



# City of Cambridge

20.

IN CITY COUNCIL

November 2, 1992

COUNCILLOR RUSSELL  
COUNCILLOR SULLIVAN  
COUNCILLOR TOOMEY  
COUNCILLOR WALSH

**ORDERED:** That the attached communication received from the Office of the District Attorney for Middlesex County, dated October 26, 1992, regarding the findings of a complaint made by the sponsors of this Order, alleging that the Cambridge City Council violated the Open meeting Law, G.L. c. 39, sections 23A-24, in the process of electing a temporary City Clerk, be referred to the Massachusetts Ethics Commission and the Cambridge Election Commission, for its review and its files.

In City Council November 2, 1992.

Adopted by the affirmative vote of nine members.

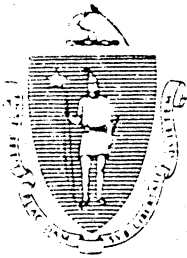
Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script, reading "D. Margaret Drury".

D. Margaret Drury  
City Clerk



# THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE  
DISTRICT ATTORNEY FOR MIDDLESEX COUNTY  
CAMBRIDGE 02141

THOMAS F. REILLY  
DISTRICT ATTORNEY

October 26, 1992  
OML 92-6

RECEIVED  
OCT 27 1992  
SOS J.

Kenneth Reeves, Mayor  
Cambridge City Council  
City Hall  
Cambridge, Massachusetts 02139

Dear Mr. Reeves:

On May 28, 1992, this office received a complaint from four members of the Cambridge City Council, William Walsh, Sheila Russell, Timothy Toomey and Walter Sullivan, alleging that the Cambridge City Council violated the Open Meeting Law, G.L. c. 39, §§23A-24, and was about to further violate the law on May 29, 1992, in the process of electing a temporary city clerk.

As the allegations in the complaint were of a nature that required further investigation, this office sought additional information concerning the alleged violations. Based on the information obtained, I find that the Cambridge City Council did not violate the Open Meeting Law in the process of electing a temporary city clerk. While no violation occurred during either of the City Council's meetings on May 28 or May 29, 1992, it is plain that at least some, if not all, of the councillors arrived at a decision as to whether the former clerk should be replaced, and some councillors selected their nominee to temporarily replace the clerk, through a series of individual conversations occurring outside the City Council's meetings. Such discussions of public business outside of an open meeting are a violation of the Open Meeting Law if a quorum of the councillors is involved. Where less than a quorum is involved, such serial conversations nevertheless create an unfortunate appearance of impropriety and should, in the future, be scrupulously avoided.

# FACTS

On Monday, May 11, 1992, the Cambridge City Council held a properly posted regularly scheduled open meeting, during which the Council conducted its normal business. There was no discussion of the election of a city clerk or the need to hold such an election in the near future.

On Tuesday, May 12, 1992, the Council posted notice of a special meeting to be held Thursday, May 14, 1992, for the purpose of "bringing in motions concerning the appointment of a city clerk." At the time, the city clerk was Joseph Connarton, who had served as city clerk for the past six years and as deputy city clerk for the fourteen years preceding his appointment.

In the late afternoon of May 12, 1992, Mr. Connarton received notice of the special meeting, along with a message from the office of Mayor Kenneth Reeves, asking him to stay after work so that the Mayor could speak to him. Mr. Connarton then approached one of the councillors and asked him if he knew the significance of the special meeting and the message from the Mayor's office. The councillor responded that he felt that Mr. Connarton should be aware that another name, besides his, would likely be placed in nomination. The councillor did not elaborate but said that the Mayor would speak to him in more detail.

Later in the evening of May 12, 1992, Mayor Reeves met with Mr. Connarton in his office and explained that the upcoming election was simply being held because Mr. Connarton's term was coming to an end. In addition, Mayor Reeves informed Mr. Connarton that he could not support his reappointment. In the following days, Mr. Connarton proceeded to ask each councillor if he had his or her support for reappointment, if he had done anything to cause them to lose faith in him and if there was anything he could do or say that could make them reconsider. Mr. Connarton found that four councillors were in favor of his reappointment and five were against it. Each councillor indicated that he or she was firmly committed to his or her position, and a majority of the councillors already appeared familiar with the issue of Mr. Connarton's proposed replacement despite the absence of any discussion of this issue at a public meeting.

