

Opinion of the Justices to the House of Representatives.

Municipal Corporations, Petition for special act, "Home rule,"
Officers and agents. Cambridge.

On June 8, 1978, the Justices submitted the following
answer to a question propounded to them by the House of
Representatives.

To the Honorable the House of Representatives of the Common-
wealth of Massachusetts:

The undersigned Justices of the Supreme Judicial Court respectfully submit their answer to the question set forth in an order adopted by the House on March 23, 1978, and transmitted to us on March 30, 1978. The order recites (1) that there is pending before the General Court a petition (House No. 5468) entitled, "An Act to amend the Cambridge rent control law by preventing the eviction of tenants in a controlled condominium unit," a copy of which was transmitted with the order; (2) that the petition was filed by a majority of the city council "as a result of a vote of the majority of the city council of the city of Cambridge"; (3) that the petition, "although signed by the majority of the Cambridge city council, is not signed by the mayor"; (4) that "[t]he City of Cambridge has adopted a Plan E form of city government"; (5) that the mayor, as an elected city councillor, voted in opposition to the proposed petition, and, in his capacity as mayor, he refused to sign it; and (6) that as a consequence grave doubt exists as to the constitutionality of the petition if enacted into law.

The question is:

"Would it be violative of Section 8 of Article 2, as amended by Article LXXVIX of the Amendments to the Constitution, for the General Court to enact House, Docket Number 5468 filed without the approval of the mayor?"¹ ✓

We invited briefs from interested persons to be filed by May 1, 1978. In response, briefs were filed on behalf of the Association for the Preservation of Buyers' and Owners' Property Rights, Inc., the Cambridge Committee of Elders, Inc., and the city of Cambridge.

Article 2 of the Amendments to the Massachusetts Constitution, as appearing in art. 89, § 8, of the Amendments, commonly referred to as the "Home Rule Amendment," in pertinent part confers on the General Court "the power to act in relation to cities and towns" by special laws enacted "on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town." Simply stated, we must determine whether the filing of House No. 5468 without the signature of a Plan E mayor comports with the procedure contemplated by the framers of § 8.

¹ ✓ The text of House No. 5468 is not set forth in this opinion as the question relates only to the constitutionality of the filing of the petition and does not raise any issue as to the constitutionality of the substantive provisions of the petition.

In a prior opinion, the Justices stated "that it was the intent of the framers of § 8 that a petition for a special act be filed or approved either by the voters or by the responsible legislative body of the municipality." Opinion of the Justices, 365 Mass. 655, 658 (1974).

The responsible legislative body of a Plan E city is the city council.^{2/} See Sancta Maria Hosp. v. Cambridge, 369 Mass. (1976).^{a/} "The city council shall have and exercise all the legislative powers of the city, except as such powers are reserved by this chapter to the school committee and to the qualified voters of the city." G. L. c. 43, § 97, inserted by St. 1938, c. 378, § 15. Under a Plan E form of government the city council members are elected at large by the qualified voters of the city. G. L. c. 43, § 96. The mayor is not elected to that office by the voters but is elected by the city council from its own members. G. L. c. 43, § 97. While a Plan E mayor, who is the official head of the city, is a member of the city council and has an equal voice with other members of the council, measures adopted by the city council are not presented to the mayor for his approval and the mayor has

^{2/} General Laws c. 43, § 1, as amended by St. 1938, c. 378, § 1, defines "Plan E" as "a city government and legislative body, to be known as the city council, composed of seven or nine members, one of whom shall be elected as mayor by and from such members and shall be the official head of the city, and an administrative officer, called the city manager; the members of the city council and the elective members of the school committee to be elected at large by proportional representation." The legislative body in Plan A, Plan B, and Plan F is composed of the mayor and a city council. Id.

^{a/} Mass. Adv. Sh. (1976) 250, 258.

no veto power. G. L. c. 43, § 100.^{3/} The mayor of a Plan E city possesses no legislative powers apart from those powers he possesses as a member of a city council. See Sancta Maria Hosp. v. Cambridge, supra at ^{b/}

Moreover, if the approval of a Plan F mayor were necessary in connection with a petition for a special act, procedures different from those usually followed by the city council in approving legislation would be required. Such a result would be inconsistent with the facts that officers not popularly elected are rarely given independent legislative powers and that § 8 evinces no intention to prescribe legislative procedures for a petition for a special act different from the procedures otherwise followed by the legislative body. See Opinion of the Justices, 365 Mass. 655, 659-660 (1974).

