

TO:

The Honorable Russell Higley
Acting City Solicitor
City of Cambridge
Massachusetts

SUBMISSION OF INVESTIGATIVE REPORT
CONCERNING
DEMOCRATIC CITY COMMITTEE OF CAMBRIDGE
(Their selection of a list of
three candidates for Election
Commissioner at meetings of
said committee on February 12,
and February 26, 1976)

BY

LT. HENRY P. GALLAGHER
DETECTIVE WILLIAM G. MAHER

OF

CAMBRIDGE POLICE DEPARTMENT

FRIDAY, MARCH 16, 1976

Pursuant to orders from Acting Chief of Police Nicholas J. Fratto on Wednesday, April 7, 1976, at the request of Acting City Solicitor Russell Higley, in reference to Calendar #7 In City Council, March 1, 1976, Lt. Henry P. Gallagher and Detective William G. Maher of the Cambridge Police Department made an investigation of the circumstances surrounding the selection of a list of three candidates by the Democratic City Committee of Cambridge from a field of five candidates for the position of election commissioner, said commissioner to be chosen by the City Manager from the submitted list of three candidates by said committee. The three candidates were selected at two meetings of the Democratic City Committee of Cambridge on February 12 and February 26, 1976.

The following facts and information were ascertained from the investigation:

The pertinent General Laws for the above mentioned selection process are found in Chapter 239, Acts of 1921, (creation of an election commission in the City of Cambridge and the method of appointing election commissioners), as amended by the Acts of St. 1939, Chapter 43, as amended by Chapter 432, Acts of St. 1939. Chapter 52, Section 10 of the General Laws allows city committee's to make rules and regulations consistent with law for its proceedings.

Chapter 52, Section 3 - City Committee's.

The members of the several ward committee's of a political party in a city shall constitute the city committee, added St. 1938, Chapter 346, Section 1.

It appears that election to Ward and City Committee membership is not a public office even though it is an election process.

Copies of the above mentioned Mass. General Laws are enclosed with this report, also, a copy of the Kidder vs. Mayor of Cambridge and others, opinion of the Mass. Supreme Court, along with a copy of Joseph J. Cabral and others vs. Mayor of Cambridge and another. Middlesex. October 3, 1939. December 8, 1939.

Other pertinent data are enclosed which come from: The City of Cambridge Election Commission; the Records Division and Elections Division Office of the Secretary of the Commonwealth; Minutes and other data of the Democratic City Committee of Cambridge submitted by Secretary David Sullivan; material submitted by the chairperson of the Democratic City Committee Lewis Armistead; copy of Calendar #7, in City Council, March 1, 1976; and, records from the Election Commission pertaining to James M. Minifie, Jr. of 51 Ellery Street Cambridge.

From talking to several of the candidates for election commissioner and members of the City Committee, also members of the Executive Committee of the City Committee, the following information was obtained.

The first meeting of the City Committee for the selection of candidates for Election Commissioner was held at the Greek Orthodox Church Hall, Magazine and Franklin Streets, on Thursday evening, February 12, 1976, from 8:15 p.m. to 11:00 p.m.

The first meeting produced two candidates selected by a majority of the City Committee members present and voting. These candidates were: Mr. George Goverman, declared elected to the first position on the list after the second ballot; Mr. Matthew Feinberg who was elected after receiving 79 votes from 155 members present and voting on the second ballot for the second position on February 12, 1976 but was not declared elected until the City Committee meeting of February 26, 1976, due to the fact that the first meeting adjourned immediately after the second ballot for the second position. The other three candidates were Mr. Live, Mr. Burns, and Mr. Amato.

During the meeting of February 12, 1976, it is generally acknowledged by persons present with whom we spoke, that the tenor of the meeting was charged with high feelings and angry emotions between two factions of the City Committee. Name calling, alleged threats, and unruly behavior prevailed. Several intemperate remarks and confrontations took place, but no physical violence ever occurred.

