



CITY OF CAMBRIDGE

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May 1, 1996

Robert W. Healy
City Manager
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Boston Newsbox Litigation

Dear Mr. Healy:

At the request of the City Council, I write to report on the so-called Boston Newsbox litigation, otherwise known as Globe Newspaper Co. v. Beacon Hill Architectural Commission.

This case began in 1991, when the Beacon Hill Architectural Commission issued an amendment to its architectural guidelines prohibiting the placement of newsboxes (sometimes referred to as "newsracks") within the Historic Beacon Hill District in Boston. The Boston Globe and other newspapers commenced litigation in the U.S. District Court, contending that the guidelines violated the First Amendment, and, alternatively, that the Commission did not have the authority to issue them.

In 1993, with the litigation still pending, the Commission promulgated another amendment, the "Street Furniture Guideline" banning all "street furniture" and superseding the 1991 guidelines banning only newsboxes. The new guideline provides:

"Street furniture, as defined below, shall not be permitted in the Historic Beacon Hill District with the exception of approved store-front merchandise stands and those structures erected or placed by authorized public agencies for public safety and/or public welfare purposes. Street furniture is defined as any structure erected or placed in the public or private ways on a temporary or permanent basis. Authorized public safety/public welfare street furniture includes, but is not limited to, such structures as street lights, traffic lights, mail boxes, fire hydrants, street trees, and trash receptacles. Any such authorized public safety/public welfare street furniture or approved storefront merchandise stands shall be subject to Commission review and shall be in keeping with the architectural and historic character of the District and the criteria for exterior architectural features as specified in [St. 1955, c. 616, as amended]."

The Federal District Court ruled that the Street Furniture Guideline violated the First Amendment and also that the Commission did not have authority to issue it. Globe Newspaper Co. v. Beacon Hill Architectural Commission, 847 F. Supp. 178 (D. Mass. 1994).

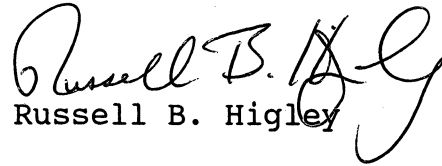
The Commission appealed, and the U.S. Court of Appeals for the First Circuit certified to the Supreme Judicial Court the following question: "Did the Beacon Hill Architectural Commission have authority under 1955 Mass. Acts c. 616 (Act creating the Commission) to adopt the Street Furniture Guideline?" Globe Newspaper Co. v. Beacon Hill Architectural Commission, 40 F. 3d 18, 25 (1st Cir. 1994). The Supreme Judicial Court answered this question in the affirmative. Globe Newspaper Co. v. Beacon Hill Architectural Commission, 421 Mass. 570 (1996).

So the case is now back in the First Circuit for decision of the First Amendment issues. I understand that the case is scheduled for argument on May 8.

Broadly speaking, the First Circuit must decide whether the

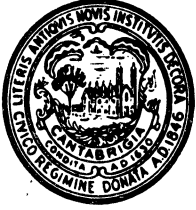
Commission's Street Furniture Guideline, which bans all newsboxes in the Beacon Hill District, violates the newspapers' First Amendment rights.

Very truly yours,


Russell B. Higley

RBH/jb

ORD#3\Newsrack\Healy.Ltr



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CITY OF CAMBRIDGE
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May 13, 1996

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 24, regarding the status of the law suit challenging Boston's regulation of newspaper boxes on sidewalks, please find attached a response from City Solicitor Russell B. Higley.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy
City Manager

RWH/mec
attachment

Consent Agenda #5

5-274

Relative to Awaiting Report Item
Number Twenty-four, regarding the
status of the law suit challenging
Boston's regulation of newspaper
boxes on sidewalks.

In City Council May 13, 1996

*Referred to Ordinance
Committee*