



# City of Cambridge

CALENDAR ITEM # 1

IN CITY COUNCIL  
MARCH 21, 1994

COUNCILLOR DUEHAY

ORDERED: That the City Manager be and hereby is requested to confer with the Hospital Administrator with the view in mind of articulating, in writing, the reason or reasons why or why not that the meetings between the Cambridge Hospital and the Community Advisory Committee be subject to the provisions of the Open Meeting Law to allow for public participation and discourse; and be it further

ORDERED: That the City Manager be and hereby is requested to report back to this City Council on this matter.

In City Council March 21, 1994.

Adopted by the affirmative vote of eight members.

Attest:- D. Margaret Drury, City Clerk.

A true copy; *D. Margaret Drury*

ATTEST:-

D. Margaret Drury,  
City Clerk



## CITY OF CAMBRIDGE

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March 3, 1994

Robert W. Healy  
City Manager  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

Re: Hospital Community Advisory Committee

Dear Mr. Healy:

You have requested my opinion as to whether the Community Advisory Committee (CAC) at the Cambridge Hospital is subject to the Open Meeting Law, G.L. c. 39, §§23A-23C.

I understand that the CAC was created by you in March, 1992 as a vehicle for community input into the Hospital's proposed expansion; that it consists of approximately six City officials, ten Cambridge residents, and two Somerville residents; and that it was not created pursuant to any statute, ordinance or regulation. I also understand that the CAC was formalized and given part-time staff assistance in May, 1993 by a Memorandum of Understanding signed by the City Manager, the Hospital Administrator and the Chairman of the Mid-Cambridge Neighborhood Association.

If my understanding of the facts is correct, it is my opinion that the CAC is not subject to the Open Meeting Law.

My opinion is based on the recent case of Connelly v. School Committee of Hanover, 409 Mass. 232 (1991), which held that a high school principal selection committee, which a town's Superintendent of Schools appointed to assist him in nominating candidates for the position of high school principal, was not a "governmental body" within the meaning of the Open Meeting Law, G.L. c. 39, §23A.

In Connelly, it appeared that the principal of Hanover High School retired, and that it was the responsibility of the Superintendent of Schools to nominate and to recommend to the School Committee a candidate for the position of principal. G.L. c. 71, §§ 38, 59. The Superintendent appointed seven individuals to a selection committee to assist him in performing that statutory duty.

In holding that the selection committee was not subject to the Open Meeting Law, the Court noted, first, that the law applies only to "governmental bodies." G.L. c. 39, §23B. The definition of "governmental body" is "every board, commission, committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted." The key inquiry, the Court stated, was whether the selection committee was a "committee ... of ... (the) town" of Hanover.

In answering this question in the negative, the Court observed, first, that the selection committee was not created pursuant to any statute or by-law, but was appointed informally by

the superintendent. This served to set the selection committee apart from other entities considered to be "governmental bodies" under the Open Meeting Law, such as, e.g., boards of health, school committees and boards of zoning appeals.

The Court thought it significant that the Superintendent, because he was clearly not a "governmental body," could, by himself, have screened and interviewed candidates in a closed session, free from the requirements of the Open Meeting Law. The Court felt that an interviewing and screening process which is exempt from the Open Meeting Law when carried out by the Superintendent should not be subject to the law when carried out by individuals informally appointed by the Superintendent to assist him. "The selection committee does not fall under the statute because it is not a committee of the town ... but a committee of the superintendent." 409 Mass. at 236-237.

Finally, the Court distinguished committees which are subcommittees of a "governmental body" or appointed by a "governmental body." See, e.g., Nigro v. Conservation Commission of Canton, 17 Mass. App. Ct. 433 (1984) (subcommittee of conservation commission); Gerstein v. Superintendent Screening Committee, 405 Mass. 465 (1989) (superintendent search screening committee established by school committee).

I believe that the question of whether the Hospital Community Advisory Committee (CAC) is subject to the Open Meeting Law is answered by the Connelly case. here, as in Connelly, the committee was not created pursuant to any statute or ordinance. Rather, it

was created by you as City Manager (not a "governmental body") to assist you in making certain decisions which you had to make in connection with the proposed expansion of the Hospital - decisions which you can make without the assistance of any committee. Using the language of the Court, the advisory committee does not fall under the Open Meeting Law, because it is not a committee of the City but a committee of the City Manager.

I conclude, therefore that the Hospital Community Advisory Committee is not a "governmental body" and is not subject to the Open Meeting Law.

Very truly yours,

  
Russell B. Higley

RBH/jab



CITY OF CAMBRIDGE  
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EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

RICHARD C. ROSSI  
Deputy City Manager

March 7, 1994

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 13, regarding a request for a legal opinion on whether the Community Advisory Committee at the Cambridge Hospital is subject to the Open Meeting Law, please find attached a response from City Solicitor Russell B. Higley.

Very truly yours,

Robert W. Healy  
City Manager

RWH/mev  
attachment

5-112

Consent Agenda #14

Transmitting comm. from R.W. Healy  
relative to Awaiting Report No. 13  
re: a request for a legal opinion  
on whether the Community Advisory  
Committee Hospital is subject  
to the Open Meeting Law.

3/21/94 - Report accepted &  
placed on file

Order adopted as  
submitted by Councillor  
Ruechay

for original order per  
1994 City Managers Request  
# 54

IN City Council March 7, 1994

Charter right exercised  
by Councillor Toomey