

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300

FAX 349-4307

EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

September 26, 1994

To the Honorable, the City Council:

I am very pleased to be able to report to you that the State Ethics Commission has determined that there was absolutely no evidence of any wrongdoing by myself and the City Solicitor. By the attached letter dated August 19, the Commission's investigator informed the Cambridge Civic Association that no official action would be taken on the Complaint because there was no evidence to support it.

I was, however, disappointed to learn of this vindication of our reputations only by indirection. Although the letter was sent to the President of the CCA on August 19, I learned of it only by chance. That the President of the organization that raised these ethics charges and publicized them widely had in its possession for more than a month a letter from the Commission dismissing those charges and failed to make that letter public is very troubling.

None of us likes to see our reputations maligned, and, as you know, public officials are always vulnerable to attack. I have always taken great pride in my reputation as a committed and honest government official, for 29 years, 20 of them in Cambridge. City Solicitor Higley has earnestly and sincerely served the City of Cambridge for 23 years. We have devoted our energies and efforts to improving the lives of our citizenry. We and our families were very distressed and deeply wounded by the attacks on our reputations.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert W. Healy", is written over the typed name.

Robert W. Healy
City Manager

The Commonwealth of Massachusetts State Ethics Commission

John W. McCormack State Office Building, Room 619
One Ashburton Place, Boston 02108
Telephone (617) 727-0060
Fax (617) 723-5851

August 19, 1994

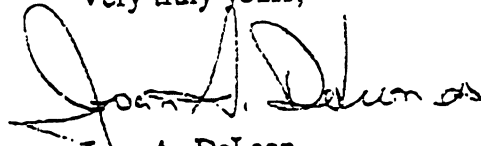
R. Philip Dowds, President
Cambridge Civic Association
649 Massachusetts Avenue
Cambridge, MA 02139

Dear Mr. Dowds:

We have conducted a careful review of the allegations you made to this Commission in your letter dated July 28, 1994. At this time, we have determined that the matter does not require presentation to the Commission for official action. Our decision was based primarily on the fact that there is no evidence that either subject has participated as a city official in matters in which they or the bank have a financial interest. Moreover, the February 4, 1994 disclosure to the city council would seem to ameliorate any appearance problems.

We appreciate your concern and we thank you for bringing this matter to our attention.

Very truly yours,



Juan A. DeLeon
Special Investigator

JAD/eab



CAMBRIDGE CIVIC ASSOCIATION

649 Massachusetts Avenue, Cambridge, MA 02139

(617) 876-9176

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Philip Sego
Richard Shydoroff
Anne Strong
Hilma Unterberger
Carol Weinhaus

Thursday, July 28, 1994

STATE ETHICS COMMISSION

One Ashburton Place, Room 619
Boston, MA 02108

Re: Possible Violations of Chapter 268A by the Manager and Solicitor of Cambridge

To The Commission:

This letter constitutes our formal notice of possible violations of Chapter 268A "Conflict of Interest" (ethics) legislation by the Cambridge City Manager, Mr Robert Healy, and the Cambridge City Solicitor, Mr Russell Higley. In briefest form, in the late '80's these two parties engaged in co-purchase and co-ownership of real estate using funds borrowed from a bank which (a) did business with Cambridge, and (b) retains Mr Higley as a Director. Their joint venture in this investment continues into the 1990's. Possible violations of applicable laws (both State and local) are itemized in the memo attached hereto.

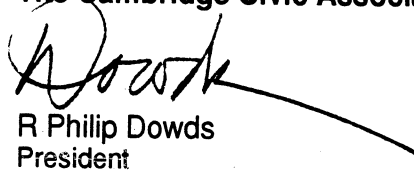
We have no evidence that municipal funds, contracts or permissions were misused in any way as a consequence of their business relationship, and we make no such charges. Despite this, we note that Mr Healy and Mr Higley are the most senior and important officials in Cambridge government, and we think it's imperative that an investigation be done. By law, these two have specific duties with respect to interpretation and enforcement of ethics legislation. Moreover, all of their employees necessarily look to them as role models, and for leadership in matters of ethical standards. We believe that the public interest and the credibility of government are well served when our top officials unequivocally understand, agree with, and adhere to rules of ethical behavior.

We made written request (copy of letter enclosed) to Mr Healy and Mr Higley that they come forward to you on their own initiative and seek clarifying opinion. They have not chosen to do so.

