



CITY OF CAMBRIDGE

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

RUSSELL B. HIGLEY
ACTING CITY SOLICITOR

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LEGAL COUNSEL

CHARLES A. WATSON
LEGISLATIVE AGENT

March 10, 1977

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

Dear Mr. Sullivan:

I am in receipt of a Council Order dated March 7, 1977 recommending that the License Commission revoke a license previously granted to the producers of the local production of "Oh! Calcutta".

I should like to take this opportunity to point out to you the legal ramifications involved in such an action.

As you are aware, although a lawfully issued license is not, strictly speaking, property of the licensee, it has some of the aspects of property and is entitled to protection against arbitrary revocation. It is well recognized law that a mayor, commissioner or other official cannot arbitrarily and without legal cause revoke a license, nor can he (she) be authorized to do so. Marrone v. City Manager of Worcester, 329 Mass. 378, 108 N.E. 2d 553. Additionally, where as in this case, expenditures and obligations have been incurred by the licensee upon issuance of the original license, said license is protected to a limited extent against revocation, assuming the thing licensed is lawful and useful or at the least harmless in character and beyond municipal power to prohibit completely. Generally then, a legal cause or ground must exist for the revocation of a license unless by its terms or under law it is revocable at the pleasure of the municipality and without notice. Marrone, supra.

I assume, therefore, that the basis for a legitimate revocation in this instance would be founded on obscenity grounds. As you are aware, expression whether by speech or conduct is, within certain limits, constitutionally protected from state or municipal regulation. Spence v. Washington, 41 L. Ed. 2d 842 (1974). The recent case of Miller v. California,

Mr. James L. Sullivan
City Manager

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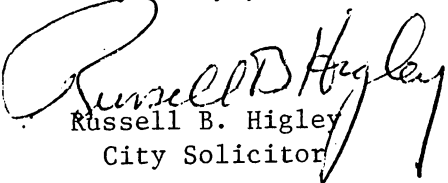
March 10, 1977

413 U.S. 15 (1973) set forth the new standard for constitutionally protected freedom of expression. Applying the Miller test, the production of "Oh! Calcutta" may be subject to municipal censorship only if 1) the work taken as a whole appeals to the prurient interest, 2) portrays sexually offensive conduct specifically defined by state law, and 3) taken as a whole, has no literary, artistic, political or scientific value. Moreover, local community standards rather than national standards must be utilized in applying these tests.

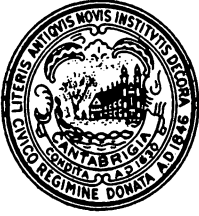
It is my opinion that the community standards of the Cambridge area are at present not sufficiently defined to justify or legitimize revocation of the production license based on obscenity grounds. An attempt to stop such expression by revocation of the license would, therefore, raise serious First Amendment constitutional issues. Moreover, the revocation of a license by the City, absent a clear showing of a rational basis could trigger Fourteenth Amendment sanctions as well.

In view of the above, I would advise that revocation of the license in question is not from a legal standpoint in the best interest of the City.

Very truly yours,


Russell B. Higley
City Solicitor

RBH:jl



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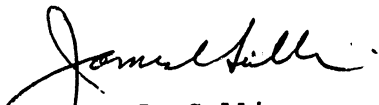
EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

March 14, 1977

To the Honorable, the City Council:

With reference to City Council Order of March 7, 1977,
relative to the revocation of the license granted to the
producers of "Oh! Calcutta", I transmit herewith self-
explanatory communication from Russell B. Higley, City
Solicitor.

Very truly yours,



James L. Sullivan
City Manager

JLS/b

Re: to the revocation of the license for "Oh!
Calcutta".

In City Council,
March 14, 1977

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Placed on File

WITH ORDER

ON HIS DEPORT