DEPARTMENT OF CITY CLERK

CITY HALL

DECEMBER 28, 1983

The Committee on Ordinances meets this day at 7:00 o'clock P.M. (EST) in the Committee Room "A", City Hall.

Present: Chairman Glavin, Councilman Annaldo, Councilwoman Fargnoli and Councilwoman Brassil - 4.

Absent: Councilman Farmer - 1.

Also present is Charles A. Pisaturo, City Solicitor and Edward L. Gernstein, Constitutional Attorney. (Michael R. Clement, Assistant Clerk).

RELATIVE TO AN ORDINANCE PROVIDING FOR THE FILLING OF THE OFFICE OF MAYOR IN THE CASE OF DISABILITY, SUSPENSION OR REMOVAL AND PROVIDING DEFINITIONS AND PROCEDURES THEREFOR.

Chairman Glavin informs that the situation is becoming very controversial and is disappointed with remarks made by Councilman Farmer in the newspaper this day regarding the hiring of an individual in constitutional law to render the Committee an opinion. He further states that according to the Minutes of the last meeting of the Committee by engaging an Attorney he was working within the approval of the Committee and refers to Page 7 of the minutes which refers to same.

He further informs that the Bar Association was contacted regarding the selection of a lawyer and it was found out that they do not recommend attorneys.

Chairman Glavin at this time introduces Attorney Edward Gernstein to the members and informs that Mr. Gernstein was suggested by 2 or 3 individuals and was a Member of the American Civil Liberties Union and was interviewed for about 1 and 1/2 hours and that they discussed quite a few things. Most importantly, the fact that the individual that would be selected would be as non-political as possible and Mr. Gernstein informed that he would not even consider accepting the job unless that was the case.

Chairman Glavin further informs that a letter was transmitted to the members listing Mr. Gernstein's qualifications, but due to the holiday season was not received as yet.

Further, he informs that he would like to make perfectly clear

that there was no attempt at any clandestine activity in the selection of the Constitutional Attorney, nothing above-board and regrets that this is being dragged into the political arena.

Councilwoman Fargnoli at this time informs that she has no objection to the selection but was surprised to read about it in the newspaper first.

Chairman Glavin apologizes for not having transmitted the letter sooner but did not have the time to do so.

Accordingly, after further discussion, on motion of Councilwoman Brassil, seconded by Councilman Annaldo, it is voted that Attorney Edward Gernstein be hired as Constitutional Lawyer, pro bono, compensation to be made only for his expenses incurred in his research of this matter, such as photocopies, etc.

Chairman Glavin reviews the two basic questions being considered:

1. The ordinance in it's present unamended form, which does not provide for any hearing or vote but provides for an automatic suspension upon the conviction of a felony by an elected official - would that be unconstitutional?
2. If an Ordinance was enacted, would it be with an automatic suspension or without whether it would be able to be applied to those individuals who are serving in an elected capacity, both Council wise and on the Mayoral level in the City or Providence throughout the rest of its term?

Attorney Gernstein informs that the first question would be whether or not due process requires a pre-suspended hearing for an elected official who has been convicted of a felony or a crime of moral turpitude which is somewhat narrower than the broad question, whether its constitutional, which would accomplish many different considerations and so in research that was done to date, informs that he has focused on the due process issue. The second question, as understood is correct - whether any Ordinance enacted at this point could be applied to the elected official who took office in January of 1983 and is of the opinion in speaking with Councilman Farmer, that the primary concern is whether application of such Ordinance would be in violation of the expos facto clause.

Attorney Gernstein further informs generally speaking, due

process protects property and liberty interest from all betrayed deprivation by the Government. Property and the liberty interest is defined by State Law to narrate a little bit into this context.

What that means is that whether an officer has a property interest and his office is dependent upon state statutes, state constitutions and ordinances, property and liberty interest are not defined by federal law.

