

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 227-4400
TELECOPIER (617) 227-4420
TELEX 951104

November 2, 1984

Robert W. Healy
City Manager
City Hall
Cambridge, Massachusetts

Dear Mr. Healy:

You have requested our opinion on the question of whether a two-thirds vote of the City Council is required to transfer funds from the Employee Benefits account to provide FY1985 funding for staff and expenses of two new boards or commissions established by the Council. As I indicated to you, our conclusion is that the relevant statute, G.L. c.44, §33B, is totally unclear on this point, but as discussed below we think that the two-thirds vote requirement of that statute should be considered applicable.

The applicable provision is in the first sentence of G.L. c.44, §33B, which reads as follows:

On recommendation of the mayor, the city council may, by majority vote, transfer any amount appropriated for the use of any department to another appropriation for the same department, but no transfer shall be made of any amount appropriated for the use of any department to the appropriation for any other department except by a two thirds vote of the city council on recommendation of the mayor and with the written approval of the amount of such transfer by the department having control of the appropriation from which the transfer is proposed to be made.

On the basis of the literal language of the statute one could conclude that, since the employee benefits appropriation was not made for the benefit of only one specific department (even though a specific department may control it), the statute does not apply. On the other hand, the literal language is also consistent with the interpretation that an appropriation controlled by

any one department, even though benefitting and in that sense "for the use of" more than one department, cannot be transferred without complying with the two-thirds vote requirement. In such a case the presumed policy underlying the statute must be considered and on balance we think that the policy would seem better served by the second interpretation. Moreover, in such an uncertain situation, we would recommend the more conservative, clearly safe position, which is to require the two-thirds vote.

Please call me if you wish to discuss this matter further.

Yours truly,



John G. Faria

JGF/smw



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

November 2, 1984

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

MICHAEL C. COSTELLO
ASSISTANT CITY SOLICITOR

SEVERLIN B. SINGLETON, III
BIRGE ALBRIGHT
SUSAN HICKS SPURLOCK
LEGAL COUNSEL

Mr. Robert Healy
City Manager
City Hall
Cambridge, Massachusetts

CREATION OF NEW STAFF POSITIONS FOR HUMAN RIGHTS COMMISSION-POLICE CIVILIAN REVIEW & ADVISORY BOARD

Dear Mr. Healy:

You have requested my opinion as to the required votes of the City Council to establish the positions called for in the above ordinances by an interdepartmental transfer.

G.L.c.44, §33A states, in part, "NO new position shall be created...by ordinance...during the financial year subsequent to the submission of the annual budget unless provision therefor has been made by means of a supplemental appropriation." In my opinion, since the annual budget has been submitted, the Council cannot create this position until it has made a supplemental appropriation to fund it, which it has not done.

If a supplemental appropriation is to be made, it would have to be adopted in accordance with G.L.c.44, §33.

Regarding interdepartmental transfer, I note, that G.L.c.44 §33B states that no transfer of an appropriation from one department to another may be made except on recommendation of the City Manager, by

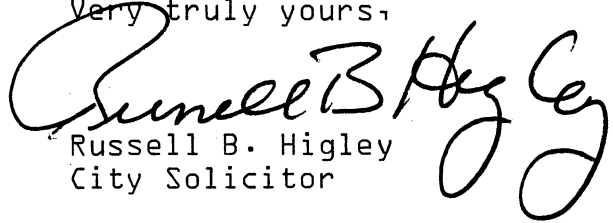
Mr. Robert Healy

-2-

November 21, 1984

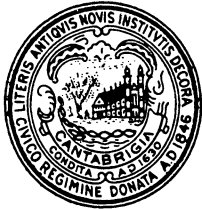
a two-thirds vote of the Council and with the written approval of the department having control of the appropriation from which the transfer is to be made.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell B. Higley". The signature is written in a cursive style with a large, looping initial "R".

Russell B. Higley
City Solicitor

RBH:cp



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

November 5, 1984

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 36 relative to the number of votes required to implement the ordinance for the creation of a Cambridge Police Review and Advisory Board and the Cambridge Human Rights Commission, enclosed please find copy of the opinion of Russell B. Higley, City Solicitor and the concurring opinion of the Bond Counsel for the City of Cambridge.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Encs. 2

Agenda Item No. 10. 40

Re: response to Awaiting Report Item No. 36
relative to the number of votes required to
implement the ordinance for the creation of
a Cambridge Police Review and Advisory Board
and the Cambridge Human Rights Commission.

In City Council,

November 5, 1984

11/5/84

P/hood

011
File