The method of ballot was on roll call by voice vote. Members of the general public were present and mixed with members of the City Committee.

Mr. Lewis Armistead, Chairperson, acted as his own Parliamentarian. Mr. David Sullivan, Secretary of the City Committee, was present to record the minutes of which a copy is submitted with this report. The minutes of the meeting appear to be in good order.

Most City Committee members who are Executive Committee members feel that the count at roll calls was accurate despite the tenor of the meeting. Several City Committee members with whom I conferred felt the procedures were a disgrace and on the second meeting of the City Committee, held on February 26, 1976, there was discussion on the floor, as indicated in the minutes, over accepting the minutes as presented by the Secretary, David Sullivan, of the February 12, 1976 City Committee meeting.

The minutes of the February 12, 1976 meeting appear in good order and the recapitulation figures concur with the roll call figures taken during the meeting.

In the matter of the second position, elected candidate Matthew H. Feinberg, of 63 Fayerweather Street, Cambridge, there seems to be some dispute as to whether he was a registered Democrat as required under law to be considered as a candidate. The Election Commission records failed to produce Mr. Feinberg's affidavit of registration made on October 8, 1974. The disappearance of Mr. Feinberg's affidavit cannot be explained. The Election Commission keeps a general register of voters and this register shows Mr. Feinberg registering on October 8, 1974, but fails to indicate he registered as a Democrat. Madeline Mullen, Chief Clerk of the Election Commission, indicated to me that when a person registers as a Democrat, it is noted with a D beside the persons name. If there is no D or R beside the persons name who has registered, it indicates no party affiliation which is usually synonymous with independent or unenrolled status. The file card under Mr. Feinberg's name does not indicate party affiliation. The 1974 and 1975 voting list carry Mr. Feinberg's name without party affiliation as a Democrat indicated. Copies of the above referred to records are enclosed with this report, other than the mentioned missing affidavit.

On April 13, 1976, I spoke with Mr. Matthew H. Feinberg via phone and he informed me that he feels the General Register at the Cambridge Election Commission is inaccurate as far as he is concerned. Mr. Feinberg stated that if had failed to register as a Democrat when registering, it must have been a completely unconscious act because has been a registered Democrat since first registering to vote about twelve years ago in Brookline. Mr. Feinberg stated he had taken steps via the March 2, 1976 Presidential Primary, to correct his disputed registration.

With Mr. Feinberg's permission, I called the City Clerk's office in Brookline on April 13, 1976, and was informed that Mr. Feinberg had been a registered Democrat voting from 286 Mason Terrace from June 24, 1964 until 1974, confirming Mr. Feinberg's earlier statement to me.

On the matter of the General Register of Voters kept by the Cambridge Election Commission, it was brought to my attention by David Sullivan, Secretary of the City Committee, that by virtue of the Acts of 1973, Chapter 1137, Section 5 approved December 4, 1973, and by Section 11, made effective June 1, 1974 a new Section 36 and 42 of Chapter 51 of the General Laws deleted all mention of a General Register and that the official record of registration is the affidavit of registration. At this time, the only records available at the Cambridge Election Commission concerning the case of Mr. Feinberg are those mentioned above. In an effort to clarify the facts surrounding Mr. Feinberg's position, I went to the Harvard Trust Company, Harvard Square, and spoke to Mr. Herbert Stackhouse on April 13, 1976.

Mr. Stackhouse was requested to forward any computer in-put information on the standing of Mr. Feinberg as a registered voter. Mr. Stackhouse will forward whatever material he has on Mr. Feinberg to your office.

In the matter of the second meeting of the Democratic City Committee of Cambridge held on February 26, 1976 at the Morse School, Granite Street, Cambridge, concerning the election of the third candidate for Election Commissioner, the following information was obtained.

