



CAMBRIDGE TENANTS UNION

December 10, 1992

Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, Mass. 02139

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To the Honorable; the City Council:

I am in receipt of a letter sent to the City Council by Attorney Frederick B. Hayes, which appears to be a response to a letter dated October 22, 1992, that I sent to the City Council on behalf of the Cambridge Tenants Union. In my letter I raised what we believe are serious abuses of public office, including an allegation that Councillor William Walsh has a conflict of interest in representing landlord Richard Farrington in a matter now before the Cambridge Rent Control Board regarding the status of the property at 9 Upland Road.

While Mr. Hayes' letter mischaracterizes the facts presented in my letter and omits certain important information, it nonetheless confirms significant parts of what we allege. These details buttress our contention that Mr. Walsh has a clear and unequivocal conflict of interest in the Upland Road matter.

1. Richard Farrington as party to a current Rent Board proceeding

The Upland Road case involves an inquiry into the rent-controlled status of the property by the Rent Board. After an evidentiary hearing a hearing officer wrote a report and determined that Richard Farrington, the owner until very recently, had unlawfully maintained the property as exempt from rent control for twenty years.

The Board considered the hearing officer's report on October 14, 1992, and remanded the matter for an additional evidentiary hearing at the request of Mr. Hayes, who represents the bank that now owns the property.

While Mr. Hayes might have it otherwise, Mr. Farrington is a party to the current proceedings at the Board. A review of the hearing officer's report shows that Mr. Farrington received notice of the proceedings, chose not to attend the evidentiary hearing

on June 1, 1992, but participated by submitting a document.

Mr. Farrington continues to have serious legal and financial interests in the outcome of this proceeding. Among the numerous findings and recommendations made in the hearing officer's report about Mr. Farrington, perhaps the most significant is the recommendation concerning overcharges:

"J. Overcharges. It must be noted that Richard Farrington has had the benefit of obtaining market rents for the past two decades without regard to rent control or its rate setting powers. The landlord obtained a questionable Ruling of Exemption in January, 1971 which, if true when he purchased the property, could not have been true for very long thereafter. The landlord failed to register the property even in 1976 after being so directed. In 1985 this matter again came to the fore, but all records relating to this property (including a Hearing Report) inexplicably disappeared. Although the records disappeared, the landlord still knew or should have known his property was subject to rent control. During the past twenty years the property has suffered a long history of neglected maintenance, as evidenced by the Inspectional Services reports and testimony. The owner apparently lost the property in foreclosure proceedings, a fate not predicated by the rent control status of this property.

"There have been rent overcharges for the controlled rental units at this property. The tenants have numerous rights with regard to those overcharges. It is recommended that the tenants consult with an attorney for advice in determining the person(s) owing prior overcharges and the best method to recoup those overcharges."

(p. 10 of Report of Hearing)

Acceptance of this report by the Board will also lay the foundation for further legal action by the Board, if it chooses, to seek prosecution of Mr. Farrington for violations of the Rent Control Act.

In addition, any reasonable assessment of Mr. Farrington's legal exposure in this matter must include the possibility that, as a result of his deliberate failure to register the property with the Board and/or the "inexplicable" disappearance of all the files concerning this property from the Board, Mr. Farrington could be charged with attempting to defraud the Board.

A copy of the hearing officer's report, without either the appendices or exhibits, is attached to this letter as Exhibit A.

2. Councillor Walsh's rendering of legal services for Mr. Farrington in the Upland Road proceeding

As Mr. Hayes' letter indicates, Councillor Walsh is rendering legal services for Mr. Farrington in relation to the matter of 9 Upland Road. Mr. Hayes describes a series of contacts with Mr. Walsh about the matter, in which Mr. Walsh has been serving as Mr. Farrington's attorney. Mr. Hayes also notes that he was directed by Mr. Farrington to provide Mr. Walsh, as Mr. Farrington's counsel, with a list of documents which Mr. Hayes was seeking in this case. On November 16, 1992, on the floor of the City Council, Councillor Walsh indicated that he was researching certain items from the 1970s for Mr. Farrington relative to the matter of 9 Upland Road.

What both Mr. Walsh and Mr. Hayes have not indicated, though, is the nature of the materials sought. Among the documents sought are those which might show that Mr. Farrington had legally exempted the property from rent control at some point in the early 1970s, after the short-term, "questionable" exemption Mr. Farrington obtained in 1971.

