

*Reconsideration***City of Cambridge**

MASSACHUSETTS

In City Council _____ 19

		YEA	NAY	ABSENT	
	Mr. Clinton	✓			
	Mr. Danehy			✓	
	Mr. Duehay		✓		
	Mrs. Graham		✓		
	Mr. Moncreiff		✓		
	Mr. Owens		✓		
	Mr. Sullivan	✓			
	Mr. Vellucci	✓			
	Mayor Ackermann		✓		
		3	5	1	

City of Cambridge

Councillor Vellucci

In City Council,

February 28, 1972.

ORDERED:-

That the City Manager be and hereby is requested to direct the Election Commission to put the subject matter of the referendum petition relative to the retention of Frank J. Frisoli as Superintendent of Schools on the ballot at the special election to be held on April 25, 1972, and be it further

ORDERED:-

That the City Manager be and hereby is requested to direct the City Solicitor to prepare in proper form the subject matter of the petition for submission to the Election Commission.

In City Council February 28, 1972
Adopted by Yea and Nay Vote
Yeas 4 Nays 5 Absent 0

Paul E. Healey
City Clerk

*Councillor Vellucci's Order***City of Cambridge**

MASSACHUSETTS

In City Council Feb. 28, 1972

		YEA	NAY	ABSENT	
	Mr. Clinton	✓			1
	Mr. Danehy	✓			
	Mr. Duehay		✓		
	Mrs. Graham		✓		
	Mr. Moncreiff		✓		
	Mr. Owens		✓		
	Mr. Sullivan	✓			
	Mr. Vellucci	✓			
	Mayor Ackermann		✓		
		4	5	0	

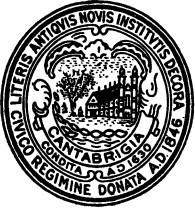
Previous question Vellucci's Motion to close off debate

City of Cambridge

MASSACHUSETTS

In City Council Feb. 28, 1972

		YEA	NAY	ABSENT	
	Mr. Clinton		✓		
	Mr. Danehy		✓		
	Mr. Duehay		✓		
	Mrs. Graham		✓		
	Mr. Moncreiff		✓		
	Mr. Owens		✓		
	Mr. Sullivan		✓		
	Mr. Vellucci		✓		
	Mayor Ackermann		✓		
			9		



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

LAW DEPARTMENT

PHILIP M. CRONIN
CITY SOLICITOR

EDWARD D. MCCARTHY
ROWENA E. TAYLOR
ASSISTANT CITY SOLICITORS

JOHN A. SERINO
LEGISLATIVE AGENT

February 1, 1972

Honorable Barbara Ackerman
Mayor of Cambridge
City Hall
Cambridge, Massachusetts

Dear Mrs. Ackerman:

You have asked my opinion as Mayor and Chairman of the School Committee whether the School Committee's decision to notify the Superintendent prior to April 15, 1972 that he is not to be employed for the following school year is subject to referendum under General Laws, Chapter 43, Section 42.

Under General Laws, Chapter 71, Section 41, the School Committee is authorized to notify in writing any teacher or the superintendent who does not have tenure on or before April 15 that such teacher or the superintendent is not to be employed the following school year; otherwise the teacher or superintendent is deemed to be rehired the next year. To achieve tenure, the superintendent or a teacher must have served at least three years. The present superintendent has not served three years and therefore does not have tenure. The reason that the April 15 date is in the statute is to provide the superintendent or any teacher so notified ample opportunity to secure another position for the next school year.

The law of Massachusetts has accorded School Committees supremacy in matters of educational concern. An essential aspect of the School Committee's supremacy is the right to decide the continued employment of non-tenured personnel in the School System. That determination obviously involves matters of educational policy that should and, under the law, must be left to the judgment of the School Committee. The Court has so decided. Sullivan v. School Committee of Revere, 348 Mass. 162.