We ask you to investigate, evaluate, and report your findings in this matter. If you find that violations have occurred, this must be made plain to our Manager, our Solicitor, and all those who work for Cambridge to whom ethics laws apply. If not — if we the citizens have misunderstood the standards that the State intends to apply to such situations — then we should be so advised by you, such that we need not pursue irrelevant enforcements where no violations have actually occurred.

We will call you in the near future to confirm how you plan to proceed. As always, please call the CCA at its offices if you have questions or requests of your own.

Sincerely,
The Cambridge Civic Association



R Philip Dowds
President

cc: Cambridge City Council via the Clerk's Office
City Manager Robert Healy
City Solicitor Russell Higley

enclosures: CCA Memo re "Healy / Higley Real Estate Venture", 10 Apr 94, 1pp.
CCA letter to Healy and Higley, 18 May 94, 2 pp.
Photocopies of misc disclosures provided by Healy and Higley to the CCA

**CAMBRIDGE CIVIC ASSOCIATION**

649 Massachusetts Avenue, Cambridge, MA 02139

(617) 876-9176

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Carol Weinhaus

Thursday, July 28, 1994

CAMBRIDGE ELECTION COMMISSION362 Green Street
Cambridge, MA 02139**Re: Possible Violations of Chapter 2.117 by the Manager and Solicitor of Cambridge**

To The Commission:

This letter constitutes our formal notice of possible violations of Chapter 2.117 "Code of Conduct" (ethics) legislation by the Cambridge City Manager, Mr Robert Healy, and the Cambridge City Solicitor, Mr Russell Higley. In briefest form, in the late '80's these two parties engaged in co-purchase and co-ownership of real estate using funds borrowed from a bank which (a) did business with Cambridge, and (b) retains Mr Higley as a Director. Their joint venture in this investment continues into the 1990's. Possible violations of applicable laws (both State and local) are itemized in the memo attached hereto.

We have no evidence that municipal funds, contracts or permissions were misused in any way as a consequence of their business relationship, and we make no such charges. Despite this, we note that Mr Healy and Mr Higley are the most senior and important officials in Cambridge government, and we think it's imperative that an investigation be done. By law, these two have specific duties with respect to interpretation and enforcement of ethics legislation. Moreover, all of their employees necessarily look to them as role models, and for leadership in matters of ethical standards. We believe that the public interest and the credibility of government are well served when our top officials unequivocally understand, agree with, and adhere to rules of ethical behavior.

We made written request (copy of letter enclosed) to Mr Healy and Mr Higley that they come forward to you on their own initiative and seek clarifying opinion. They have not chosen to do so.

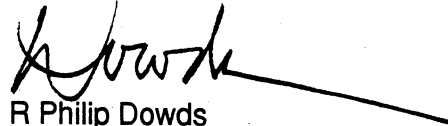
We ask you to investigate, evaluate, and report your findings in this matter. If you find that violations have occurred, this must be made plain to our Manager, our Solicitor, and all those who work for Cambridge to whom ethics laws apply. If not — if we the citizens have misunderstood the standards that the State intends to apply to such situations — then we should be so advised by you, such that we need not pursue irrelevant enforcements where no violations have actually occurred.

Additionally, we understand there are issues regarding your powers (if any) of investigation and enforcement, and regarding the degree to which you can exercise authority over two officials who themselves have direct appointment and supervisory responsibility over the Election Commission. This case might provide you with an opportunity to clarify your own duties and authorities with respect to the administration of Chapter 2.117.

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We will call you in the near future to confirm how you plan to proceed. As always, please call the CCA at its offices if you have questions or requests of your own.

Sincerely,
The Cambridge Civic Association



R Philip Dowds
President

cc: Cambridge City Council via the Clerk's Office
City Manager Robert Healy
City Solicitor Russell Higley

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CCA

CCA Memorandum

CAMBRIDGE CIVIC ASSOCIATION • 649 Massachusetts Avenue, Cambridge, MA 02139 • (617) 876-9176

Re: **Healy / Higley Real Estate Venture and the Ethics Laws**

To: Ethics Task Force: RPD, HM, DC, JG, and MB

Date: 10 April 1994

By: R Philip Dowds, President

City Manager Bob Healy and City Solicitor Russell Higley became co-buyers of a condominium using a no-money-down loan from Century Bank where Mr Higley is a Director. Possible violations of local and State ethics laws might include the following:

Cambridge Municipal Code Title 2, Chapter 2.117, "Code of Conduct for City Officials and Employees"

Section 2.177.030: All officials, acting as such, "owe a fiduciary duty to the City".