If such documents are produced, Mr. Farrington will be exonerated of charges made in the current proceeding that he overcharged tenants. Furthermore, Mr. Farrington will not have to face the possibility of prosecution for such overcharges as violations of the Rent Control Act.

Hence, Mr. Walsh is rendering services for Mr. Farrington in an effort to affect the outcome of a Rent Board proceeding, with direct consequences for Mr. Farrington. Thus, Councillor Walsh is representing a private party in city business.

Mr. Walsh's general representation of Mr. Farrington can easily be distinguished from his representation of Mr. Farrington on city business. For example, Mr. Farrington is one of 94 partners in the Shrewsbury II Trust, as indicated in Exhibit A of the October 22, 1992 letter from the Cambridge Tenants Union. Where Mr. Walsh may have provided Mr. Farrington with legal representation for matters regarding the Shrewsbury II Trust that have no connection with the city of Cambridge's government, such legal work is not city business proscribed by the state conflict-of-interest statute.

But once Mr. Walsh assumed responsibility for representing Mr. Farrington in a matter involving an administrative agency of the city, and especially where Mr. Farrington has an interest in the outcome of that matter, Mr. Walsh was engaged in city business prohibited by the statute.

What Mr. Walsh can and cannot do is clearly laid out in a letter from City Solicitor Russell Higley to City Manager Robert Healy dated January 6, 1986. It reads in part:

"1. Section 17(a)

This section prohibits Mr. Walsh from receiving compensation, directly or indirectly, from anyone other than the City in relation to any particular matter 1/ in which the City is a party or has a direct and substantial interest. Examples of particular matters subject to the s17(a) prohibition are administrative proceedings before City agencies and lawsuits in which the City is a party. The prohibition not onlky [sic] to his receipt of money in return for services which he would render, but also to his receipt of money for services rendered by others in the firm."

(pp. 1-2 of "Conflict of Interest" letter)

A copy of the City Solicitor's letter is attached as Exhibit B.

3. The Remand Request and Mr. Walsh

Mr. Hayes contends--wrongly, as Mr. Higley's letter makes clear--that a conflict of interest would arise only if Mr. Walsh "appeared" on behalf of Mr. Farrington in the proceedings.

In this case, though, Mr. Walsh's representation of Mr. Farrington has not remained offstage. The entire Rent Board is aware of Mr. Walsh's representation of Mr. Farrington and responded to it when it ruled on Mr. Hayes' request for a remanded hearing on the evening of October 14, 1992.

When Mr. Hayes went before the Rent Board that evening, he gave, as he stated in his letter, an accounting of the "status of his investigation" in seeking Mr. Farrington's testimony. What he failed to describe in his letter, though, were the details of that accounting.

After having been challenged as to the continuing delay in the proceedings, which would be exacerbated by a remanded hearing, Mr. Hayes represented to the Board that he had been unsuccessful to date because when he had tried to contact Mr. Farrington, Farrington told him that he would have to speak to his attorney, Mr. Walsh. Then, in what constituted the rhetorical showstopper of the evening, Mr. Hayes stated to the Board that Mr. Walsh had been hard to reach of late.

As Mr. Hayes surely knew, Mr. Walsh had been released from detention only the day before (October 13). In the previous two weeks

Mr. Walsh's indictment, flight from federal authorities, subsequent return and detention had received substantial coverage in the local media.

Mr. Hayes was granted the remanded hearing he requested. In his letter to the council Mr. Hayes states that the granting of his request by the Board represented its reaction to Mr. Hayes' "inability to voluntarily secure the appearance of a witness." How did Mr. Hayes describe his difficulty in securing Mr. Farrington as a witness to the Board? As noted above, he referred to Mr. Farrington's unwillingness to speak with him directly and his insistence that Mr. Hayes speak with Mr. Walsh about the matter. But Mr. Walsh was hard to reach.

In short, Mr. Hayes actually confirms in his letter what I stated in my letter of October 22. The remand request was granted on the basis of Mr. Hayes' representations about Mr. Walsh.

I would ask that both Mr. Hayes' letter and the response of the Cambridge Tenants Union be sent, along with all other pertinent materials, to the State Ethics Commission in accordance with the order of the City Council on November 16, 1992.

