

City of Cambridge

The Rules and Government Operations Committee held a joint public meeting on November 2, 1994, beginning at 10:10 a.m. in the Sullivan Chamber for the purpose of discussing proposed legislation to prohibit persons convicted of felonies from holding elective municipal office.

Present at the hearing were Vice Mayor Sheila T. Russell and Councillor Michael A., Sullivan, Co-Chairs of the Committee, Councillor Kathleen L. Born, Councillor Francis H. Duehay, Councillor Jonathan S. Myers, City Clerk D. Margaret Drury. Also present was Deputy City Solicitor Donald Drisdell.

Councillor Sullivan convened the Committee and distributed a draft of the proposed legislation to address the issues that have been raised at the prior committee meetings on this subject. (Attachment A)

Mr. Drisdell stated that Section 1 should clarify that the "appointive office" is in Cambridge.

Councillor Myers stated that he appreciates the work that has gone into this. He favors Section 3 and Section 4. He stated that he is concerned about the provisions of Section 2 that allows the City Council by majority vote to expel. He would prefer a neutral law that did not require a vote.

Councillor Sullivan said that this is the first time that he knows of that this has come up; he does not expect to see it come up often, but if it does, it is incumbent upon the City Council to accept responsibility in such a serious situation.

Councillor Duehay said it may happen once in 50 years.

Mr. Drisdell asked whether Section 2 was inconsistent with Section 1.

Councillor Duehay asked what "appointive" officials means.

Mr. Drisdell noted that adding "appointive" officials adds several issues.

Councillor Sullivan said that this language came from the Chelsea charter.

Councillor Myers noted that under Section 2 as proposed, a City Councillor could be excluded by majority vote of the Council for having committed an obscure archaic felony that is still on the books.

Councillor Sullivan stated that the requirement of such a vote is preferable to automatic exclusion for such a felony.

Councillor Duehay stated that Section 1 is an improvement over the previous draft; Section 2 is not. He added that the most important consideration is that the City Council take some rational action. He would not like to see existing state law inadvertently weakened by a interpretation of Section 2 that allowed a person who would be required to vacate by Massachusetts General Law, Chapter 279 to stay in office because the City Council did not act. Councillor Duehay added that while it is unpleasant for the City Council to have to take such action, it is a possible solution.

Councillor Born noted that there could be strong disagreements about what felony deserved this treatment, for example, violent protest at an abortion clinic.

Councillor Myers suggested attempting to define what felonies qualified for exclusion. Councillor Duehay noted that this could be a very time consuming task.

Councillor Born stated that Councillor Sullivan has done a good job in trying to correct some of the problems discussed as previous committee meetings. She stated that she needed to think more about the proposal, but that there is a basis here. Councillor Born added that in thinking of the type of felonies that should qualify for exclusion, the question would be whether the character of the person committing the felony was so impugned that the person should no longer serve.

Councillor Sullivan asked Mr. Drisdell how the determination would be made as to whether the felony was one involving a violation of official duties. Mr. Drisdell said that there is case law on this issue.

Vice Mayor Russell posed the question of whether the convicted felon could vote under Section 2, and what would happen if the felon were in jail, couldn't vote and there was a split vote.

Councillor Myers stated that he would like clarification of what felonies would be involved in Section 1. Regarding Section 2, he said he would rather the Council not take a vote.

Mr. Drisdell asked whether "appointive office" would be removed from Section 1. If the Committee intends to leave it there, it may have a significant effect vis a vis many other provisions of state law. It was agreed without objection that "appointive office" would be removed from the proposed draft.

Councillor Born asked whether Section 3 is meant to apply to the Mayor and Vice Mayor, to remove them from office, as well as Committee Chairs.

Councillor Sullivan stated that he did not believe Section 3 should apply because Section 3 relates to indictment.

Councillor Duehay suggested that Section 3 should provide for temporary suspension for all committee chairs, the Mayor and Vice Mayor.

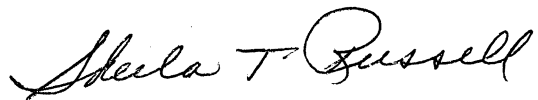
It was agreed that Mr. Drisdell will prepare a new draft incorporating all of the suggested changes for another Committee meeting on November 16, 1994, with the expectation that there will be home rule legislation submitted to the State Legislature by December 4, 1994.

Councillor Duehay asked whether the School Committee was included, and suggested drafting the proposed legislation so that the School Committee is the body that takes or exclusion of its members rather than the City Council voting or exclusion of members of the School Committee.

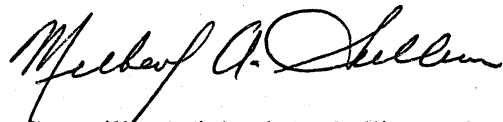
Mr. Drisdell noted that he intended to add a definition of "conviction" in accord with earlier discussions.

The meeting was adjourned at 11:10 a.m.

For the Committee

A handwritten signature in cursive script, reading "Sheila T. Russell".

Vice Mayor Sheila T. Russell, Co-Chair

A handwritten signature in cursive script, reading "Michael A. Sullivan".

Councillor Michael A. Sullivan, Co-Chair

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SECTION 1. Notwithstanding any general or special law or charter provision to the contrary, any person convicted of a criminal offense ~~involving misconduct~~ involving a violation of his or her official duties in any elected or appointive office at any time held by him or her, shall be deemed to have vacated office and shall not be eligible to serve in any elective municipal office in the City of Cambridge.

in the City of Cambridge

SECTION 2. Notwithstanding any general or special law or charter provision to the contrary, any person convicted of a felony under the laws of the Commonwealth or of the United States committed while holding elected municipal office in the City of Cambridge, who still holds elective municipal office in the City of Cambridge at the time of conviction, may be subject to censure or expulsion by a majority vote of the City Council, and the City Council shall have authority to exclude said officer and to declare the office vacant.

SECTION 3. Notwithstanding any general or special law or charter provision to the contrary or any other provision of this act, any person indicted for a felony under the laws of the Commonwealth or of the United States while holding elected office in the City of Cambridge at the time of indictment, ~~shall automatically forfeit~~ *shall be suspended* ~~his or her appointment to any committee chairs held by virtue of their office.~~

from

SECTION 4. If the conviction is reversed or vacated he or she shall be restored to office with all its rights and emoluments; but, if pardoned, he or she shall not by reason thereof be restored, unless it is so expressly ordered by the terms of the pardon.

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COMMITTEE REPORTS

S-64

Report from the Joint Committee on
Rules and Government Operations
Committee for a public hearing held on
November 2, 1994 for the purpose of
discussing proposed legislation to
prohibit persons convicted of felonies
from holding elective municipal office.

In City Council,

February 13, 1995

*Report accepted
Placed on file*