



CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

March 13, 1996

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

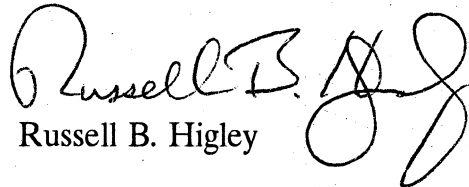
Re: *City Council Order No. 75, dated March 4, 1996 Requesting Legal Opinions Issued
At the Time of the Building of the New High School Concerning the Status of land
Around the Cambridge Public Library.*

Dear Mr. Healy:

In response to the above-referenced City Council order, I am attaching all opinions on file in the Law Department relating to the construction of the new high school building as it relates to the grounds of the Cambridge Public Library. As you will see, the opinions, including one from Ropes & Gray then serving as bond counsel to the City, uniformly conclude that there were no restrictions on the land preventing the construction of the new high school.

Please let me know if I can be of further help in this matter.

Very truly yours,


Russell B. Higley



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

LAW DEPARTMENT

PHILIP M. CRONIN
CITY SOLICITOR

EDWARD D. MCCARTHY
ROWENA E. TAYLOR
ASSISTANT CITY SOLICITORS

JOHN A. SERINO
LEGISLATIVE AGENT

May 26, 1970

Mr. David E. Hockman
Deputy Superintendent
School Committee
1700 Cambridge Street
Cambridge, Massachusetts

Dear Mr. Hockman:

You have asked my opinion in behalf of the School Committee whether or not there are legal restrictions concerning the use of any portion of the public library grounds for school purposes.

The City obtained title to the land bounded by Cambridge Street, Trowbridge Street, Broadway and Irving Streets where the public library is now located by deed dated June 14, 1889, recorded Middlesex South District Deeds, Book 1914, page 291 from Frederick H. Rindge.

The purpose of this conveyance was to accommodate the construction of a public library. The deed has the following provision: "If it is consistent with other uses, I shall be glad to have some portion of the land reserved as a playground for young children, and, if the City of Cambridge shall desire at any time to erect upon the premises additional buildings to be occupied as a museum of art, or halls for lectures, or some kindred purpose I assent to such use, but I do not intend that any portion of the land hereby conveyed shall be used for any of the purposes of ordinary city business, such as a site for a City Hall or a police station or even for a school house. I do not choose to embarrass this conveyance by making it a condition of this deed, that these expressions of my wishes should be observed, preferring to leave it entirely to the honor of the people and officers of my native town to see that those wishes as above stated are respected."

Mr. David E. Hockman
Deputy Superintendent

-2-

May 26, 1970

Mr. Rindge, by the terms of the grant, did not condition the use of the land for a public library. Crane v. Inhabitants of Hyde Park 135 Mass. 147, Howe v. City of Lowell, 171 Mass. 575. However, the grant does impose at least a moral obligation on the City to respect the wishes of the grantor. The moral obligation of the City may be such that the Division of Charities of the Department of the Attorney General or even a citizen of the City could bring appropriate legal action against the City to see to it that the City complied with the terms of what could be in substance a Charitable Trust. It would be necessary under those circumstances to demonstrate that there is a compelling public need for a different use of the land at present than that contemplated by Mr. Rindge and that every effort would be made by the City to see that the use is as nearly consistent with Mr. Rindge's wishes as possible under the changed conditions.

Very truly yours,

Philip M. Cronin

Philip M. Cronin
City Solicitor

PMC:cas

CC: City Manager



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

LAW DEPARTMENT

EDWARD D. MCCARTHY
CITY SOLICITOR

ROWENA E. TAYLOR
ASSISTANT CITY SOLICITOR

CHARLES WATSON
LEGISLATIVE AGENT

RUSSELL B. HIGLEY
SPECIAL COUNSEL

November 5, 1974

To The Honorable School Committee
Cambridge School Department
1700 Cambridge Street
Cambridge, Massachusetts 02138

Re: Library Land

Dear Committee Members:

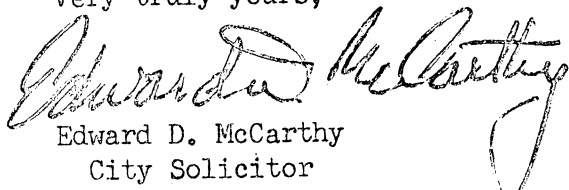
As I have earlier explained; there are no legal restrictions upon the use of the above land. I have earlier forwarded copies of opinions of John Daly and Philip Cronin which expressed essentially the same opinion.

In an effort to avoid any dispute; we have contacted the heirs of the late Mr. Rindge and I am enclosing letters from them which assent to Mr. Catalano's proposal.

