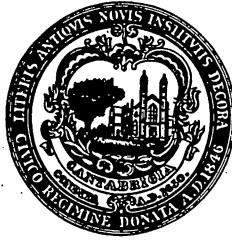


Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Nancy E. Glowa
First Assistant
City Solicitor



Arthur J. Goldberg
Supervising Legal Counsel

Legal Counsel
Birge Albright
Gail S. Gabriel
Vali Buland
Cheryl Anne Watson
Nancy B. Schlacter

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

July 25, 2000

Robert W. Healy
City Manager

Re: Council Order #29 dated 6/19/00

Dear Mr. Healy:

In response to City Council Order #29, dated 6/19/00, regarding a Report on the Domestic Partnership Benefits Lawsuit, I enclose the attached report of Nancy B. Schlacter, the attorney in the Law Department who is handling the matter. Her report outlines the current status of the case.

I know that you and the Council are committed to making every effort to prevent the loss of benefits to domestic partners, and the Law Department's efforts in this suit have endeavored to realize that goal. In addition, you should be aware that the Personnel Department has contacted the health care insurance providers in order to ensure that the insurance benefits could be continued pursuant to COBRA in the event that the ordinance is declared invalid as to the provision of those benefits. As a result of those discussions, the health care insurance providers have informed us that they are taking the position that they are not required to provide COBRA benefits if the Court finds that the provision of benefits to domestic partners is illegal. We have endeavored to address that problem by providing the trial judge with language for an order that might authorize COBRA benefits if the ordinance is declared invalid as to health insurance.

As you know, our view is that the health care benefits in the ordinance are vulnerable to being struck down by the Court as inconsistent with G.L. c. 32B. While there is no way to be certain, if the Court does strike down these provisions, we hope that it will nonetheless grant some reasonable stay of the cancellation of benefits. This would give recipients of those benefits an opportunity to make other health care arrangements, in the event that COBRA benefits may not be available to them.

Sincerely,

A handwritten signature in cursive script that reads "Russell B. Higley".
Russell B. Higley

Enclosure

INTEROFFICE MEMORANDUM

TO: RUSSELL B. HIGLEY
FROM: NANCY B. SCHLACTER *NBS*
SUBJECT: DOMESTIC PARTNERSHIP SUIT – STATUS REPORT
DATE: 07/25/00

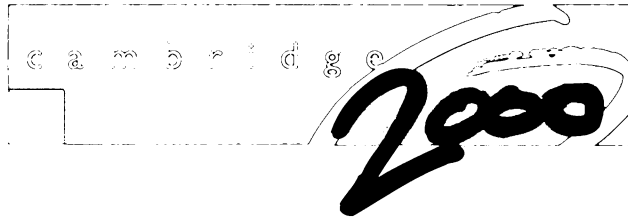
The Domestic Partnership lawsuit (*Catavolo et al v. City of Cambridge and Anthony Galluccio*) was tried on June 26, 2000 before the Middlesex Superior Court. The Court took the matter under advisement and will issue a decision at some future date.

Prior to the trial, the Court denied plaintiffs' request for a preliminary injunction halting the health care benefits; thus, they are still available to City employee's domestic partners and their dependents, until the Court rules otherwise.

At trial I argued that the Domestic Partnership Ordinance ("DPO") does not violate state criminal law, does not create common law marriage, does not recognize a new marital status and is consistent with the City's Home Rule powers under the Massachusetts Constitution, at least as to aspects unrelated to the provision of health care benefits. The Court rejected plaintiffs' argument that the City had shown "bad faith" in not canceling benefits when the *Connors* (Boston) decision was rendered. The judge stated that nothing in *Connors* in fact bound the City of Cambridge to affirmatively act to cancel benefits, prior to a court order to do so.

I argued that the plaintiffs' suit, brought eight years after the benefits were originally granted, provides the Court with an equitable basis (*laches*) for either allowing benefits to continue for those who already receive them or for granting a reasonable stay of any order canceling benefits. The Court recognized that the procedural posture of the Boston Executive Order, at issue in *Connors*, distinguished that case from the Cambridge DPO, but there is reason to doubt that this will provide a sufficient ground for allowing benefits to continue indefinitely.

Finally, I had been informed on the day of trial that the health care insurance providers who cover the affected domestic partners and their dependents are taking the position that if the provision of these benefits is determined to have been illegal under state law, that they do not need to provide COBRA benefits. I explained this to the Court and suggested that the Court could craft an order which might overcome the insurers' objection to providing COBRA benefits. I also argued that this potential result provided yet another equitable argument for staying any order that might immediately cancel benefits.



10.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager

Richard C. Rossi, Deputy City Manager

July 31, 2000

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 00-46, regarding a report on the domestic partnership benefits lawsuits, received from City Solicitor Russell B. Higley.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy".

Robert W. Healy
City Manager

RWH/mec
Attachment



2000 Things 2 Do in 2000

Consent Agenda #10

5222

Relative to AW Rpt. #00-46,
regarding a report on the
domestic partnership benefits
lawsuit.

In City Council July 31, 2000

PLACED ON FILE