time, paid local director in order to be eligible for Federal assistance. This latter agency also sets forth the qualifications for this particular individual and also the requirement that he have a supporting staff, which in a City the size of Cambridge should consist of at least one (1) stenographer.

Title 50, United States Code Annotated, Section 2252 provides:

"It is further declared to be the policy and intent of the Congress that the responsibility for Civil Defense shall be vested jointly in the Federal Government



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-2-

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and the several States and their political subdivisions."

In order to phase out any local program in Massachusetts, it is my opinion that it would necessitate, at the very least, an act of the legislature of the Commonwealth of Massachusetts. This action could not be effected under the so-called "Home Rule Amendment", since the subject matter involved has been reserved to the State as an overall project and any local action would be plainly "inconsistent" with matters reserved for the Commonwealth.

Respectfully submitted,

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Acting City Solicitor

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Respectfully submitted,

Edward D. McCarthy,
Acting City Solicitor

EDM:jma

Comm. from the City Clerk transmitting
one from the City Solicitor relative to
the Office of Civil Defense

In City Council,

May 21, 1973

5/21/73
To CM72
K012
Report