

Vote of the City Council adopting the City of Cambridge

Ruling of the MASSACHUSETTS City Solicitor

Re Sec. 97 and Sec 100
of the Charter

In City Council January 21 1974

	YEA	NAY	ABSENT	PRESENT
Mrs. Ackermann	✓			
Mr. Clinton	✓			
Mr. Danehy	✓			
Mr. Duehay	✓			
Mrs. Graham	✓			
Mr. Russell	✓			
Mr. Sullivan	✓			
Mr. Vellucci	✓			
Mr. Wylie	✓			
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CITY OF CAMBRIDGE

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

LAW DEPARTMENT

EDWARD D. MCCARTHY
ACTING CITY SOLICITOR

ROWENA E. TAYLOR
ASSISTANT CITY SOLICITOR

RUSSELL B. HIGLEY
SPECIAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

January 21, 1974

Paul E. Healy, City Clerk
CITY OF CAMBRIDGE
City Hall
Cambridge, MA 02139

Dear Mr. Healy:

You have requested my opinion as to three matters of fundamental importance to the City of Cambridge and to the proper exercise of the legislative powers and duties of the City Council.

1. May the City Council conduct regular business in light of their failure to elect a Mayor or Vice-Chairman?

In determining this question, as the others you have raised, we must, of course, look to the City Charter contained in General Laws, Chapter 43, Sections 93 to 116 inclusive. The general rules of construction to be used in construing a City Charter are set forth in Section 9.22 of McQuillin, Municipal Corporations, the only multi volume work and the leading authority on Municipal Law. Essentially they provide that all laws must be read together in construing the Charter and all parts of the Charter will be considered together in order to ascertain its true meaning. It must further be construed, if possible, as to give sense and meaning to every part. In Fisk V. Worcester, 219 Mass. 428, the Supreme Judicial Court of Massachusetts held that: "the scheme or framework of government is to be ascertained from all the provisions of the Charter.". Another rule is that if there is apparent conflict between two provisions they will be so construed as to make both effective.

In order to arrive at the intent of the framers of the Charter it is also proper to consider the objects they sought to accomplish and the practical situation they were attempting to provide for.

General Laws, Chapter 43, Sections 95 and 97 clearly vests the government of the City, the general management and control of all its affairs, and all the legislative powers of the City, except those reserved to the School Committee, in the City Council.



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-2-

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To say that the City Council cannot exercise these powers which they are required by law to exercise because of failure to elect one of its members as Mayor runs contra to the strong public policy of requiring stability and continuity of policy in order to assure successful municipal administration. The Massachusetts Supreme Judicial Court in Russell V. Wellington, 157 Mass. 100 concerned itself with the question of whether a city officer could be validly elected at a time later than that required by the Charter of the City of Pittsfield. The Court said, in part: "We think that the provision that the election shall be held in a particular month or at a particular time must be regarded as directory. It must necessarily sometimes happen that an election in concurrence cannot be had within the month or at the time mentioned, and the essence of the thing to be done is that there should be an election, but the time relates only to the regular and orderly change of officers. . . ." This is not to say that the City Council is in any way relieved of their duty to elect a Mayor with dispatch. This is clear from the language in General Laws, Chapter 43, Section 97, that "Thereupon the City Council shall, by a majority vote of all the members elected, elect a Mayor and Vice-Chairman." I, therefore, agree with former Solicitor Cronin that once the City Council is sworn to perform its duties it then has full authority to act.

2. When a Mayor and Vice-Chairman have not been elected who is to preside over Council meetings?

It seems clear from a reading of the Charter that the presiding officer of the Council should be one who was elected by the people of the City. Section 99 provides that the Mayor shall preside at the meetings; in the Mayor's absence, the Vice-Chairman; and in the absence of both, a temporary chairman shall be chosen. It is important to note that Section 97 uses the language: "For the purposes of organization, the City Clerk shall be temporary chairman until the Mayor or Vice-Chairman has qualified." [It is, therefore, my opinion that you may properly act as temporary chairman at the first Monday of January meeting for the purposes of qualifying and administering the oath of office to the individual Councillors.] As you have pointed out, the City Clerk chaired each Council Meeting in 1948 until a Mayor was elected on the 1,321st ballot. If you will refer to the legal opinions at that time, each of the meetings was considered to be part of the organizational meeting and



