



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

DONALD A. DRISDELL
DEPUTY CITY SOLICITOR

MICHAEL C. COSTELLO
ASSISTANT CITY SOLICITOR

SEVERLIN B. SINGLETON, III
BIRGE ALBRIGHT
GAIL S. GABRIEL
LEGAL COUNSEL

June 2, 1988

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Police Review and Advisory Board

Dear Mr. Healy:

The Police Review and Advisory Board has requested my opinion as to whether the attached proposed amendment to its ordinance (No. 1018), which would add a new section 12 to the Ordinance, should be adopted.

The gist of the proposed amendment is that the Board would stop investigating a complaint when criminal or civil proceedings arising out of the same incident are brought against the police officer who is the subject of the complaint.

In my opinion, there is no legal impediment to the City Council's amending Ordinance No. 1018 in the manner proposed. Furthermore, as a matter of policy, I think the proposed amendment would be desirable for the following reasons:

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The proposed amendment addresses several difficult issues raised by the Board proceeding with an investigation in the event that criminal or civil actions have been filed.

Once a criminal action has been filed the Fifth Amendment rights of the police department employees involved in the complaint will prevent effective investigation by the Board. Postponing the Board's investigation until the criminal action is finally adjudicated should not affect the general purpose of Ordinance No. 1018. Prosecution of a criminal action will provide the "...prompt, impartial and fair investigation of complaints..." which is the stated purpose of the ordinance. Once the criminal action is adjudicated the Board could proceed with its investigation and procedures.

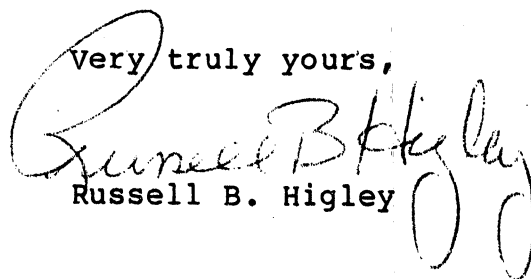
If a civil action is filed, the Board's investigation would compete with the parties efforts to control discovery in the civil suit. Several boards or commissions with similar investigatory functions avoid this conflict by prohibiting the complainant from filing a civil law suit until the commission has had a reasonable period to investigate.

The City Council does not have the authority to prohibit the filing of court actions. The proposed amendment, insofar as it would halt the Board's investigation when a civil suit has been filed, would enable the Board to inform a complainant that filing a law suit would stop the Board's investigation. The complainant could choose to allow the Board to complete its investigation

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before filing suit. This procedure would accomplish the goal of preventing any conflicts between the Board's investigation and the civil law suit. As in the case of a criminal action the Board would be able to complete its investigation and procedures once the civil suit is adjudicated.

Very truly yours,


Russell B. Higley

RBH/jml

Enclosure



City of Cambridge

POLICE REVIEW AND ADVISORY BOARD

CITY HALL
795 MASSACHUSETTS AVE.
CAMBRIDGE, MA 02139

WILLIAM GOLON
EXECUTIVE DIRECTOR
(617) 498-9000
x 9489

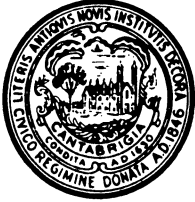
PROPOSED AMENDMENT

The following is a proposed amendment to Ordinance #1018 of the "Code of the City of Cambridge".

SECTION 12. CRIMINAL PROCEEDINGS OR CIVIL LITIGATION

In the event that criminal proceedings relating to the matter of the complaint are known to be commenced against the officer who is the subject of a complaint, or litigation relating to the matter of the complaint is known to be commenced against any party to a complaint, no investigation shall be undertaken beyond the filing, lodging, and docketing of the complaint. The Police Review Board shall undertake no investigation until the criminal or civil matter has been adjudicated, or the authorities have rendered a final decision not to commence any such proceedings. During the pendency of any such contemplated or commenced proceedings, all time limits applicable to the processing of board complaints shall be tolled. Whenever a board investigation is tolled as provided here, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:

1. The original communication center tapes relevant to the complaint.
2. All police reports, tapes, records, and documentation of the evidence relevant to the complaint.
3. Names, addresses and telephone numbers, and statements of all witnesses relevant to the complaint.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

July 25, 1988

To the Honorable, the City Council:

I am re-submitting for your consideration a copy of the opinion of Russell B. Higley, City Solicitor, and a proposed amendment to Ordinance 1018 of the Code of the City of Cambridge. This amendment, as recommended by the Police Review and Advisory Board, would add a new section 12 directing the Board to stop investigating a complaint when criminal or civil proceedings arising out of the same incident are brought against the police officer who is the subject of the complaint.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Encs. 2

0-114
0-53

Re: re-submittal for consideration of the Council an opinion of the City Solicitor & a proposed amendment to Ordinance 1018 of the General Ordinances relating to the Police Review & Advisory Board in Section 12, entitled "Criminal Proceedings or Civil Litigation".

In City Council,

July 25, 1988

*Charter righted by
Councillor David
Sullivan*

9-12-88

No. Action Taken.

Placed on file under
Rule 19.