If the Manager or Solicitor, in entering into contracts with Century Bank, failed to make the most favorable possible deal for the benefit of the City, they failed their fiduciary duty.

Section 2.177.040: Officials are prohibited from "effecting" City decisions in which they have an "economic interest".

The Manager, having entered into a mortgage with Century might have an economic interest in Century's treatment by the City. The Solicitor, if drawing a fee as a Director of Century, might have a similar economic interest.

Mass General Laws Chapter 268A, "Conflict of Interest Law"

Section 3, Gifts: Prohibits officials from accepting gifts (anything worth more than \$50) from those with whom they have, or might have, official dealings.

The Manager and Solicitor deal with other officials all the time. If the Manager got exceptionally favorable loan terms from Century, it might be construed as a gift from the Solicitor (a Century Director). If either party gets to share in the sale profit or other benefit from real estate co-owned without equity, it might be construed as a gift from the other party.

Section 19, Restrictions on Actions: Officials prohibited from participating in "particular matters" affecting the financial self-interest of business partners.

The Manager and Solicitor are partners in a real estate venture. The Manager is thereby prohibited from making decisions about the Solicitor's financial self-interest, such as the renewal of the Solicitor's contract with the City, or negotiation of fees for services.

HOWEVER, a Section 19 exemption would permit the Manager to make such decisions regarding the Solicitor provided that he first obtains written permission from the City Council (his "appointing authority").



CAMBRIDGE CIVIC ASSOCIATION
649 Massachusetts Avenue, Cambridge, MA 02139
(617) 876-9176

May 18, 1994

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Philip Sego

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Hilma Unterberger
Carol Weinhaus

Robert Healy, City Manager
City of Cambridge
City Hall
Cambridge, MA 02139

Russell B. Higley
City of Cambridge
City Hall
Cambridge, MA 02139

Re: Cambridge "Ethics Ordinance" and MGL Chapter 268A

Dear Messrs. Healy and Higley:

Thank you for forwarding the information on the Century Bank mortgage granted to you as well as information about the business relations that the City of Cambridge has had with Century Bank & Trust. Following receipt of this material and a general presentation by the Election Commission, the Cambridge Civic Association (CCA) appointed a Task Force to review the information.

In reviewing both Cambridge Municipal Code Title 2, Chapter 2.117 and 2.118 which establishes municipal standards of conduct and statements of financial interests, and Massachusetts General Laws, Chapter 268A, the Conflict of Interest Law, together with the information you provided, we believe that appearances of conflict may exist.

As a matter of appearance, Bob, having entered into a mortgage agreement with Century, had an interest in Century's treatment by the City. Similarly, Russ, serving as a director and as a borrower, had a similar interest, as well as having fiduciary loyalties to both parties.

We have no reason to believe that your conduct was ever influenced by these factors nor, without more detailed disclosure of the terms of these transactions, can one tell if a reportable benefit was conferred on anyone. Certainly, if the terms were not arms-length, it is possible for the

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CCA |

bank to be conferring a benefit on one or both of you, and it is possible one of you is conferring a benefit on the other. For these reasons, we believe all aspects of these transactions should be fully disclosed as a policy matter. Moreover, we believe these transactions may constitute reportable items under the ethics ordinance or the Conflict of Interest statute.

We know that you share the CCA's desire for the successful implementation and effective functioning of Cambridge's Ethics Ordinances. Given your positions as role models for City employees and your direct responsibility for the interpretation and enforcement of ethics laws, we urge you to seek advisory opinions from both the State Ethics Commission and the Cambridge Election Commission with regard to your real estate trust. Such fact-finding will end any speculation as to the nature of your business dealings and help restore confidence to the citizens of Cambridge.

Because we feel that the decision as to how to go about seeking these opinions should be yours initially, this letter is intended to be private to the senders and the addressees at this time. We hope to hear from you about this matter before our June 16th Board meeting.

Sincerely yours,

ETHICS TASK FORCE

Michael Brandon *MB*

Michael Brandon

Richard Clarey *RC*

Richard Clarey

Julia Gregory *JG*

Howard Medwed *DM*

Howard Medwed

S-368

Consent Communicaiton #8

A communication was received from the Cambridge Civic Association regarding the possible violatoins of Chapter 268A by the City Manager and City So.licitor.

In City Council September 12, 1994

Placed on file