While the ultimate responsibility for enforcement of public trusts rests with the Attorney General; it is my opinion that Mr. Rindge did not intend to impose a condition that the library property not be used for a schoolhouse but he preferred "to leave it entirely to the honor of the people and officers of my native town to see that those wishes as above stated are respected."

It would, in my opinion, appear that you have complied with the wishes of Mr. Rindge.

Very truly yours,


Edward D. McCarthy
City Solicitor

EDMcC: jm
Encs.

November 12, 1975

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

Dear Mr. Sullivan:

You have requested my opinion whether the School Committee or School Department may at some future time, change the use of the open space provided for in Architect Eduardo Catalano's plan for the new high school. This later plan was approved and voted by the City Council.

The general rule is that the School Committee, unless the city or town otherwise directs, has general charge and Superintendence of school houses.

Where the lot of land is small, the implied power of the School Committee to control the grounds embraces most of the incidents of ownership. Here, where the land area is not small in relation to the buildings and the City has by vote of the Council "otherwise directed" the School Committee may not, in my opinion, exercise any control or adopt any use other than that set forth by the City. This is in line with the Massachusetts Supreme Court case of Day v. Inhabitants of Town of Greenfield, 234 Mass. page 31 which held that the School Committee does not have exclusive control of the land upon which a school house is located.

Very truly yours,

Edward D. McCarthy
City Solicitor

EDMcC:jm



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

LAW DEPARTMENT

EDWARD D. MCCARTHY
CITY SOLICITOR

ROWENA E. TAYLOR
ASSISTANT CITY SOLICITOR

CHARLES WATSON
LEGISLATIVE AGENT

RUSSELL B. HIGLEY
ASSISTANT CITY SOLICITOR

January 12, 1976

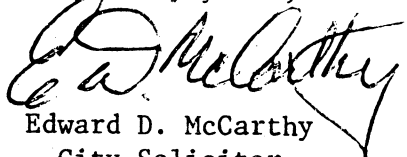
Robert and Jane Richards, Co-Chairmen
Mid-Cambridge Neighborhood Association
76 Antrim Street
Cambridge, Massachusetts 02139

Dear Mr. and Mrs. Richards:

Enclosed is a copy of a letter recently received from the City of Cambridge's Bond Counsel, Ropes and Gray, concerning the City's right to use land in the Rindge Library area as a site for the new addition to the high school.

Based on our own research and the conclusions of our Bond Counsel, as reported in the enclosed letter, it is my opinion in his November, 1975 letter to the Secretary of Environmental Affairs, are without merit and that the City is free to use the land behind the library for the new high school.

Very truly yours,


Edward D. McCarthy
City Solicitor

EDMcC:cas

Enc.

ROPES & GRAY
225 FRANKLIN STREET
BOSTON 02110

CABLE ADDRESS "ROPGRALOR"

AREA CODE 617 423-6100

December 17, 1975.

Edward D. McCarthy, Esquire
City Solicitor
City Hall
Cambridge, Massachusetts

Dear Mr. McCarthy:

You have asked us to consider the right of the City of Cambridge to use land in the so-called Rindge Library area as a site for the school project to be financed by bonds authorized by Order of the City Council of April 28, 1975, with particular reference to the effect of certain language in the deed dated June 14, 1889 pursuant to which the City acquired that land.

We could not as bond counsel give our approving opinion for bonds issued to finance a school project that could not legally be constructed on the chosen site. However, we are informed that the site has been approved by the School Committee and the City Council and, for the reasons indicated below, it appears to us that the City may legally construct the contemplated school project of the land given to the City by the late Frederick H. Rindge by the deed hereinbefore referred to.

We have examined the conditions stated in the deed and what purports to be a copy of the record pursuant to which the City accepted the original proffer of the gift of a library. See "The Rindge Gifts to the City of Cambridge," University Press, pp. 7-27, published by Order of the City Council, 1891. The deed of the land in question states:

"If it is consistent with other uses, I shall be glad to have some portion of the land reserved as a playground for young children and if the City of Cambridge shall desire at any time to erect upon the premises additional buildings to be occupied as a museum of art, or halls for lectures, or some kindred purposes, I assent to such use, but I do not intend that any portion

Edward D. McCarthy, Esquire
Page 2
December 17, 1975

of the land hereby conveyed shall be used for any of the purposes of ordinary city business such as a site for a city hall or a police station or even for a school house. I do not choose to embarrass this conveyance by making it a condition of this deed that these expressions of my wishes should be observed, preferring to leave it entirely to the honor of the people and officers of my native town to see that those wishes as stated above are respected."