He further informs that the particular Ordinance regarding the elected official situation, there are two interests, property and liberty that would possibly be implicated. There is the property interest of detention of office and there is the liberty interest in reputation, good name, ability to gain further employment, this liberty interest is generally bound together and it is called "stigma" - an officer has the right not to be stigmatized unfairly by government action.

In the area of the issue of property, does an elected official have property interest? He states you must look first to the Home Rule Charter to the State Constitution, and to the State Statutes under the Charter it limits the property interest to conditions the property? Upon certain things such as not being convicted of a felony, and informs that New York has a public officer law which is similar to section 206 except it provides for vacancy upon initial conviction which means that even if the initial conviction is subsequently reversed on appeal, the officer is still out of office. The New York courts, both state and federal have been held that upon initial conviction, the officials property interest and his office are extinguished and there is nothing for due process to protect.

With respect to suspensions and pre-suspensions hearings, generally the courts have upheld suspensions without hearings for elected officials, they have upheld termination of office for elected officials. He further informs these judicial decisions or premise began on looking at the State Law for the City Charter and by way of example, suggests that if the Council adopted an Ordinance which required the pre-suspension hearings, then in fact, no elected official could be suspended without a hearing, if it does not adopt so the board wins it, it adopts an automatic suspen-

sion ordinance then that automatic suspensional ordinance would become a term and condition of the office which would limit or define the property interests, Persay, there is nothing that requires a pre-suspension hearing, that's a question of State Law, it's a question of the Charter, it's a question of what type of Ordinance you choose to pass and once you pass it, it will in fact become a permanent condition of the officers employment. Further there is no requirement that there be pre-suspension hearings in the absence of the State Law or the City Ordinance provided for such Hearings.

Mr. Gernstein further states almost 100 years ago, the Supreme Court upheld the suspension of a railroad commissioner whose public officer by the Governor without any hearing the Courts simply recognized there was no inherent right to pre-suspension hearing and therefore, the Commissioner was not entitled to one. Since then, other courts have upheld suspension without hearings of elected officials, such as supervisors of election that suspension was upheld upon mere allegation of misfeasance or malfeasance in office, they've upheld suspensions of magistates, suspension of judges upon mere allegation and is of the opinion and is fairly comfortable in offering an opinion that the City Council is not required to provide for a pre-suspension hearing of any kind and to further support that opinion has found that particular framework in which this Ordinance becomes effective, is pointing to suspension, pointing to the Council effective, after there has been judical determination of guilt. The Courts that address the issue are primarily interested in the context of determinational removal from office and have said, assuming there is sufficient property interest in the office, due process was adequately provided by the judicial proceedings that in fact the judicial proceedings, the trial, the conviction, afforded the official more proceedural safeguards than he would have been entitled to before an administrative hearing or a legislative hearing, and there would be a requirement of independent determination of guilt and suggests that also supports the opinion that a pre-suspension hearing is not necessary. Generally, the Courts have recognized that in dealing with public officers, there is a paramount state interest in utilizing suspension, to preserve the integrity of the officers and that that interest outweighs the interest of the individual in not being suspended, the courts have generally recognized that suspension is not the

best deter of office, that ordinarily, the official is receiving his pay, etc., he's merely suspended from exercising his duties. And again, Mr. Gernstein feels fairly comfortable in saying that no pre-suspension hearing is necessary especially in the context of the proposed Ordinance.

