



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

EDWARD A. CUNNINGHAM
ANDREW T. TRODDEN
MICHAEL C. COSTELLO
ROBERT F. SYDNEY
LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

June 1, 1979

Mr. James L. Sullivan
City Manager
City Hall
Cambridge, Massachusetts

Dear Mr. Sullivan:

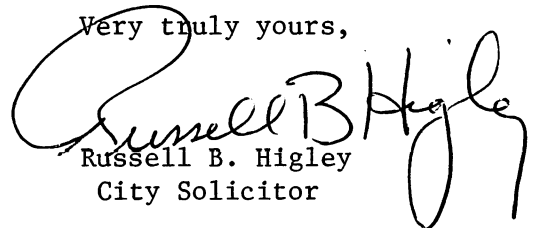
As per the request of the City Council, I have reviewed communications 9 and 13 of May 21, 1979 relative to the proposed order of taking by eminent domain for the property at 35-43 West Street, Cambridge.

I have also reviewed the May 14, 1979 order by Councilors Graham and Duehay relative to this matter.

It is my opinion that the May 14, 1979 order by Councilors Graham and Duehay was in the nature of a request to the City Manager to initiate the necessary procedures for future Council approval of a valid taking of the Pelrine property located on West Street, Cambridge. The May 14, 1979 order was not an order of taking and appropriation as required by General Laws, Chapter 40, section 14 and General Laws, Chapter 43, section 30, copies of which are enclosed.

You will note that both sections cited above require an affirmative vote of six members of the Council for passage.

Very truly yours,


Russell B. Higley
City Solicitor

RBH:jl
Encs.

CASE NOTES

Section requires action of town meeting. "town meeting" rather than "by the town".
—The instant section is one of a number of Robinson v Watertown, 336 Mass 537, 146
statutes in which the action specified in the NE2d 900.
statute is to be taken by, in, at, or of a

[SCHOOL PHYSICIANS]

§ 13B. Residence Quarters for School Physician.

A town of not exceeding three thousand inhabitants which accepts this section by vote in town meeting may appropriate for free residence quarters for a school physician a sum not exceeding five hundred dollars. (1925, 303, § 1.)

CASE NOTES

Section requires action of town meeting. "town meeting" rather than "by the town".
—The instant section is one of a number of Robinson v Watertown, 336 Mass 537, 146
statutes in which the action specified in the NE2d 900.
statute is to be taken by, in, at, or of a

TAKING, PURCHASE AND ABANDONMENT OF LAND

§ 14. Taking or Purchase of Land, etc.

The aldermen of any city, except Boston, or the selectmen of a town may purchase, or take by eminent domain under chapter seventy-nine, any land, easement or right therein within the city or town not already appropriated to public use, for any municipal purpose for which the purchase or taking of land, easement or right therein is not otherwise authorized or directed by statute; but no land, easement or right therein shall be taken or purchased under this section unless the taking or purchase thereof has previously been authorized by the city council or by vote of the town, nor until an appropriation of money, to be raised by loan or otherwise, has been made for the purpose by a two thirds vote of the city council or by a two thirds vote of the town, and no lot of land shall be purchased for any municipal purpose by any city subject to this section for a price more than twenty-five per cent in excess of its average assessed valuation during the previous three years.

The words "municipal purpose", as used in this section, shall include any such land, easement or right therein within the city or town, so purchased or taken by eminent domain for the purpose of conveying or granting the same to the commonwealth for the use of a regional community college. (1848, 237, § 1; 1851, 186; 1855, 318; GS 38, § 38; 1869, 411, § 1; 1874,

school committees over public education. *Eastern Massachusetts St. R. Co. v Mayor of Fall River*, 308 Mass 232, 31 NE2d 543.

For a case holding that the principal enunciated in the foregoing case relative to the transportation of pupils is not applicable to expenditures for school purposes which, by law, municipalities are compelled to provide the amounts estimated by the school committee, see *Hayes v Brockton*, 313 Mass 641, 48 NE2d 683; *School Committee of Gloucester v Gloucester*, 324 Mass 209, 85 NE2d 429.

Contract which school committee had sole power to make is not subject to this section. *School Committee of Salem v Gavin*, 333 Mass 632, 132 NE2d 396.

Contract for repairs distinguishable from contract for services of athletic coach.—Although it was held that the power of a school committee to contract for the services of an athletic coach under the instant section is not subject to the requirements imposed by § 29 of c 43, such a case is distinguishable from a contract by a school committee for the making of repairs on school property, which latter type of contract is subject to § 29. *Richard D. Kimball Co. v Medford*, 340 Mass 727, 166 NE2d 708.

Contract to make emergency repairs.—Notwithstanding a city charter provision requiring that any city contract in excess of \$500 have the written approval of the mayor, the bursting of a water pipe causing substantial damage to a new school building under construction by a contractor, created

an emergency situation, empowering the city's board of public works, without the mayor's written approval, to authorize the contractor to repair the situation, although the cost was in excess of \$500. *Fontaine Bros., Inc. v Holyoke* (1967) 39 Mass App Dec. 23.

4. Finality of decision of mayor

The court cannot control the exercise of his independent judgment and if his disapproval of a contract is in good faith for a reason neither arbitrary nor capricious, there is no ground on which the court can intervene to compel him to take further action. *Eastern Massachusetts St. R. Co. v Mayor of Fall River*, 308 Mass 232, 31 NE2d 543.

