

January 9, 1993

RECEIVED BY  
CITY CLERK  
1993 JAN 11 AM 8:11  
CAMBRIDGE MA.

The Honorable Cambridge City Council  
795 Massachusetts Avenue  
Cambridge Massachusetts 02139

Dear Councilors:

I enclose a photocopy of a *Boston Globe* article, dated 1-09-93, entitled *Judge says MBTA board is subject to public law, must open its records.*

This decision by Suffolk Superior Court Judge Hiller B. Zobel opposes efforts by the MBTA Retirement Board to prevent disclosure to the public and the *Boston Globe* of the Board's actions including illegal payments of fees to Carmen Elio and Senator William "Biff" McLean mediated by Aetna Insurance Company while supervising pension plans. Similar illegal payments were made by the Cambridge Retirement Board. A settlement with Aetna and Cambridge was recently announced in the newspapers.

The public's right to inspect and copy public records is defined in M.G.L. c.4, s.7, M.G.L. c.66, s.10, and promulgated by 801 CMR 2.00 and 950 CMR 31.00 through 33.00. The burden is on the public official or agency to demonstrate that a record is *not* public. "Both by statute and by regulation, the outside limit for responding to a request for public records is ten days. Under the regulations, the custodian must respond to the request 'as soon as is practicable' which, in many cases, will obviously be a lot faster than ten full days." The records must be available at "reasonable times". "This means during all regular business hours. It does not mean 'when a specifically named custodian happens to be in the office.' Even when the person who normally coordinates access to records is out sick, on vacation, in a meeting, or out to lunch, citizens retain their right to access." "One cannot be denied access to documents on the basis that no one is available to supervise the inspection."

As I have routinely been stonewalled by Cambridge city officials while attempting to obtain undisputable public records, I urge this Council to direct the City Manager to emphasize to City departments and boards & commissions the imperative to comply with the public's right to know "as soon as practicable".



Jack Martinelli 617.354.1325

171 Auburn Street  
Cambridge MA 02139-3949

# Judge says MBTA board is subject to public law, must open its records

By Bruce Mohl  
GLOBE STAFF

A superior court judge has ruled that the MBTA Retirement Board is subject to the state's public records law and must comply with a request for documents from the Globe.

The retirement board, which has already spent more than \$150,000 on lobbyists and attorneys to fend off legislative and legal attempts to pry open its records, is expected to appeal the ruling.

The retirement board had rejected the request for records on travel and investments by arguing that it is a private trust not subject to the state's open meeting, open records and conflict of interest laws.

But Superior Court Judge Hiller B. Zobel, who nearly two years ago denied a preliminary injunction sought by the Globe, ruled this week that the heavy infusion of state funds to the retirement board makes it a public entity.

Zobel described the board as "a creature of the MBTA" and noted that MBTA contributions to the retirement fund constitute 76 percent of the board's cash flow.

"This court concludes that an en-

tity so integral to a public body's operation, dealing with so much of that body's money — public money — is itself a public body for purposes of the public records law," Zobel wrote in an opinion dated Tuesday and released yesterday.

The judge's decision occurs at a time when the retirement board and its executive director, John J. Gallahue Jr., are being scrutinized as part of a wide-ranging pension probe by the US attorney's office in Boston. Federal investigators are reportedly investigating allegations of influence peddling in the awarding of investment contracts and lavish spending on travel and conferences.

Gov. Weld, who has sought to increase access to board records, urged the board yesterday to give up its fight and open its records to the public.

"I have never understood the basis for the furious opposition to making these records public," said Weld who, through his control of the MBTA, appoints three of the board's six members.

But the attorneys representing the board, Thomas Kiley and Carl Valvo, said the board has urged them to take every step possible to

preserve the board's independence.

"They have asked us to resist each encroachment on their private status," said Kiley, who is also battling efforts by the State Ethics Commission to bring the board under its jurisdiction.

Gallahue said the board's primary concern is that it cannot be viewed as a public agency in some ways and yet retain its independence in other areas. "It's like being a little bit pregnant," he said. He added that the board is worried that the state's deficit-plagued retirement system may try to take control of the MBTA's fully funded pension system.

But Rep. Kevin Blanchette (D-Lawrence), chairman of the Legislature's Public Service Committee, said he believes the board is trying to hide something. "If everything is so on the up and up over there, why have they gone to such extraordinary lengths to shroud themselves in secrecy?" Blanchette asked.

The Globe filed its suit in April 1991, after a request by the Globe's Spotlight Team for board documents was rejected. The Globe initially sought a preliminary injunction to force the board to turn over the records, but Zobel denied the motion, saying that if it were granted it would "work irreparable damage" on the board.

Zobel referred the matter to the state appeals court for review, but the Supreme Judicial Court took control of the case and referred it back to Zobel for action.

Zobel's decision this week stunned the parties. "We were surprised because the judge had ruled the opposite way earlier in the case," Valvo said.

CAMBRIDGE MA

1993 JAN 11 AM 8:11

RECEIVED BY  
OFFICE OF CITY CLERK

January 9, 1993

RECEIVED BY  
OFFICE OF CITY CLERK

1993 JAN 11 AM 8:11

CAMBRIDGE MA.

Margaret Drury  
Cambridge City Clerk  
795 Massachusetts Avenue  
Cambridge MA 02139

Dear Ms. Drury:

Please direct the enclosed letter and attachment to:

Cambridge City Council

Robert W. Healy, City Manager

Russell Higley, City Solicitor

Joseph Connarton, Chair, Cambridge Retirement Board

James Maloney, Acting Commissioner, ISD

I emphasize that my complaint herein does not refer to you or your staff who have promptly and completely responded to my requests.



Jack Martinelli 617.354.1325

171 Auburn Street  
Cambridge MA 02139-3949

5.

S-39

Comm. from Jack Martinelli, 171 Auburn St., relative to city departments, boards and commissions complying with public disclosure laws "as soon as possible."

In City Council,

January 25, 1993

*Referred to the  
City Manager.  
Copy sent to City Mgr.  
1/27/93 ee*