The meeting was called to order at 8:15 p.m. and was adjourned at 11:05 p.m. The tenor of this meeting was unlike the first meeting on February 12, 1976. There were two Cambridge Police Officers on detail during the meeting. The public was separated from the City Committee members by having City Committee members up front. The members of the City Committee were made to remain seated during the roll call. Members were made to raise their hands when voting. At the end of each roll call, vote switches would be taken by wards in order. Ms. Malenfant was clerk; David Sullivan was secretary; Mr. Panico of Ward 5, Parliamentarian; Mr. Reinstein of Ward 7, assistant to Mr. Panico at Mr. Panico's request; Chairperson was Lewis Armistead. (For complete report, see minutes of meeting.)

This meeting appears to have been more orderly than the prior meeting. The minutes of the meeting adequately state the circumstances of the meeting and they seem complete.

During the second meeting a dispute arose over the first ballot for the third position on the list. The minutes of the meeting show that on the first ballot for third position that Mr. Amato received 0 votes; Mr. Burns 81 votes; Mr. Live, 80. One member voted present. The dispute arose as to whether it was necessary to have another ballot as Mr. Burns had received 81 votes and Mr. Amato stated he was withdrawing his candidacy for the sake of the party unity. Mr. Christoforo of Ward 5 raised a point of order to the effect that Mr. Burns should be declared elected, since Mr. Live should be eliminated as the person receiving the fewest votes. The Chair ruled that Mr. Amato was still a candidate for the purposes of that ballot and accordingly, declared Mr. Amato eliminated. Ms. Belloste of Ward 1 raised a parliamentary inquiry as to whether another ballot was necessary, and the Chair answered "yes", Mr. Fantini of Ward 11 raised a point of order to the effect that Mr. Burns had received a majority of those present and voting, since members voting "present" should not be counted for purposes of calculating the majority required. The Chair, relying on an opinion from the Parliamentarian, ruled that point of order was not well taken, in view of the practice on prior votes. During this first ballot for third position, there were 162 members present and voting. A majority thereof was 82, according to the minutes of the meeting.

On the second ballot for the third position on the list, 162 members were present and voting; a majority thereof was 82. The candidates received the following votes: Mr. Burns, 80; Mr. Live, 82. Accordingly, Mr. Live was declared elected to the third position on the list.

Mr. David Sullivan, Secretary to the City Committee, informed me that the committee was guided by Robert's Rules of Order except where other provisions are made elsewhere in the by-laws. Resolution 28 was adopted by the Executive Committee, December 14, 1975. This resolution adopted rules governing the procedure for selecting candidates for Election Commissioner in 1976. (Copy of resolution and by-laws enclosed with this report.) This resolution, Section 7, Status of these rules. These rules are standing rules within the meaning of Section 49 of Robert's Rules of Order (Pyramid edition. 1967 at 98). Section 5 of resolution 28 gives the voting rules. Section 5 states that the Candidate shall be elected by all of the roll by a majority of the votes cast. After each roll call or ballot, if no candidate is elected, the candidate receiving the fewest votes shall be eliminated after each vote until on a particular ballot or roll call, the candidate receiving a majority will be declared elected (for exact interpretation of Section 5, I advise reading same as I gave a general description of it in my own words).

The question arises as to what does the City Committee mean by a majority vote! Chapter 52, Section 10 of the General Laws, requires rules and regulations by the City Committee to be consistent with law. Chapter 432 of the Acts of 1939, amending Chapter 43 of 1939 which amended Chapter 239 of the Acts of 1921, states that a candidate shall be selected by vote of a majority of the members of such committee present and voting at a duly called meeting; provided, that not less than thirty such members are present and voting at such meeting.

The following information is submitted for your perusal concerning the possibility that it may shed some light on the above mentioned dispute as to the meaning of the word majority where it is concerned in an election process, and if it has any bearing on the first ballot for third position at the Democratic City Committee meeting mentioned above, which took place on February 26, 1976.