On Thursday, May 14, 1992, the Council met in a properly posted special meeting which was open to the public. Councillor Walter Sullivan nominated Joseph Connarton to be reappointed to his position as Cambridge City Clerk at the expiration of his term on May 31, 1992. The Council then tabled all discussion of the election of a city clerk, and no further action was taken. No other

names were placed in nomination, and the meeting was adjourned after four minutes. At that point, Mr. Connarton felt that the Council would not reappoint him, as all of the councillors had assured him that they would not change their positions.

As a result, Mr. Connarton retained an attorney to protect his interests, and the attorney drew up a severance agreement over the weekend. The Cambridge City Manager and Mr. Connarton signed the severance agreement during the properly posted, regularly scheduled, open meeting of the Cambridge City Council on May 18, 1992. The Council took no further steps at that time to elect a city clerk for the term beginning June 1, 1992.

As the next Council meeting was scheduled for June 1, 1992, Mayor Reeves asked Russell Higley, Cambridge City Solicitor, about the legal ramifications of not appointing a new city clerk prior to the expiration of Mr. Connarton's term. Mr. Higley advised the Mayor that if the Council failed to take any action on the appointment of a city clerk, the deputy city clerk would not succeed to the position; rather, the City of Cambridge would be without a clerk as of June 1, 1992.

In order to avoid this situation, Mayor Reeves called a special meeting of the Cambridge City Council on May 28, 1992 for the purpose of discussing the election of a temporary city clerk. As there was some question whether the call of the meeting encompassed the actual election of a temporary city clerk, the Mayor called a second special meeting for May 29, 1992. Both these meetings were properly posted and open to the public. As the Mayor wanted to ensure that the Council would have some candidate to consider during the election, he suggested candidates to and solicited suggestions from a number of the other councillors prior to the special meetings. During the discussions, Margaret Drury's name arose as a candidate for which there appeared to be some enthusiasm. Some, if not all, of the councillors were familiar with Ms. Drury as she was employed by the City of Cambridge as Assistant General Counsel for Affordable Housing within the Community Development Department and, prior to that, had been the Executive Director of the Rent Control Board. On the morning of May 28, 1992, Mayor Reeves asked Ms. Drury whether she would be interested in being a candidate for the position, and she indicated that she would.

During the May 28, 1992 meeting, Councillor Francis Duehay nominated Ms. Drury for the position of temporary city clerk. After some brief discussion about the

propriety of the election in light of the call of the meeting, the meeting was adjourned. At the meeting of the next evening on May 29, 1992, Ms. Drury appeared before the Council and answered questions put to her by the councillors regarding her qualifications for the position and her vision of the office she would run if she were appointed. The Council voted by a five to four majority to appoint Margaret Drury as the temporary city clerk.<sup>1/</sup>

#### DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The law aims "to advance democracy by providing broad access to governmental decision-making ... " Bartell v. Wellesley Housing Authority, 28 Mass. App. Ct. 306, 308 (1990). To this end, the Law provides that no quorum of a governmental body may meet in private for the purpose of deciding or deliberating toward a decision on any matter except as provided by law. G.L. c.39, §23B, paragraph two. The Law specifically provides that, "[n]o chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power." G.L. c. 39, §24B, paragraph nineteen.

The complainants allege that Ms. Drury's nomination on May 28, 1992 was invalid because the call of the meeting gave no notice to the public that an election would take place, only that an election would be discussed. While the Council may have had a practice of stating the purpose of its meetings in its notices, and while the public is always better served when more information is provided, the Open Meeting Law does not mandate that the notice of a meeting contain any agenda. The notice provisions of the Open Meeting Law are quite minimal, requiring governmental bodies to provide information sufficient only to ensure that members of the public can attend: the date, time and place of the meetings. G.L. c. 39, §23B, paragraph twenty. As the Cambridge City Council provided all of the necessary information forty-eight hours in advance as required, it did not violate the notice provisions of the Open Meeting Law with respect to the May 28, 1992 special meeting. The Council likewise satisfied the notice

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<sup>1/</sup> Ms. Drury has since been appointed by the Council as the Cambridge City Clerk.

requirements of its May 29, 1992 special meeting.<sup>2/</sup>

The complainants also allege that five members of the Council decided not to reappoint Mr. Connarton and informed him of this decision outside of an open meeting. The complainants further allege that these five councillors decided on the appointment of Ms. Drury as the temporary city clerk prior to the May 28, 1992 meeting and the May 29, 1992 election. While the Mayor denies that a quorum of the Council held any secret meetings, he acknowledges that several councillors approached him privately concerning their desire not to reappoint Mr. Connarton. The Mayor also acknowledged that he later privately spoke with some councillors regarding the suitability of Ms. Drury as temporary city clerk. While none of the councillors specifically recalls that these private conversations involved a quorum of the City Council, the obvious familiarity of a majority of the councillors with the proposal to replace the city clerk, despite the fact that the issue had never been discussed at a meeting, raises a strong inference that a quorum of the City Council had engaged in private discussions, whether at a private meeting or simply through a series of individual conversations.

