



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

To Robert W. Healy
City Manager

Date January 3, 1983

From Russell B. Higley RBA
City Solicitor

Reference

Subject City Council's Right To Subpoena Witnesses

I understand that Electronics Corporation of America (ECA), which is located in Cambridge, is planning to move to New Hampshire, and that this would result in their laying off their Cambridge employees.

Can the City Council subpoena officers of ECA in order to question them about their plans to relocate?

General Laws, c.233, §8 states:

Witnesses may be summoned to attend and testify and to produce books and papers at a hearing before a city council...or before a...special committee of the same...as to matters within their authority...

Thus, the Council can subpoena witnesses to attend a hearing to testify regarding matters within the authority of the Council. What are such matters?

Since the Council possesses the legislative power of the City, it has the power to pass any ordinance which is permitted by law, and also to initiate the procedure for passing special acts pertaining to Cambridge. If the Council were considering the passage of a lawful ordinance or special act, I feel that it could hold a hearing to gather information relevant to that legislation. See 4 McQuillin, Municipal Corporations, §13.51 a (1979); 97 C.J.S.

Witnesses, §5 (1957).

Thus, the question may be stated as follows:
Does the Council have the power to legislate regarding
some aspect of the problem presented by the relocation
of ECA? If so, then it could hold a hearing to gather
facts and summon witnesses to testify at that hearing.

RBH:cp

233 § 6

§ 6. Warrant for non-attending witness

Law Review Commentaries

Auditors and masters. James T. Ronan (1963) 48 Mass.L.Q. 5; 48 Mass.L.Q. 165.

WITNESSES AND EVIDENCE

Notes of Decisions

1. In general

Whether to issue an order compelling a witness to appear and testify is discretionary with judge. Bloom v. City of Worcester (1973) 293 N.E.2d 268, 363 Mass. 136.

§ 7. Witnesses before executive council

Notes of Decisions

1. In general

Council of Commonwealth is not entitled to judicial nominating commission's records and de-

liberations concerning any person other than person who has been nominated by governor. Opinion of the Justices to the Council (1975) 334 N.E.2d 604, 368 Mass. 866.

§ 8. Bodies authorized to summon witnesses; oath

Witnesses may be summoned to attend and testify and to produce books and papers at a hearing before a city council, or either branch thereof, or before a joint or special committee of the same or of either branch thereof, or before a board of selectmen, a board of police commissioners, a fire commissioner or a board of fire commissioners, a commissioner of public safety, a school board, the alcoholic beverages control commission established by section forty-three of chapter six, a licensing board or licensing authorities, as defined in section one of chapter one hundred and thirty-eight, a board of registrars of voters, the police commissioner or election commissioners of Boston, the metropolitan district commission, the state racing commission, the parole board or a board of appeals designated or appointed under section thirty of chapter forty, as to matters within their authority; and such witnesses shall be summoned in the same manner, be paid the same fees and be subject to the same penalties for default, as witnesses in civil cases before the courts. The presiding officer of such council, or of either branch thereof, or a member of any such committee, board or commission, or any such commissioner, may administer oaths to witnesses who appear before such council, branch thereof, committee, board, commission or commissioner, respectively.

Amended by St.1975, c. 466.

1975 Amendment. St.1975, c. 466, approved July 11, 1975, included "the parole board" in the first sentence.

Notes of Decisions

1. In general

Any person summoned by city human rights commission may assert the same rights that a person may assert in response to any subpoena. Bloom v. City of Worcester (1973) 293 N.E.2d 268, 363 Mass. 136.

If a person summoned before city human rights commission refuses to testify, the commission has no inherent power of enforcement, but it may seek a court order. Id.

No legislative purpose concerning unlawful discrimination would be adversely affected by the exercise of subpoena power by city human rights commission. Id.

Supreme Judicial Court would presume that the judge made all requisite preliminary findings prior to admitting portion of transcript of evidence from a previous trial. Wilson v. MacDonald (1965) 208 N.E.2d 805, 349 Mass. 419.