Respectfully submitted,



Michael H. Turk
Co-chair
Cambridge Tenants Union

cc: Mr. Frederick B. Hayes, III
Mr. William H. Walsh

REPORT OF HEARING

Case: SCF 92-042
Property: 9 Upland Road

Owner: Richard Farrington
Date: June 1, 1992
Examiner: J. H. Packer
Present: India Richer, tenant #1
Samantha Smith, tenant #3
Sandra Hammond, tenant #4
Francesca Richer, tenant #1
Michael Haran, CASCAP
Andrea Devine, CRCB
Chris Whittle, tenant #8
James Chen, tenant #6
Rodrigo Capaz, tenant #6
Michael Minas, observing
Deborah Hopkins, formerly CASCAP

Issue: Establish Lawful Maximum Rents.

I. This hearing was conducted pursuant to Chapter 30A, the Administrative Procedure Act. Prior to the hearing the parties were notified of their rights to be represented by counsel, to examine and cross-examine witnesses, to submit evidence and rebuttal evidence, that this would be their only opportunity to present evidence, and that any appellate review would be limited to the Rent Control record. The hearing was tape recorded and a copy of that tape becomes an official part of the record. The Oath was administered to the witnesses and the hearing commenced at 10:40 a.m.

II. History of Case.

All files regarding this property are missing. The missing Registration File had documents in it going back to at least 1971. Some documents have been provided which aid in reconstructing the history of the property. In November, 1991, the owner was requested to provide any correspondence relating to this property and the subject of exemption. Exhibit 1. The owner responded by providing only a copy of a January, 1971 letter from an employee of the former Rent Control Administration stating that the property was listed as exempt pursuant to § 3(b)(1)- a rooming house with a rental period of less than fourteen days. Exhibit 2.

According to a letter copied from the Registration File by CASCAP in 1985, (Exhibit 3), owner Farrington was sent a letter on October 1, 1976 regarding the status of the property and the necessity to register. Farrington apparently paid a visit to the Rent Control Office in response to that letter and indicated his intention to register the property. On December 27, 1976, Farrington was sent another letter asking him to register or to state a reason he believes the property to be exempt so that a Special Case Hearing could be scheduled. Exhibit 3.

A Special Case entitled SCS 85-011 was docketed and assigned to this Examiner in early 1985, but that case was Dismissed because the case concerned the same issues as SCS 84-212, already assigned to Examiner Donohue. Even SCS 85-011, a file which contains little or nothing, is also missing from the closed cases files.

SCS 84-212 was filed 10/24/84 and docketed 11/16/84. It was assigned to Examiner Donohue and a hearing notice was sent 10/23/85. A Hearing was held on either 11/12/85, 12/4/85 or both, but most likely originally scheduled to the former date and continued until the latter date. Exhibit 4. That case file is missing. Examiner Donohue, who left the employ of the Board several years ago, was contacted and has no memory of the case. There is no record of that case ever having been written or sent before the Board, nor of any Board Ruling.

It should be noted that numerous members of the Rent Control professional staff, this Examiner included, have spent a great deal of time thoroughly searching all files looking for the missing case and Registration File without success. I feel I can safely say that the

missing files were not "misfiled" in the rent control office. They are nowhere to be found.

III. List of Exhibits

1. CRCB ltr of 11/22/91
2. O's ltr of 1/24/92 w/ CRCB ltr of 1/25/71 attached.
3. CRCB ltr of 12/27/76
4. CRCB Docket Book page
- 5-10 Inspectional Services Reports
11. Election Comm summary
- 12-25 Voter lists
26. Investigation Rpt
27. Ltr terminating leases
- 28-34 CASCAP leases
- 35-36 Floor Plans, Apts. 5; 6; 7
37. Offer and Acceptance, Unit #4
38. Lease, Unit #4
39. Letter from Bank atty

IV. Findings.

1. 9 Upland Street is a building which historically was used as a rooming house, at least until 1970 or early 1971. [App I 2;5]
2. In 1970 or 1971 the property was purchased by Richard Farrington. [App. I 2;5]
3. Administrative notice is taken that during the Fall, 1970, all owners of residential property in the City were required to register their properties with the newly formed Rent Control Administration, or explain why they believed themselves exempt from the recently enacted statute.
4. On or before January, 1971, Richard Farrington wrote for and obtained an exemption pursuant to §3(b)(1) of the Rent Control Act as a rooming house rented primarily to transient guests for a period of less than fourteen consecutive days. [Exhibit 2]
5. Richard Farrington maintained his lodging house license for 9 Upland Road with the City of Cambridge continuously until 1988, when he stopped paying his annual lodging house license fee. [App. I;5]

6. There is no evidence beyond the continued payment of a Lodging House License fee to indicate that Richard Farrington operated 9 Upland Road as a lodging house dedicated to use by transient guests beyond January, 1971. There is evidence, and I so find, that the property was rented over the years as both apartments and individual rooms for long term roomers. [App I 2;3;4; II; III].