It is clearly inconsistent with the concept of the supremacy of the School Committee to subject the decision of the Committee whether to rehire a non-tenured employee to a popular referendum under General Laws, Chapter 43, Section 42. If the Committee's determination were subject to referendum, that would mean that the decision whether to retain any non-tenured teacher, quite apart from the superintendent, would be subject to a political campaign and a popular vote. That would not only be inconsistent with the concept of supremacy, but even more serious, it would destroy professionalism in education by sanctioning appointment of teachers and the superintendent by popular vote.

The Supreme Judicial Court has made clear that such a result cannot be tolerated. The Court has held that only legislative, and not executive or administrative acts, of a City Council or School Committee are subject to referendum. Gorman v. City of Peabody, 312 Mass. 560. The Court in that case observed: "It well may be assumed that this power to contract with teachers from time to time involves the exercise of an executive function in carrying out the mandate of the law."

The City-wide referendum of November 5, 1957 defeating a vote of the School Committee to establish seventeen new positions and adopt a budget for those positions has no bearing on the present issue. After the vote, the new School Committee in 1958 decided to accept the mandate of the voters and refused to create the positions or adopt a budget for them. The propriety of the referendum was never in issue. There was a Court challenge to the 1958 School Committee vote and the Court ruled in Murphy v. City of Cambridge, 342 Mass. 339 that in accord with the doctrine of supremacy, the 1958 School Committee could do what it thought best for the School System by accepting the mandate of the voters in the referendum. At no time, however, did the Court consider the issue of a referendum as to specific appointments to the seventeen positions.

The Supreme Court of Connecticut decided virtually the same issue as involved with the current school superintendent. The Connecticut Court was concerned with the dismissal of a town manager, but the law was comparable to that of this Commonwealth.

Honorable Barbara Ackerman
Mayor of Cambridge

-3-

February 1, 1972

The Connecticut Court in State v. Hunter, 97 Conn. 579 ruled that the decision of the town council to dismiss the town manager was not a "measure" which was subject to referendum. The Court said in pertinent language: "The whole matter of appointment, salary and removal was evidently put into the hands of the Council exclusively; and this is logical, for the whole argument in favor of the town-manager system of municipal government is that the purely business affairs of the municipality will be better managed by a trained expert than by a popular favorite. To apply the referendum to the appointment and removal of a town agent would tend to defeat the supposed superior efficiency of the system, and in this instance would nullify the unrestrained power of appointment and removal which Section 39 confers on the town council."

It is therefore my opinion that the written notice given to the superintendent who does not have tenure prior to April 15, 1972 advising him that he will not be employed the following school year cannot be the subject matter of a referendum.

Very truly yours,

Philip M. Cronin

Philip M. Cronin
City Solicitor

PMC:cas

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR Clinton and
Councillor Vellucci

2 - 29 - 72
Date

Mr. Paul E. Healy,
City Clerk,
Cambridge, Mass.

Dear Sir:-

I hereby notify you of my intention to move reconsideration of the vote of the City Council on February 28, 1972 failing to adopt an order requesting the City Manager to direct the Election Commission to put the subject matter of the referendum petition relative to the retention of Frank J. Frisoli as Superintendent of Schools on the ballot at the special election to be held on April 25, 1972 and requesting the City Manager to direct the City Solicitor to prepare in proper form the subject matter of the petition for submission to the Election Commission.

Truly yours,

Daniel J. Clinton
Signature
Alfred Vellucci

CAMBRIDGE, MASS.

MAR 1 10 41 AM '72

RECEIVED

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR

Clinton and
Councillor Vellucci

2-29-72

Date

Mr. Paul E. Healy,
City Clerk,
Cambridge, Mass.

Dear Sir:-

I hereby notify you of my intention to move reconsideration of the vote of the City Council on February 28, 1972 failing to adopt an order requesting the City Manager to direct the Election Commission to put the subject matter of the referendum petition relative to the retention of Frank J. Frisoli as Superintendent of Schools on the ballot at the special election to be held on April 25, 1972 and requesting the City Manager to direct the City Solicitor to prepare in proper form the subject matter of the petition for submission to the Election Commission.

Truly yours,

Daniel J. Clinton
Signature
Alfred Vellucci

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MAR 1 10 41 AM '72

Reconsideration⁷³