Mr. Gernstein further states the next issue of whether application of the proposed Ordinance would be part of the Ex Post Facto prohibition is a somewhat closer question, certainly subject to different opinions that any person could litigate in good faith, and would do so with that caveat. Generally, ex post facto applies to just criminal statutes or civil statutes that masquerade as criminal statutes. Traditionally, it has been a prohibition against increasing the punishment for an offense, increasing the punishment that was available at that time the offense was committed, or making something a crime at the time that was not a crime at that time it was committed, etc. Recently, the Supreme Court made the standard a little more ambiguous and included the prohibition against any statue or law that impermissibly disadvantages, the offender. What impermissibly disadvantages means is a question that's recounted on a case by case basis in the courts and can offer no answer to that. He suggests that in determining whether an offender is impermissibly disadvantaged, the court looks at legislation involved and it considers whether it is designed to punish or whether the disadvantaged merely results from an exercise of the police powers to control or address legitmate public concerns and perhaps, best by way of example; in the Supreme Court, there was a case that addressed the question of ex post facto to a union official. A Union Official in 1920 plead quilty to grand larceny, (he subsequently became a union official) in 1956 New York passed a statute that said any person that is convicted of a felony cannot hold union office. The law and that statute was not in effect when this individual took his union office, he went all the way to Supreme Court alleging ex post facto, because at the time of his plea, at the time he took office, he could not be subject to this prohibition. The Supreme Court rejected his argument and it held that legislation is a valid attempt to currently and perspectively regulate.

He further mentions another case dealing with judges and lawyers, the Court again looks to what the purpose of the legislation is. By way of example, he states another case involving justices of the peace

who were elected officials, in 1960 when they took office they could hold employment in other State Departments, subsequently rules were adopted 2 years later, that said no justice of the peace could hold any other State Job. The Justices of the Peace went to the State Supreme Court and to the Federal Court claiming ex post facto, and the Courts again rejected it looking at the legislation saying that there is a legitimate reason to protect the integrity of the judicial system, etc., and that the disadvantage to the justices of the peace is just unfortunate, but its not unconstitutional.

Mr. Gernstein further states in this context, states no lawyer will argue that the public interest of not having convicted a felon that holds office is paramount and that legislation designed to prevent that, for there is legitimate public need or public interest. He further informs that the US Court of appeals has recognized that conviction of a felony is adequate ground for disabling a person from holding an office of public trust, and is of the opinion that in this situation the proposed Ordinance, Item 1 would not violate the expost facto for the simple reason that it is legislation designed to protect legitimate public interest that there is no intent to camoflouge a criminal sanction for past conduct, and is of the opinion the Courts would uphold application in that ground. In addition, in a particular context of the Home Rule Charter there is notice in his opinion to elective officers that they can in fact be suspended, 206 (a) the last sentence which provides that the City Council shall provide by Ordinance ... and specifically indicates with regard to suspension of an official convicted of a felony...and informs that there is notice to elective officers that they can be subject to an Ordinance suspending them and that the real issue is a question of procedure which is where the distinction comes in between the proposed draft and the amended version.

Mr. Gernstein informs that in this particular case is of the opinion that the officer has notice and what is being discussed is a distinction of what procedures, whether it is automatic, whether it is a hearing and those procedures are simply outside expost facto prohibitions and informs that then a lawyer could say that those procedures are not procedures at all and that is a question that would be determined by the Court.

He further informs that he is uncertain about the expost facto issue rather than about the pre-suspension hearing issue and informs that litigation would be anticipated if they were applied to an elective officer and in his opinion either one can be applied.

Mr. Gernstein at this time suggests regarding the expost factor issue - claims have been made in New York that removal from office upon conviction is an impermissible punishment and the Courts have rejected that and say that it is not a punishment that flows from the conviction but rather its a reasonable exercise of legislative power to protect the integrity of public officers.

Councilwoman Brassil questions as to other courts that would say it is expost facto and Mr. Gernstein informs that he has not found any, but has found expost facto in private settings regarding workmen's compensation but not regarding elected officials.

Councilman Annaldo at this time requests a written opinion and Mr. Gernstein informs that if so desired he will submit same.

Councilman Annaldo further requests an opinion be sumbitted from the State, for comparison and evaluation.

Chairman Glavin informs that there is no provision in the Ordinance to bring back to office the individual who is suspended.

Mr. Gernstein informs of the New York Statute which states that upon initial conviction the officer is out and presents a copy of the said statute to the members.

He further states that there should be certain procedures for suspending and that because removal does not occur until final conviction there ought to be something for fairly automatic procedures for coming back, if in fact, the conviction is reversed.

