



# City of Cambridge

## Law Department

George A. McLaughlin  
~~THOMAS K. LYNN~~  
CITY SOLICITOR

PAUL A. D'AGOSTINO  
MOSIER B. GOLDBERG  
ASSISTANT CITY SOLICITORS

CITY HALL  
TELEPHONE: TROWBRIDGE 6800

August 2, 1937.

The Honorable, The Members of the City Council,  
City Hall, Cambridge, Massachusetts.

Dear Sirs:-

I beg leave to acknowledge the receipt of your order under date of July 23, 1937, requesting my opinion as to the validity of existing provisions of ordinances with regard to the number of police stations and the number of men.

In reply thereto I beg leave to submit the following:

The present ordinance under which the number of police stations and the number of men in the department and their assignment is sought to be established was enacted in 1917 entitled: "An ordinance abolishing the Department of Public Safety and establishing a Fire Department and a Police Department." Thereafter this ordinance was amended on May 20, 1918; January 4, 1919; May 29, 1934; December 4, 1934 and on April 29, 1937.

Section Six of the ordinance now provides for a minimum quota of two hundred and thirty-five men in the department at all times.

Section Seven now provides for a centrally located central station, a station in North Cambridge and a station in East Cambridge, with a minimum quota of thirty-seven men for each twenty-four hour tour of duty assigned to the North Cambridge and East Cambridge stations, inclusive of one captain, one lieutenant and two sergeants.

Having already advised the Honorable City Council that it lawfully may and has fixed the number of police stations and their locations within the confines of the city, it is no longer necessary to consider so much of the ordinance as pertains thereto.

While it has been pointed out in the preceding opinion that the City Council has the right to provide for the maintenance of its internal police, the power of the City Council to enact such ordinance is predicated upon special legislative authority and upon its original legislative



authority under the city charter. Its power in general may be said to enact such ordinances and pass such orders and resolutions as may be necessary and wise to provide for the maintenance of the police force without intruding upon the executive and administrative conduct of the Police Department. There is a well defined limitation upon the exercise of the power of the City Council. The enactments of the City Council, as evidenced by its ordinances, must at all times remain purely legislative and never interfere with or transgress into the executive and administrative branches of the municipal government. The clear separation of powers under the Constitution of the Commonwealth of Massachusetts into legislative, executive and judicial, must at all times be respected by the City Council in the enactment of ordinances.

It has been the tendency of legislative enactments and charters in the last half century to gradually divest the City Council, as the legislative branch of municipal government, of many of its powers and to centralize - as far as can effectively be accomplished - the responsibility for municipal government and its administrative features in the executive branch of the government and in the person of the Mayor and his subordinates.

The Council has remained, under the modern statutes, a purely legislative and deliberative body and is never clothed with executive or administrative powers.

When the legislature enacted the so-called standard forms of charters, Plans A, B, C and D, more specifically set forth in G. L., (Ter. Ed.), C. 43, the tendency toward centralization of the responsibility for municipal government was crystallized. In the enactment of the so-called Budget Act this development of municipal government has been manifest. The <sup>City</sup>Council, having adopted the Plan B form of charter and the constitutionality of the Plan B charter having been passed upon affirmatively by the Supreme Court, later decisions concerning this type of charter indicate this development of municipal law.

In the case of Dooling v City Council of Fitchburg, 242 Mass. 599, the court says:

"The sphere of action of the City Council of a city with a Plan B charter is rigidly confined to legislation with possible exceptions not here material, and cannot encroach upon executive or administrative duties which are to be performed by the Mayor or under his direction, or by other municipal boards, committees or officers. This is required by the general scheme of the statutes as well as by its detailed provisions."

While it is difficult to establish a line beyond which legislative powers may not go without transgressing into the



duties of the executive branch of the city government, it is my opinion that the City Council cannot validly fix the number of men in the Police Department, as set forth in Section Six of the existing ordinance, and that the City Council cannot fix the quota of men and the assignment of specified superior officers as provided for in Section Seven of the existing ordinance.

There has been so much controversy in recent years concerning this ordinance that without being asked to do so, I am passing upon the ordinance, section by section, for the benefit of the Council in any future legislation.

Section One is valid and has been ruled to be constitutional by the Supreme Judicial Court.

Section Two is valid and has been ruled to be constitutional by the Supreme Judicial Court.

Section Three. In my opinion this is a valid exercise of legislative authority under the city charter.

Section Four. In my opinion this is a valid exercise of legislative authority under the City Charter and it has been ruled to be constitutional by the Supreme Judicial Court.

Section Five. This section, in my opinion, is valid and has been ruled to be constitutional by the Supreme Judicial Court.

Section Six. In so far as this section purports to establish a minimum quota of two hundred and thirty-five men at all times, it is invalid; in all other respects, in my opinion, it is a valid exercise of legislative authority.

Section Seven. In so far as Section Seven fixes the location of three police stations in the City of Cambridge, it is a valid exercise of legislative authority. In so far as it fixes a minimum quota of thirty-seven men for each twenty-four hour tour of duty, said quota to consist of one captain, one lieutenant, two sergeants and thirty-three patrolmen, it is invalid and not a proper exercise of legislative authority. In so far as it provides that members of the Police Department shall be excused from duty for one day out of every six without loss of pay, it is a proper exercise of legislative authority, both under the charter and under a special act of the legislature affecting the City of Cambridge and granting to its City Council the right to fix the compensation of members of the Police Department. In so far as it leaves the manner, time and nature of



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excusing members of the Police Department to the Chief or to the officer in charge of the department, it is, in my opinion, a valid exercise of authority.

Section Eight, in my opinion, is a valid exercise of legislative authority.

Section Nine, in my opinion, is a valid exercise of legislative authority.

Section Ten, in my opinion, is a valid exercise of legislative authority.

Section Eleven, in my opinion, is a valid exercise of legislative authority.

Section Twelve is a valid exercise of legislative authority and has been ruled to be constitutional and complies with the provisions of the state statute pertaining thereto.

Section Thirteen needs no discussion.

Respectfully submitted,

*George A. McLaughlin*  
City Solicitor.

GAMcL:C



Communication from the City Solicitor in response to an order of the City Council adopted on July 25, 1937 requesting his opinion as to the validity of existing provisions of ordinances with regard to the number of police stations and the number of men.

In City Council \_\_\_\_\_ AUG 10 1937

PLACED ON FILE

*Frederick H. Burke*  
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City Clerk