Information taken from: Black's Law Dictionary, Revised Fourth Edition, Copyright 1968 by West Publishing Company.

Majority:

Elections. Majority signifies the greater number of votes. In re Todd, 208 Ind. 168, 193 N.E. 865.

(Continuation of cite from Black's Law Dictionary):

When there are only two candidates, he who receives the greater number of votes cast is said to have a majority; when there are more than two competitors for the same office, the person who receives the greatest number of votes has a plurality, but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined.

It relates to voters voting at election, not those qualified and not voting. *Hevelone v. City of Beatrice*, 120 Neb. 648, 234 N.W. 791, 795. (End of cite from Black's Law Dictionary.)

On the first ballot for third position at the meeting of the Democratic City Committee on February 26, 1976, Mr. Burns received more votes than all his competitors combined. Mr. Burns, 81; Mr. Live, 80; Mr. Amato, 0. From the above citation, it appears Mr. Burns had both a plurality and a majority vote, a quorum being present.

It would appear from the above cites that Mr. Burns should have been declared a successful candidate on the first ballot for third position, if they apply in this case.

In conclusion, let me state that the investigation made by myself and Detective Maher, was not all inclusive as it would take months to interview all members of the Democratic City Committee and members of the public who were present at the two meetings discussed in this report. Rather, a general sampling, along with whatever documentary evidence was available, was gathered by us in an attempt to present a fair and impartial report.

Hoping that your expectations of results from our investigation are met, we conclude our investigation.

Respectfully submitted,

Lt. Henry P. Gallagher
Lt. Henry P. Gallagher

Detective William G. Maher
Detective William G. Maher

Inspectional Services Section
Cambridge Police Department
Friday, April 16, 1976

APPENDAGE TO INVESTIGATIVE REPORT

While visiting the Cambridge Election Commission concerning this investigation, it was brought to my attention that one James M. Minifie, Jr. of 51 Ellery Street, Cambridge, which is located in Ward 4, Precinct 5 on the City of Cambridge voting list, is entered on the office copy of the 1975 voting list as an independent voter. A copy of the change of party enrollment dated September 24, 1974, is enclosed with this report, also a copy of the 1975 Election Commission Office copy of the voting list.

Mr. James M. Minifie, Jr. is indicated as having voted at both meetings on February 12 and February 26, 1976 respectively, of the Democratic City Committee.

Information also came to my attention that James M. Minifie, Jr. was certified as a Ward Committee member by the Cambridge Election Commission; this matter is submitted for your consideration.



CITY OF CAMBRIDGE

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

LAW DEPARTMENT

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ASSISTANT CITY SOLICITOR

May 7, 1976

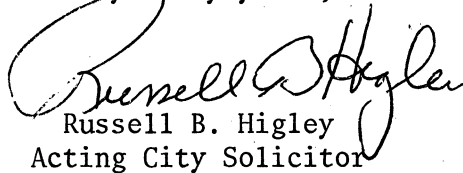
Mr. James L. Sullivan
City Manager
City Hall
Cambridge, MA 02139

Dear Mr. Sullivan:

In reference to Calendar No. 7 in City Council March 1, 1976 by Councillor Sullivan, I herewith submit a copy of an Investigative Report submitted by Lieutenant Henry P. Gallagher and Detective William G. Maher, Cambridge Police, relative to Democratic City Committee of Cambridge Meetings on February 12 and February 26 of 1976.

I concur with the findings of the Investigative Report and feel that the names of the three candidates as submitted by the Democratic City Committee of Cambridge to City Manager, James L. Sullivan, for selection of an Election Commissioner are not accurate.

Very truly yours,


Russell B. Higley
Acting City Solicitor

RBH:jm
Enc.

Re: to Democratic City Committee of Camb.
Meetings on Feb. 12 and Feb. 26, 1976 in
response to Calendar No. 7, March 1, 1976

In City Council,
May 10, 1976

- Placed on File -