Councilwoman Fargnoli informs that a suspension could take an endless amount of time and questions what happens to the functions of that office in the meantime, in the case, say, of the Mayor.

Chairman Glavin informs, in that case, it would be Acting Mayor the Council President - the Council person it would not hamper the function of government.

Councilwoman Fargnoli states then that would deprive that Ward of representation on the Council.

Chairman Glavin informs that this is the only problem that this Ordinance has in his opinion which would be impossible to fix, except if the electorate in a particular area felt so strongly about that particular individual that they felt a recall petition was in order they could proceed along those lines and have a recall election, the individual could be recalled and an election take place.

Mr. Gernstein informs that is a very real situation and it is within the Constitution and questions what happens if in fact a Council Person who is under suspension, then there is the question of the right of the people in that particular Ward that is represented, and it seems that the Ordinance and the way that the Home Rule Charter is drafted, does not provide at all with that situation just for the wrongdoer and not the consequences of the wrongdoer and suggests perhaps not in this Ordinance but somewhere that problem is addressed.

Chairman Glavin questions as to a proviso being inserted; example; if said suspension continues for a period longer than amount of months that.....

Councilman Annaldo is of the opinion that is not a realistic approach.

Discussion ensues on the subject matter and City Solicitor Pisaturo informs that you would have to look at the Charter and then provide the answer that should be the guiding light.

Mr. Gernstein informs that he is concerned with the length of suspension with a respect to due process if there was a situation where suspension was on the second day of a persons office and the appellate process took 3 or 4 years, and states that after 365 days it would be pantomine to suspend and pantomine to vacancy - and suggests considering what happens if this suspension becomes lengthy and in fact the issue is not resolved within a reasonable period of time and at that point suggests hearings be held and informs that the way the Ordinance is written it would be just a question of interpretation, Section 5 is cause for vacancies upon exhaustion of all appeals and states there is a question in his mind as a lawyer what that means - state or federal system, this provision is subject to interpretations in judicial proceedings that could take 8 years and does not think it is a likely interpretation but there is a question, and suggests the Committee should not reasonably expect

even on the Supreme Court to decide an appeal in a relatively short time, which is 3 months.

City Solicitor Pisaturo at this time informs that the difficulty of the point just raised here of what happens if an elected official which the Ordinance purports to suspend is exonerated, how do you get him back in office, do you get him back in office, how long a period the issues are almost impossible to solve and that time indicates the danger and sensitivity of the issue that the Committee is dealing with here, suspension before final conviction.

He further states that he is trying to clarify conviction of which there are two kinds, the conviction that you can speak of before the appellate procedure is done and then there is the real conviction when the appellate procedure is done.

Discussion ensues at this time regarding the communication from the Civil Liberties Union and Mr. Gernstein suggests that the Committee contact them.

Councilwoman Brassil questions as to who the legal advisor is to the American Civil Liberties Union and Mr. Gernstein informs that you would contact the Legal Committee as to whether or not they agree.

Councilwoman Brassil at this time informs that she is upset at the fact that Mr. Steven Brown who is not an Attorney presented himself at the last meeting and suggested legal opinions.

Mr. Pisaturo continues at this time and states that he has presented 3 legal opinions to the Committee regarding same, dated July 25, 1983, November 21, 1983 and December 1, 1983.

Councilwoman Brassil questions as to whether or not Mr. Gernstein has Reviewed the 3 Ordinances proposed - 1. proposed by the Home Rule Charter Commission 2. proposed amendments by Councilman Farmer 3. proposed Ordinance by the Law Department and Mr. Gernstein informs that he has.

Mr. Pisaturo reviews the December 1, 1983 opinion at this time, with the members and informs that the first and primary thing that guides the Committee is in fact the Charter, these cases could go either way, and they premise their opinion on the wording and the language and the provisions of the Charter or of the State Statute or the State Constitution and informs that all opinions must be kept within the scope of the City Charter.