WITNESSES AND EVIDENCE

§ 10. Enforcing

Supplement Mandamus 4

1. Validity

Resolve creatinging from membership felonies, gaming of, involving moral turpitude of those so convicted served on previous invalid as established hold public office of the Declaration of protection of laws. 196 N.E.2d 303, 360

2. In general

If interrogation of rights commission used excessive force in needless harassment, injustice, commission enforcement of W. N.E.2d 341, 370 Mass.

In determining rights commission's issued on basis of excessive force in could consider fact proceeded against basis could either nas or limit their se

§ 11. Requiring

Note

1. In general

A party may not untary testimony of the expertise he may absence of any per

§ 13A. Attendance

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Edition, V

Jurisdiction

Alaska
Arizona

The Commonwealth of Massachusetts

Middlesex ss.

To Chief Executive Officer,

Electronics Corporation of America, 1 Memorial Drive, Cambridge,

Massachusetts

greeting.

You are hereby required, in the name of The Commonwealth of Massachusetts, to appear before the Cambridge City Council ~~Court~~ holden at City Hall, ~~within and for the county of~~ Cambridge, Massachusetts on the 10th day of January, 1983 at 6 o'clock in the afternoon, and from day to day thereafter, until the ~~action~~ ^{Council} hereinafter named is heard by said ~~Court~~ to give evidence of what you know relating ~~to an action~~ ^{of} to ~~then and there to be heard and tried between~~ Allegations that the Electronics Corporation of America (ECA) ~~Plaintiff~~ has purchased property in and will be relocating to Derry N.H. and ~~Defendant~~ and you are further required to bring with you any and all books, records and papers relating to these allegations. The City Council issues this summons, because it has an obligation to the Cambridge residents currently employed by ECA; because, in view of the depressed state of our national economy, any act which would terminate the employment of such residents is a matter of deep concern to the Council; and because ECA is located adjacent to the Lechmere Canal UDAG Project.

Hereof fail not, as you will answer your default under the pains and penalties in the law in that behalf made and provided.

Dated at Cambridge the 3rd day of January

A. D. 1983

Notary Public — Justice of the Peace

The Commonwealth of Massachusetts

.....Middlesex.....ss.

To Chief Executive Officer,
 Electronics Corporation of America, 1 Memorial Drive, Cambridge,
 Massachusetts.....

.....greeting.

You are hereby required, in the name of The Commonwealth of Massachusetts, to appear
 before the Cambridge City Council ~~XXXX~~
 holden at City Hall, ~~within and for the county of~~ Cambridge, Massachusetts.....
 on the 10th day of January, 1983 at

6 o'clock in the afternoon, and from day to day thereafter, until the ~~XXXX~~
 Council

hereinafter named is heard by said ~~Court~~ to give evidence of what you know relating to ~~XXXX~~

to ~~then and there to be heard and tried between~~ Allegations.....
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has purchased property in and will be relocating to Derry N.H. and ~~Defendant XXXXXXXX~~

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 employed by ECA; because, in view of the depressed state of our

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such residents is a matter of deep concern to the Council; and

because ECA is located adjacent to the Lechmere Canal UDAG Project.

Hereof fail not, as you will answer your default under the pains and penalties in the law
 in that behalf made and provided.

Dated at Cambridge.....the 3rd day of January.....

A. D. 1983

.....
 Notary Public — Justice of the Peace

The Commonwealth of Massachusetts

Middlesex ss.

To Chief Executive Officer,

Electronics Corporation of America, 1 Memorial Drive, Cambridge,
Massachusetts.

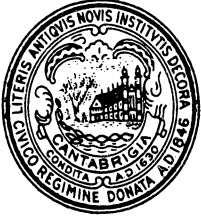
greeting.

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Dated at Cambridge the 3rd day of January A.D. 1983

Notary Public — Justice of the Peace



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

January 3, 1983

To the Honorable, the City Council:

I transmit herewith proposed subpoena to Electronics
Corporation of America pursuant to request of the City
Council.

Very truly yours,

Robert W. Healy
City Manager

RWH/b

Re: enclosed proposed subpoena to Electronics Corp. of America as requested by the City Council.

1/10/1983
Subpoena Under
Approved
WITH REVISION
Subpoena
AND
ATTACHMENT

In City Council,

January 3, 1983

1/3/1983
Charter Right
by
Councilman Donchy