7. Any exemption pursuant to §3(b)(1) of the Rent Control Act which may have been valid for rooming house or boarding house use which were rented primarily to transient guests for a period of less than fourteen consecutive days, would be lost when the building was rented to long term roomers or boarders, and/or used as apartments.

8. At a hearing in 1985 owner Farrington did not argue that the property should be exempt as a transient rooming house. He did make an argument that because some of his tenants were the non-profit CASCAP, the building should be exempt. [App. II 10]

9. Although the building has been used variously as both apartments and rooms, I find that the building contains nine five-room apartments, all of which are approximately equal in size.

10. I find that the property should have been registered by owner Farrington many years ago, probably as early as 1971. The owner Farrington apparently relied on the the 1971 exemption letter which may have been applicable to the prior owner who may have operated the building as a transient rooming house, but which Farrington knew (at least at some point in 1976) no longer was the case. That 1971 letter may have helped to obscure the fact for several years that the property should have been registered.

11. The maximum lawful rent for these nine controlled rental units is established as the historical rent actually charged in 1970, adjusted. The basement unit may have been rented or may have been used only as a superintendent's unit, but in either case it is a similar sized residential unit which will have an identical controlled rent to the other eight units when first rented.

12. I find there to be no reliable information regarding the rental history of this property back to 1970 or 1971. The 1979 rents are not applicable in rent-setting because they are removed in time by eight or nine years from the Base Date.

13. The Maximum Lawful Rents (MLRs) for this property should be set by using the average rents for five room, unheated, controlled rental units in the same Geo-Code area of the City located in similar-sized buildings. The rent control data base for 1970 rents is not considered reliable. The rent control data base for 1967 rents is verified and considered accurate. I therefore find that the Base MLRs for this property should be based on the average 1967 rents, adjusted by 30% per the 1973 General Adjustment.

14. The median 1967 rents (sample size of 84 units) for five-room, unheated, controlled units located in buildings located within the same Geo-Zone was \$95.

15. Rents charged in excess of the maximum lawful rents are considered rent overcharges. The current tenants should consult with legal counsel in determining the amount of overcharge, their appropriate remedy, and the appropriate "person" owing the overcharge [i.e., Farrington; the Bank; the Realty Agent; the Property manager].

V. Recommendations:

A. Transient Use. Owner Farrington submitted Exhibit 2, a letter from an employee of the former Rent Control Administration dated January 25, 1971, which exempted the property pursuant to §3(b)(1) because it was used primarily for transient roomers. That 1971 letter was supplied by Farrington without any further documentation, substantiation or explanation. Mr. Farrington did not appear at the hearing to explain the history of the building, and as noted above, all records for this property are missing.

All rental units in the City are subject to rent control unless the owner can demonstrate that such units fall within a statutory exemption to the Act. Simply stated, in cases where there is a question as to the exempt or controlled status of a residential property, the burden of proof rests with the owner. Well settled legal principles establish that one claiming an exemption from a statute has the burden of proving that exemption. Comm. v. Mass. CRINC, 392 Mass. 79, 96 n.6 (1984); Wheeler v. Dir. of D.E.S., 347 Mass. 730, 734, 738 (1964). The party who claims that their case is an exception to a general prohibition, must prove that exception. See, for example, Comm. v. Walker, 372 Mass. 411 (1977); Comm. v. Brunelle, 361 Mass. 6 (1972); Comm. v. Nickerson, 236 Mass. 281 (1920). Further, where a fact is peculiarly within the knowledge or control of a party, the burden is ordinarily upon that party to establish it. Gomes v. Eastern Gas & Fuel Assoc., 127 F. Supp 435 (D.C.Mass 1955).

An exemption pursuant to §3(b)(1) is conditional. When the grounds for the exemption no longer exist, the exemption ceases. The evidence indicates that even had the property qualified for this exemption in 1970, the property was not used primarily for transient guests for much longer. By 1976 the landlord had failed to provide proof of any reason the property should be listed as exempt. Exhibit 3.

Several copies of old Housing Inspection Forms were found at the Inspectional Services Department. While Exhibit 5, dated 5/25/71, appears to be a copy of the annual inspection done when a Roominghouse license is renewed, Exhibit 6, dated 4/9/73, was an inspection for Roaches requested by a tenant. It is unlikely, in my experience, that a transient guest would make an appointment with Inspectional Services for such an inspection. Other Reports were also

requested by tenants, but these were in the 1980's, when there is even more information about the use of the property.