He continues to refer to Section 207 of the Charter.

He further presents a legal opinion dated December 28, 1983 and reads same to the members.

CHARLES A. PISATURO, ESQ.
CITY SOLICITOR

VINCENT A. CIANCI, JR.
MAYOR

DEPARTMENT OF LAW

December 28, 1983

Members of the Ordinance Committee:

Dear Honorable Members:

RE: ORDINANCE PROVIDING FOR FILLING THE OFFICE OF MAYOR IN THE CASE OF DISABILITY, SUSPENSION OR REMOVAL

This legal opinion is in response to a request of this Committee made at its last meeting relating to the above subject; and the further question (raised as a suggestion at the said meeting):

> Whether the Municipal Court - rather than the City Council - can hold a hearing on whether a convicted elected official (whose appeal is still pending) should be suspended.

Preliminarily, I would like to invite the Committee's attention to the legal opinions already submitted by this department to this Committee, dated July 5, 1983, November 21, 1983 and December 1, 1983, and the two alternate ordinances on the subject drafted by this department.

The said opinions of this department (previously submitted) contain rules or doctrines of law which should be noted and bear repeating here. For example, paragraph 2 of opinion dated July 5, 1983:

> The general rule on suspension of public officials is treated in McQuillin Municipal Corporations, Vol. 4, Cp. 8. In Section 12.229 the general rule is stated as follows:
>
> "The removal or suspension of officers is controlled by the particular law applicable and its proper construction. Strict construction of laws authorizing removal is the rule. It is essential that the mandatory provisions of the law applicable be substantially observed, particularly constitutional restrictions. [e.g. due process]...it seems hardly necessary to state that the power in the matter of removal conferred by the Charter or legislative act applicable can neither be extended nor restricted by Ordinance."

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And, in Section 12.555 of McQuillin, Municipal Corporations, it is stated:

> "Generally, officers and employees may be legally suspended or removed only under the conditions and the manner pointed out by the local laws and regulations applicable. The procedure must follow that prescribed by statute, charter or valid civil service rules originating and promulgated thereunder."

The Rhode Island Supreme Court has followed this strict rule of construction of statutes or charters that make grants to municipalities of the state's authority. See Carter v City of Pawtucket, 115 RI 134 (1975); Andruzewski v Smith, 105 RI 463 at 467 (1969); Dancliff Realty Corp. v Miller, 101 RI 478 (1966).

Thus, in dealing with the important vested right of holding the office to which an official has been elected, any law, ordinance or procedure which purports to impair or take away that right must strictly and carefully follow the pertinent statutory authority, and constitutional rights and safeguards of due process such as notification of the charge, "the right to be heard, to be represented by counsel, and to request the City Council to compel the attendance of witnesses and production of evidence" (see sec. 403 of Charter; see also statement of Civil Liberties Union. R.I. affiliate dated December 5, 1983.)

Of course, the central issue here is the construction of section 206 of the Charter; not section 206 standing alone, but as enlightened and aided by other sections of the Charter touching on the issue.

The second sentence of section 206(a) provides:

> For the purposes of this section, a vacancy in a city elective office shall be declared to exist by the City Council in the event the incumbent thereof..." (emphasis added)

And there follows a list of seven events or facts (in the alternative) that the incumbent must first do or have done to him before the City Council shall declare a vacancy (note the use of the future tense.)

Thus, this language says two important things: First - something must first happen in order for a vacancy to occur; and second - then the City Council (not some other agency) shall declare the existence of a vacancy in the first instance.

How will the City Council do this? Section 206(a) - the same sub-section (bottom of p. 16 of Charter) says:

> "The Council shall provide by ordinance, such definitions and procedures...[but not contrary to law or due process] to carry out its duties under this section, including but not limited to the suspension of an official convicted of a felony..."

But note that this language is all part of 206(a) and hence the most reasonable and logical conclusion is that the same procedure must be followed, namely - (1) the occurrence of the event or fact spoken of (here, conviction of a felony); and (2) a declaration of the City Council, by ordinance, that the person is suspended.