No limitation is expressed as to the nature of the elements which the mayor may take into consideration in deciding whether or not to affix his approval, nor does any sound distinction occur to us by which he can be debarred from consideration of any reasonable grounds or arguments entertained in good faith and not in themselves merely arbitrary or capricious. *Eastern Massachusetts St. R. Co. v Mayor of Fall River*, 308 Mass 232, 31 NE2d 543.

Disapproval because award not made to lowest bidder.—The saving of money by awarding the contract to the lowest bidder is a perfectly proper reason for a mayor's disapproval of a contract for school transportation which was let to one not the lowest bidder and does not appear to be unreasonable, arbitrary or capricious. *Eastern Massachusetts St. R. Co. v Mayor of Fall River*, 308 Mass 232, 31 NE2d 543.

§ 30. Purchase or Taking of Land for Municipal and Other Purposes.

At the request of any department, and with the approval of the mayor and city council under Plan A, B, C or F, or with the approval of the city manager and the city council under Plan D or E, the city council may, in the name of the city, purchase, or take by eminent domain, under chapter seventy-nine, any land within its limits for any municipal purpose, and, without the request of any department, but with like approval, the city council may, in the name of the city, purchase or take by eminent domain, under chapter seventy-nine, any land within its limits for the purpose of conveying the same, with or without consideration, to the commonwealth for the use of a regional community college. Whenever the price proposed to be paid for land for any municipal purpose is more than twenty-five per

cent higher than its average assessed valuation during the previous three years the land shall not be purchased, but shall be taken as aforesaid. No land shall be taken or purchased until an appropriation by loan or otherwise for the general purpose for which land is needed has been made by the city council, by a two-thirds vote of all its members; nor shall a price be paid in excess of the appropriation, unless a larger sum is awarded by a court of competent jurisdiction. All proceedings in the taking of land shall be under the advice of the law department, and a record thereof shall be kept by said department. (1915, 267, I, § 30; 1938, 378, § 11; 1948, 459, § 7; 1959, 448, § 11; 1967, 59, § 2.)

Editorial Note—

The 1948 amendment rewrote the first sentence, in accordance with the revised Plan D.

The 1959 amendment rewrote the first sentence, including Plan F.

The 1967 amendment added at the end of the first sentence a provision permitting a city to take property by eminent domain for conveyance to the commonwealth for use of a regional community college.

For the provisions of section 4 of Acts 1967, Ch 59, see the Editorial Note following § 28 of GL c 15.

CASE NOTES

1. In general.
2. Applicability of section.

1. In general

History of section.—For a short discussion relative to the history of the instant section and a comparison of its provisions with the provisions of c 40, § 14, see *Shea v Inspector of Bldg.* 323 Mass 552, 83 NE2d 457.

Purpose to prevent hasty action.—The purpose of the instant section was to place limitations upon the purchase or taking of land in order to prevent hasty or ill advised action by city councils. *Shea v Inspector of Bldg.* 323 Mass 552, 83 NE2d 457.

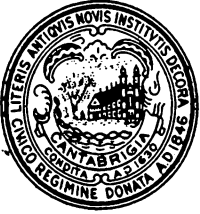
Necessity for request by department.—Under the instant section, the request of a department is required as a condition precedent to any purchase or taking of land. *Shea v Inspector of Bldg.* 323 Mass 552, 83 NE2d 457.

Two-thirds vote of all members required.—Under the instant section, in cities having standard charters an appropriation for the taking or purchase of land should be made by the city council "by a two-thirds vote of all its members" the legislature having clearly indicated that the entire member-

ship of the council should be the basis of the calculation, the instant section being in contrast to statutes like c 40, § 14, providing for a two-thirds vote of the city council which latter type of statute is construed to require only a two-thirds vote of the quorum present. *Ellison v Haverhill*, 309 Mass 350, 35 NE2d 202.

Appropriation need only cover cost of acquisition of land.—The provision of the instant section "nor shall a price be paid in excess of the appropriation" clearly indicates that the appropriation required to be made by the instant section may be limited to the cost of acquisition of the land in question, and that it need not include the cost of erecting structures upon such land. *Harrington v Worcester*, 345 Mass 166, 186 NE2d 185.

Appropriation need not include cost of erecting school building.—Where a city council, in connection with the taking of land for the erection of a school building, makes an appropriation for the taking of the land, the appropriation is not invalid because it does not also cover the cost of erecting the school building on the land, it being clearly indicated in the instant section that the required appropriation may be limited to the cost of acquisition of the land alone. *Harrington v Worcester*, 345 Mass 166, 186 NE2d 185.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

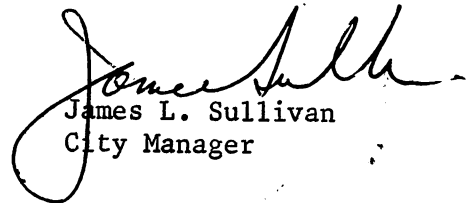
EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

June 4, 1979

To the Honorable, the City Council:

I transmit herewith self-explanatory communication from Russell B. Higley, City Solicitor, relative to the proposed order of taking by eminent domain for property at 35-43 West Street, Cambridge.

Very truly yours,


James L. Sullivan
City Manager

JLS/b

5335

Agenda #11

Self-explanatory communication from Russell
Higley, City Solicitor, re: proposed order
of taking by eminent domain for the property
located at 35-43 West St.

In City Council,

June 4, 1979

6/4/1979

Placed on File

LF

See Agenda Items

10 and #12

RE

Parcel of # 35-43

West Street by

EMINENT DOMAIN

Proceeding -