



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 876-6800

LAW DEPARTMENT

PHILIP M. CRONIN
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ASSISTANT CITY SOLICITORS

JOHN A. SERINO
LEGISLATIVE AGENT

May 14, 1973

TO THE HONORABLE, THE MEMBERS OF THE CITY COUNCIL:

You have asked my opinion regarding the appointment of a City Messenger and Clerk of Committees and the authority of the City Manager for said appointment.

Section 2-126 of the present City Ordinances, as adopted June 28, 1948, provides as follows:

"The City Messenger - Clerk of Committees' Department shall be in charge of the City Messenger and Clerk of Committees. He shall be appointed by the City Manager for the term of one (1) year from June 1, in the year of his appointment, and until his successor is appointed and qualified. He shall perform the duties of City Messenger and shall act as Clerk of all Committees, standing or special, of the City Council, not otherwise provided for by Ordinance or Order. He shall receive such salary as the Council from time to time shall determine."

Chapter 43, Section 95 of the General Laws (The City Charter) provides, in part, as follows:

"The Government of the City in the general management and control of all its affairs shall, except as otherwise provided in this Chapter, be vested in a City Council, . . ."

Section 18 of Chapter 43 provides, in part:

"Except as otherwise provided in this Section, the legislative powers of the City Council may be exercised as provided by Ordinance or Rule adopted by it."

The general authority of the City Manager to make appointments is contained in Section 105 of Chapter 43 and reads as follows:

"Such officers and employees as the City Council, with the advice of the City Manager, shall determine are necessary for the proper administration of the departments, commissions, boards and offices of the City for whose administration the City Manager is responsible, shall



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-2-

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be appointed, and may be removed, by the City Manager."

Section 103 of Chapter 43 specifically excludes from the responsibility of the City Manager "any body elected by the voters of the City".

It is, therefore, my opinion that under the existing Ordinance, the City Manager and the City Manager alone may appoint the Clerk of Committees. However, there would appear to be ample authority in the Charter and other case law to support the proposition that this position is one reserved under the general legislative power of the City Council and could be effectuated by a repeal of that portion of the existing Ordinance which provides for appointment by the City Manager. It is of interest to note that the 1943 Ordinances in effect at the time of the adoption of the Plan E Charter did not provide for this appointment by the City Manager.

As a matter of general information, General Laws, Chapter 44, Section 33A contains certain restrictions on the creation of new positions as follows:

"No new position shall be created or increase in rate made by Ordinance, vote or appointment during the financial year subsequent to the submission of the annual budget unless provision therefor has been made by means of a supplemental appropriation. No Ordinance, vote or appointment creating a new position in any year in which a municipal election is held shall be valid and effective unless said Ordinance, vote or appointment is operative for more than three (3) months during said municipal election year."

If I can provide you with any additional information, please let me know.

Respectfully submitted,

Edward D. McCarthy

Edward D. McCarthy,
Acting City Solicitor

EDM:jma

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Comm. from the City Clerk transmitting
opinion from the City Solicitor relative
to the authority of the City Manager
in the appointment of the City Messenger-
Clerk of Committees Department.

In City Council,

May 21, 1973

*Filed with Col #19
on this matter*