Exhibits 11-25 are the records from the Cambridge Election Commission and reflect both the police census and the voter listings for the City. Looking only at the census names during the early 1970's, it is clear that many of the residents of 9 Upland in 1971 remained as residents for long periods of time thereafter. Also the "V" designation next to many of the names indicates that the occupant was registered to vote in the City as a resident of 9 Upland Street. Such a pattern is inconsistent with transient housing.

Even had the property been eligible for an exempt status in 1970 due to transient housing usage, the loss of that status prior to March 31, 1976 would mean, pursuant to §6 of C. 842 of the Acts of 1970, that the property became subject to rent control with the 1970 rents being used as Base Rents.

B. Number of Controlled Units. I recommend that the Board declare this property to be an apartment building containing nine controlled rental units. This recommendation is made despite evidence that the building has had a history of mixed apartment/rooming house use. The building is currently rented as an apartment building and the scant history of this property does not lend itself to requiring that certain units be rented as individual rooms.

Such a Ruling is consistent with the present use as well as the historical use of at least some of the building. The historical amount of rooming use vis-a-vis apartment use is not quantifiable with the evidence available. Nothing in said Ruling would prevent a future owner from operating this property as a roominghouse, or as a mixed roominghouse/apartment building.

C. Registration. I recommend that the Board order the current owner to properly register this property. ¹ Registration is required in order to receive future notices of rent control information which may pertain to the property, such as future Board authorized General Adjustments of the rents.

¹ During the Hearing it was mentioned that the property was in the process of foreclosure. Subsequent to this hearing I was contacted by Steven Kelley of BayBank who informed me that the property had been foreclosed and purchased by BayBank. Registration may be accomplished by BayBank or by the property manager.

D. **Parking.** The tenants complain that they cannot get Resident Parking Stickers from the Cambridge Parking Department because the Parking Department still lists this property as a transient lodging house. Hopefully this problem will be resolved upon resolution of this case.

E. **Mailboxes.** The tenants complain that there are no individual mailboxes for each apartment. Rather, the mail is dumped in the front foyer and each tenant must search through the pile each day to find their own mail. This has been a continuous problem, about which they have complained without avail.

United States Postal Service regulations concerning delivery of mail to residential buildings containing three or more apartments or flats, having a common building entrance, and having a common street number, require the installation and maintenance of mail receptacles approved by the Postal Service. Said mail boxes for the building must be grouped at a single point, and the landlord must provide one box for each apartment, including that of any resident manager or building superintendent. See, USPS Publication 17 (4/82).

F. **Apartment Numbers.** The individual apartments are unnumbered. The current residents gave them their present designations. The landlord should be required to place apartment numbers on the entry doors to the individual units.

G. **Base Rents.** The Base Rents for this property would normally be established as the March, 1970 rents. C. 842 of the Acts of 1970, §6. Those rents are not available. The rent control data base for 1970 rents is not considered accurate. The rent control data base for 1967 rents is considered accurate, since those rents were verified. I therefore recommend that the Board establish the Maximum Lawful Rents for these units using the average 1967 rents in the same Geo-Zone for unheated, five room apartments. There is no reliable rental history for this property, and none is expected in the future.

H. **General Adjustments.** I recommend that the Board allow the General Adjustments for which this property would have been eligible had the owner properly registered in 1970 or 1971. The Base Rents should be adjusted to allow for average General Adjustments since 1970 despite the inexcusable Failure to Register the property.

The fact of missing records for this property are inexplicable. Speculation in that regard should be avoided, since all normal explanations do not make sense. I can think of no way that all files for a property could vanish including a file of a Hearing already held but not yet written (or written but not yet scheduled for a Board Meeting). The missing records force speculation as to the history between this landlord and the rent control office with regard to this property. Such speculations cannot carry enough weight to withhold prior General Adjustments.

As discussed in Footnote 1, this property was recently Forclosed. The Bank has appointed a managing agent. Presumably the Bank wishes to sell the property. Prospective buyers should have the right to know the Maximum Lawful Rents so that they may bid intelligently.