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-4-

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There is strong evidence in Massachusetts of a legislative intent that an office not be vacant. Some examples are the line of succession to the office of Governor, the fact that in many cities the Mayor holds over in office until his successor is qualified, and the many legislative provisions for acting mayors. Plan D for instance provides that if a Mayor is not elected by the City Council within 14 days of its organizational meeting, then the Councillor who received the highest number of votes shall be Mayor and the Councillor with the next highest number of votes shall become Vice-Chairman both for full terms of office. See also Senate Report 254 of 1915 dealing with Plans A, B, C, and D for cities and House Report 1710 of 1938 reporting favorably on the Plan E Charter. These reports reflect the intent of the framers of the Charter that a member of the Council (logically the Mayor) serve as Chairman of the School Committee not only to keep the Council informed of school matters; but in light of the Councils appropriation powers, he would be an official who is held accountable to the people for the appropriation and expenditure of their money; and, of course, the obvious intent to have voting, seven (7) members of the School Committee to minimize the likelihood of tie votes.

It is, therefore, my opinion that the intent of the framers of the Charter was that the office of Mayor in Cambridge never be in an unoccupied state of limbo and that the language of Section 100 requires that the member of the Council, senior in length of service, perform the duties of Mayor, including presiding over Council meetings, until such time as the Council elects one of its members.

While I feel that a Court most probably would not invalidate the proceedings at which you acted as Chairman, the defect being essentially one of form and not of substance, I would respectfully recommend that the Council vote to ratify and confirm their earlier proceedings.

3. Should the City Council recess each meeting until a Mayor is elected or should it adjourn each meeting, so that all business, which is transacted, may be valid and final?



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-5-

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In light of what has been set forth in the above answer, it is my opinion that the City Council should properly adjourn each regular meeting. This procedure will, once again, comply with the intent of the framers of the Plan E Charter that government in Cambridge should be orderly, continuous, and stable.

Very truly yours,

Edward D. McCarthy
Edward D. McCarthy
Acting City Solicitor

EDM:jmw



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-3-

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the Council was advised that it could not conduct regular business.

For the reasons set forth that the Council may conduct regular business, it is my opinion that there is no authority in law for the City Clerk to preside over regular business meetings of the City Council. You should, however, continue to take the chair at said meetings when the question of election of a Mayor or Vice-Chairman is being considered.

You have also raised the question of the interpretation of Section 100 of the Plan E Charter which in pertinent part states: "In case, at any time, there shall be neither a Mayor nor a Vice-Chairman, the member of the Council, senior in length of service, or, if more than one have so served, then the member senior both in age and length of service shall perform the duties of Mayor until a new Mayor has qualified.". To my knowledge, this raises for the first time in Cambridge the question of whether upon failure to elect a Mayor at the organizational meeting the "senior member" shall act as Mayor until such election or does Section 100 presuppose the election of a Mayor and a subsequent "vacancy" caused by death, resignation, removal, etc..

Once again, we must look to the entire Charter and also bear in mind that "Courts generally indulge in strong presumption against legislative intent to create a condition which may result in an executive or administrative office becoming, for any period of time, wholly vacant and unoccupied by one lawfully authorized to exercise its functions.". See McQuillin, Municipal Corporations, Section 12.110, n.10.

While the office of Mayor has been referred to in earlier opinions as essentially involving duties of a ceremonial nature; he or she is nevertheless cloaked with other more important powers and obligations. The Mayor is the presiding officer of the City Council, recognized by the courts for the purpose of serving civil process and by the governor for military purposes. "In time of public danger or emergency, as determined by the City Council, he may, with its consent, take command of the police, maintain order and enforce the laws." And most significantly, shall be chairman of the School Committee.

Re: To who presides/8
at the city Council
meetings prior to election
of mayor

Jan. 14