Serial conversations involving a quorum of members of a governmental body about public business within their jurisdiction have long been held by this office to violate the Open Meeting Law. Open Meeting Law Opinions OML 89-3, OML 89-1, OML 88-7; District Attorney's Open Meeting Law Guidelines, (1989 ed.) p. 26. The Attorney General has also so ruled, see Attorney General's Open Meeting Law Opinion to Massachusetts Aeronautics Commission dated October 13, 1992, as has the Massachusetts Superior Court. See Harshbarger v. Board of Selectmen of the Town of Lexington, No. 88-3644 (Middlesex Super. Ct., August 18, 1989) (order granting summary judgment). Thus, it is immaterial whether such discussions occurred at a private meeting or by serial conversations; in either case, the Open Meeting Law would be violated.

Deliberation under the Law is "a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction." G.L. c.39, §23A. Here, while none of the councillors was able to recall these

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<sup>2/</sup> That so-called "special meetings" require written notices to be delivered in hand to the councillors twelve hours in advance under G.L. c. 43, §98, does not exempt special meetings from the requirements of the Open Meeting Law, as the City Council evidently correctly recognized. Nothing in that statute precludes public notice. See G.L. c. 39, §§23B, 24.

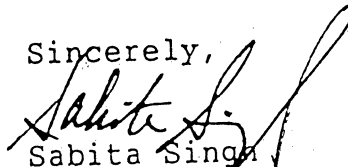
conversations with sufficient clarity to establish that a quorum was involved, all indications are that this was the case. This impression is strengthened by the surprise expressed by some councillors when informed that private conversations among a quorum of a governmental body are prohibited. Thus, it is apparent that the Council, at best, created a strong appearance of impropriety by engaging in private discussions regarding Council business. As the councillors must well know by now, the mere appearance of impropriety is sufficient to shake public confidence. Moreover, such casual conversations often result in behind the scenes decision-making. This is the precise result that the Open Meeting Law was designed to prevent.

#### CONCLUSION

In summary, while I find no violation of the Open Meeting Law in the Council's meeting notices, I find that several councillors engaged in private serial conversations outside of a public meeting, concerning the replacement of the city clerk, plainly a matter of public business within the Council's jurisdiction. Regardless of whether a quorum was involved, the Council's actions created a strong appearance of impropriety. Such discussions result in the public being deprived of the opportunity to see their elected representatives engage in the deliberative process, and should be scrupulously avoided.

I trust that, in the future, the Cambridge City Council will be more cognizant of its responsibility to refrain from private discussions of its public business. The members of the District Attorney's Open Meeting Law Team are available by telephone at (617) 494-4062 to assist public officials and members of the public with questions concerning the Law, and this office has published guidelines to assist in compliance. A copy of the guidelines is enclosed. Additionally, upon request, this office will present a workshop on the Open Meeting Law to governmental bodies and members of the public. Please call me at (617) 494-4457 if you would like us to schedule such a presentation.

Sincerely,



Sabita Singh  
Assistant District Attorney  
Tel: (617) 494-4457

Enclosure: Guidelines

JD.

Convent

November 2, 1992

Councillor Russell

Councillor Sullivan

Councillor Toomey

Councillor Walsh

ORDERED : That the Attached Communication received from the Office of the District Attorney for Middlesex County, dated October 26, 1992, regarding the findings of a complaint made by the sponsors of this order, alleging that the Cambridge City Council violated the Open Meeting Law G.L. c. 39 § 23A-24, in the process of electing a temporary City Clerk, be referred to the Massachusetts Ethics Commission and the Cambridge Election Commission, for its review and its Files.



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NOV. 02 1992

City Council \_\_\_\_\_

Adopted by the affirmative vote

of 9 members

*D. Margaret Smayda*  
City Clerk

CONSENT ORDER #20

S-892

Councillors Russell, Sullivan, Toomey &  
Walsh re: Middlesex County District  
Attorney ruling on the alleged violation  
of the Open Meeting Law.

In City Council,

November 2, 1992

Order Adopted