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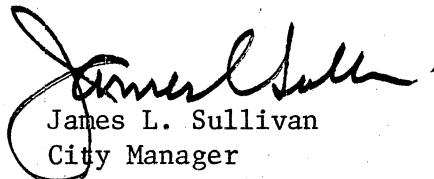
EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

May 1, 1978

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 7 relative to testing marijuana without legal penalty to the former owner, enclosed please find copy of the opinion of Russell B. Higley, City Solicitor.

Very truly yours,


James L. Sullivan
City Manager

JLS/mbf
Enc.

S-

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- Placed on File -



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

• (617) 876-6800

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

RUSSELL B. HIGLEY

EDWARD A. CUNNINGHAM
ANDREW T. TRODDEN
LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

May 1, 1978

Councillor Mary Ellen Preusser
City Hall
Cambridge, Massachusetts

Dear Councillor Preusser:

You have asked my opinion as to whether or not one possessing marijuana may turn the marijuana into the City of Cambridge for testing without fear of prosecution for possession of marijuana.

I direct your attention to the case of Marcoux, et al. v. Attorney General, decided during the week of April 21, 1978 where the Supreme Judicial Court stated "we affirm the judgement upholding the constitutionality of the statute which prohibits knowing possession of marijuana (M.G.L., C. 94C, section 34) where the "Legislature could believe with reason that use of marijuana created dangers both to users and to others justifying public control."

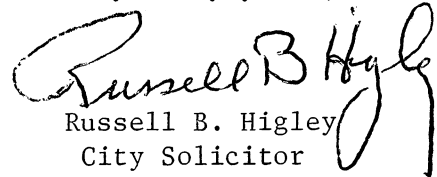
"The medical, social and law enforcement aspects of the marijuana have been and can be studied by the General Court with an intensity and a breadth no court can readily approximate....It is for that branch of government to decide whether the present statute attains to the best solutions."

Therefore, possession of marijuana C. 94C, section 34 is still a crime. Marijuana which comes into the possession of the police department as a result of an arrest or raid may be tested by the City of Cambridge with permission of the Court.

May 1, 1978

The next issue is whether or not individuals may turn marijuana into the City Hospital for testing without fear of prosecution. Once in our possession the marijuana may be tested, but there is no guarantee that the City may give to an individual that he would not be subject to prosecution under C. 94C, section 34 as a result of the decision by the Supreme Judicial Court which still makes possession a crime.

Very truly yours,



Russell B. Higley
City Solicitor

RBH:jl

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