In addition, requiring the approval of a Plan E mayor would provide him with a veto power which he does not currently possess in any other context. Such a requirement would negate the voters' choice of a Plan E form of government.

Accordingly we conclude that it would not be violative of the Home Rule Amendment for the General Court to enact House No. 5468 even though it was filed without the approval of the mayor.

We answer the question, "No."

^{3/} Compare the significant difference in the power of a popularly elected mayor in Plan A, Plan B, and Plan F where "[e]very order, ordinance, resolution and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval." G. L. c. 43, §§ 55, 63, 125.

^{b/} Mass. Adv. Sh. (1976) at 258.

The foregoing opinion and answer is submitted by the Associate Justices, subscribing hereto on the eighth day of June, 1978.

Francis J. Quirico

Robert Braucher

Benjamin Kaplan

Herbert P. Wilkins

Paul J. Liacos

Ruth I. Abrams

Mr. Chief Justice Hennessey is unavailable for signature.

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To the Honorable the House of Representatives of the Commonwealth of Massachusetts:

The undersigned Justices of the Supreme Judicial Court respectfully submit their answer to the question set forth in an order adopted by the House on March 28, 1978, and transmitted to us on March 30, 1978. The order recites (1) that there is pending before the General Court a petition (House No. 5468) entitled, "An Act to amend the Cambridge rent control law by preventing the eviction of tenants in a controlled condominium unit," a copy of which was transmitted with the order; (2) that the petition was filed by a majority of the city council "as a result of a vote of the majority of the city council of the city of Cambridge"; (3) that the petition, "although signed by the majority of the Cambridge city council, is not signed by the mayor"; (4) that "[t]he City of Cambridge has adopted a Plan E form of city government"; (5) that the mayor, as an elected city councillor, voted in opposition to the proposed petition, and, in his capacity as mayor, he refused to sign it; and (6) that as a consequence grave doubt exists as to the constitutionality of the petition if enacted into law.

The question is:

"Would it be violative of Section 8 of Article 2, as amended by Article LXXXIX of the Amendments to the Constitution, for the General Court to enact House, Docket Number 5468 filed without the approval of the mayor?"^{1/}

We invited briefs from interested persons to be filed by May 1, 1978. In response, briefs were filed on behalf of the Association for the Preservation of Buyers' and Owners' Property Rights, Inc., the Cambridge Committee of Elders, Inc., and the city of Cambridge.

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Moreover, if the approval of a Plan E mayor were necessary in connection with a petition for a special act, procedures different from those usually followed by the city council in approving legislation would be required. Such a result would be inconsistent with the facts that officers not popularly elected are rarely given independent legislative powers and that § 8 evinces no intention to prescribe legislative procedures for a petition for a special act different from the procedures otherwise followed by the legislative body. See Opinion of the Justices, 365 Mass. 655, 659-660 (1974).

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Accordingly we conclude that it would not be violative of the Home Rule Amendment for the General Court to enact House No. 5468 even though it was filed without the approval of the mayor.

We answer the question, "No."

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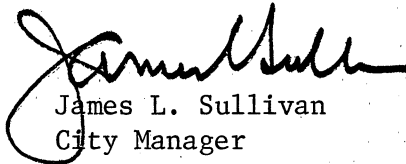
EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

June 26, 1978

To the Honorable, the City Council:

I am enclosing herewith a copy of the opinion of the Supreme Court stating that it is not necessary for the Mayor to sign a Home Rule Petition approved by the City Council under the Plan E form of government.

Very truly yours,



James L. Sullivan
City Manager

JLS/mbf
Enc.

Opinion of the Supreme Court stating that it
is not necessary for the Mayor to sign a Home
Rule Petition under the Plan E form of gov't.

In City Council,
June 26, 1978

Placed on File -