Prior to the delivery of the deed, Mr. Rindge had written a letter dated June 14, 1887 which read:

"Boston, June 14, 1887.

Hon. William E. Russell.

Dear Sir,--It would make me happy to give the city of Cambridge the tract of land bounded by Cambridge, Trowbridge, Broadway, and Irving Streets, in the City of Cambridge, and to build thereon and give to said city a Public Library building, under the following conditions: -

That on or within said building, tablets be placed bearing the following words: -

First - Built in gratitude to God, to his son Jesus Christ, and to the Holy Spirit.

Second - The Ten Commandments and 'Thou shalt love thy neighbor as thyself.'

Third - 'Men, women, children, obey these laws. If you do, you will be happy; if you disobey them, sorrow will come upon you.'

Fourth - 'It is noble to be pure; it is right to be honest; it is necessary to be temperate; it is wise to be industrious: but to know God is best of all.'

Fifth - Words for this tablet to be given hereafter.

Edward D. McCarthy, Esquire
Page 3
December 17, 1975

It is my wish that a portion of said tract of land be reserved as a playground for children and the young. I ask you to present this communication to the City Government of Cambridge and notify me of its action in relation to it. Should the gift be accepted, I hope to proceed at once with the work.

Yours respectfully,

Frederick H. Rindge."

Following receipt of the letter, both boards which then made up the legislative body of the city adopted the following resolutions:

"Resolved, That the city of Cambridge accepts with profound gratitude the munificent gift of Mr. Frederick H. Rindge, of land and buildings for a public library as stated in his letter of June 14, 1887; that the city accepts it upon the conditions stated in said letter, which it will faithfully and gladly observe as a sacred trust, in accordance with his desire.

"Resolved, That in gratefully accepting this gift, the city tenders to Frederick H. Rindge its heartfelt thanks and desires to express its sense of deep obligation to him, recognizing the Christian faith, generosity, and public spirit that have prompted him to supply a long-felt want by this gift of great and permanent usefulness."

Although claims appear to have been made that the land in question constitutes a park, the land in question was not designated as a public park and so far as we are informed has never been used as a park. No notice of restriction was filed before January 1, 1964 under G. L. Chapter 184, Section 28 indicating a limitation on the use of the land in question. Mr. Rindge's intent seems clearly directed toward benefitting the city as such and not as an entity to hold the land for the benefit of all the inhabitants of the Commonwealth. See Lowell v. Boston, 322 Mass. 709.

Edward D. McCarthy, Esquire
Page 4
December 17, 1975

It does not appear to us that the land in question is subject to a public charitable trust, the terms of which render improper its use as a school site. The only condition we find in the record pursuant to which the City acquired the property relates to the inclusion in the buildings of a plaque having a particular inscription. This condition has been met in the library and, if applicable, could be physically accomplished in the proposed school building. We find no other conditions or limitations which in our opinion prevent the city from using the land as a school site. There is, of course, the statement in the deed that Mr. Rindge did not intend the land to "be used for any of the purposes of ordinary city business such as a site for a city hall or a police station or even for a school house." But the same paragraph in the deed also makes it clear that the City officials can if they choose ignore Mr. Rindge's wishes.

In those instances where the Supreme Judicial Court has found land to be impressed with a public charitable trust, there has been clear indication of an intent to make a gift in perpetuity for specific public purposes. See Salem v. Attorney General 344 Mass. 626 (1962), Dunphy v. Commonwealth Mass. Adv. Sh. (1975) 2361. In its most recent pronouncement on this subject, it is clear that the Court will not strain to find the necessary conditions for a public charitable trust. See Opinion of the Justices, December 1, 1975, 1975 Mass. Advance Sheets p. . On the basis of the foregoing, we conclude that the City may legally use the site of the land adjacent to the Rindge Library for the proposed school project.

Obviously, the requirements of the applicable environmental statutes must eventually be met and we shall eventually need appropriate evidence to indicate this as well as that the City has taken appropriate action properly to designate the land in question as the site for the school project.

Very truly yours,

Ropes & Gray
Ropes & Gray



23.

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

March 18, 1996

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 33, regarding a request for legal opinions issued at the time of the building of the new High School concerning the status of land around the Cambridge Public Library, received from City Solicitor Russell B. Higley.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachment

Consent Agenda #23

S-130

Relative to Awaiting Report Item
Number Thirty-three, regarding
a request for legal opinions issued
at the time of the building of
the new High School concerning the
status of land around the
Cambridge Public Library.

In City Council March 18, 1996

3/25/96

Referred to unfinished business
Number 8.