General Adjustments since 1967 for this property have been calculated in Appendix B to this report. Should the Board allow General Adjustments to the 1967 Base Rent and further Rule this property to contain nine controlled rental units, the current rent structure would appear as follows:

<u>Ser#</u>	<u>Unit</u>	<u>Flr</u>	<u>BR</u>	<u>Rms</u>	<u>HT</u>	<u>EL</u>	<u>HW</u>	<u>GAS</u>	<u>FURN</u>	<u>PKG</u>	<u>1992 MLR</u>
001	1	1	3	5			X				\$ 312
002	2	1	3	5			X				312
003	3	2	3	5			X				312
004	4	2	3	5			X				312
005	5	3	3	5			X				312
006	6	3	3	5			X				312
007	7	4	3	5			X				312
008	8	4	3	5			X				312
009	B	B	3	5			X				312

I. **Capital Improvements.** The testimony indicates that the property suffered from neglected maintenance over the years. However owner Farrington apparently renovated the building shortly before renting to the current occupants. That renovation, and other capital improvements that may be documented or otherwise proven, may be considered in the future upon the submission of a Petition for Rent Adjustment for capital improvements. The applicant need not have been the owner at the time of the improvements in order to gain an increase in the maximum lawful rents for said improvements.

J. Overcharges. It must be noted that Richard Farrington has had the benefit of obtaining market rents for the past two decades without regard to rent control or its rate setting powers. The landlord obtained a questionable Ruling of Exemption in January, 1971 which, if true when he purchased the property, could not have been true for very long thereafter. The landlord failed to register the property even in 1976 after being so directed. In 1985 this matter again came to the fore, but all records relating to this property (including a Hearing Report) inexplicably disappeared. Although the records disappeared, the landlord still knew or should have known his property was subject to rent control. During the past twenty years the property has suffered a long history of neglected maintenance, as evidenced by the Inspectional Services reports and testimony. The owner apparently lost the property in foreclosure proceedings, a fate not predicated by the rent control status of this property.

There have been rent overcharges for the controlled rental units at this property. The tenants have numerous rights with regard to those overcharges. It is recommended that the tenants consult with an attorney for advice in determining the person(s) owing prior overcharges and the best method to recoup those overcharges.

Respectfully submitted,

James H. Packer
Assistant Counsel



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

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LAW DEPARTMENT

RUSSELL B. HIGLEY
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SUSAN HICKS SPURLOCK
LEGAL COUNSEL

January 6, 1986

Robert W. Healy
City ManagerRE: Conflict of Interest

Dear Mr. Healy:

You have requested my opinion as to whether the recent election of William Walsh, Esq. to the City Council might present a conflict of interest problem in view of the fact that Mr. Walsh and members of his law firm have recently represented clients with claims against the City, and have represented clients before the Cambridge Rent Control Board.

Based on a confidential opinion from the State Ethics Commission, dated December 27, 1985, a conversation with Mr. Walsh on January 2, 1986 and my own review of the law, my opinion is as follows:

Upon assuming office this month, Mr. Walsh will be a "municipal employee" within the meaning of G.L.c.268A, the conflict of interest law. See s.1(g). The two relevant sections of Chapter 268A are sections 17 and 18.

1. Section 17(a)

This section prohibits Mr. Walsh from receiving compensation, directly or indirectly, from anyone other than the City in relation to any particular matter 1/ in which the City is a party or has a direct and substantial interest. Examples of particular matters subject to the s17(a) prohibition

are administrative proceedings before City agencies and lawsuits in which the City is a party. The prohibition applies not only to his receipt of money in return for services which he would render, but also to his receipt of money for services rendered by others in the firm. The definition of "compensation" within G.L.c.268A, s1(a) expressly includes the receipt of money for the services of others, and the Commission has endorsed this principle in recent advisory opinions. See, EC-COI-85-20; 85-21; 85-22. Therefore, while Mr. Walsh remains a municipal employee, he may not receive directly or indirectly, compensation attributable to services of the firm performed in relation to matters in which the city is a party or has a direct and substantial interest. To avoid a 17(a) violation, the firm's assets attributable to such compensation should be segregated from the assets which would otherwise be available for Mr. Walsh.

At our meeting on January 2, 1986, Mr. Walsh represented to me that such a segregation of his firm's assets had been carried out effective January 1, 1986.

1/ "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

I also call your attention to G.L.c.268A, s17(c), which states:

No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Mr. Walsh also represented to me that he would not appear as attorney of record in any case against the City or any case before the Rent Control Board.

Very truly yours,


Russell B. Higley

31.

5-7088

Comm. from Michael H. Turk, Co-Chair,
Cambridge Tenants Union, regarding
alleged abuses of public office.

In City Council,

Dec. 14, 1992

*Charter Right
exercised by
Councillor Duesoy
at the reconvened
meeting held on
Dec. 16, 1992
12/21/92 Placed on file*