Why should this be any different than a vacancy situation?

With respect to the issue of a formal hearing to be afforded the elected official prior to any attempted suspension, I am convinced that such a requirement is a fundamental principle of elementary constitutional law and due process. The A.C.L.U. statement has termed this a "minimal element of due process" (emphasis added). Certainly the Charter envisions and provides for same when closely reviewed:

> (a) See the parrallel situation of a vacancy in sec. 207 of the Charter (covered in my opinion of December 1, 1983). After all suspension of an elected official - especially the mayor - would be tantamount to creating a vacancy (albeit, premature and perhaps temporary).

Note that this section requires a hearing and an affirmative vote of 2/3 of the entire council. It should be no less in a suspension situation. See McQuillin, Municipal Corporation sec. 12.252: "Suspension...whether termed suspension or expulsion...constitutes either temporary or permanent disenfranchisement."

(b) In fact, the Charter, in sec. 403, does specifically provide for a hearing in the less severe situation of "charges...against any department head...and deputy thereof, any appointive officer of the city [etc.]...for neglect of duty or gross misconduct having an effect upon the duties of such person..."

This section then sets forth the usual due process rights, including notice; a public hearing ordered by the City Council, the right to be heard, to counsel, to have witnesses subpoenaed, production of evidence.

Why should the procedure be any less for an elected official threatened with removal from office than for an appointed official charged with neglect of duty? The obvious answer is that it is not any less.

Our Rhode Island Supreme Court has affirmed these principles of fair play. In Auge v Anderson, 112 R.I. 296 (1973), after determining that under the applicable local code, the Building Inspector can be fired only for cause, the Court stated (P. 298):

> "'Dismissal only for cause' guarantees a municipal officer or employee (1) written specification of charges; (2) a hearing with an opportunity to offer evidence in his behalf; and (3) a determination as to the sufficiency of evidence to warrant his removal. Riccio v Town Council, 109 R.I. 431, 286 A.2d 881 (1972)."

Aside and apart from the foregoing reasons, if the proposed ordinance is intended to apply to the Mayor's situation or status, it is probably invalid for the additional reason that it is an attempt to enact a retrospective ordinance.

> In 16A Am. Jur. 2d Sec. 664 [dealing with retrospective laws] it is stated:
>
> "Retrospective legislation is prohibited under the 14th Amendment [U.S. Constitution] when it divests any private vested right or interest."

In Section 667 of the said 16 Am. Jur. 2d it is further stated:

> "A law may be unconstitutional through its retrospective operation, whereby it impairs vested rights. It may also be invalid as interferring with a fundamental right of property where the vested right is looked on as constituting such property" (emphasis added).

And certainly the right to continue in one's job or office could be "looked on as constituting such property."

Legislation which is retrospective in nature is not generally favored by the courts. The R.I. Supreme Court has said:

> "Legislation, however, having a retrospective aspect must be carefully scrutinized, if its constitutionality is questioned, because of abuses which may result therefrom." (See Prata v State Board of Embalming, 55 R.I. 454 (1936) p. 470).

The proposed ordinance or any ordinance can only speak prospectively and affect events occurring after its enactment, not before.

As to the possible role of the Municipal Court, it is my opinion that it does not have jurisdiction, authority or power to hold such a hearing, and hence, any determination or decision rendered by it under an ordinance on this subject, would not be binding. While the City is fortunate in having a Municipal Court of such high quality, nevertheless, it is a court of limited jurisdiction. See P.L. 1929, Ch. 1447; see also, Martindale & Hubbard, Vol VII, Law Digest (1983).

Moreover, a review of sections 206, 207 and 304 of the Charter, clearly indicates that the City Council is charged with conducting hearings in these matters.

Nor can jurisdiction outside the enabling statute and the Charter be conferred upon the Municipal Court by agreement or by ordinance.

Members of the Ordinance Committee
December 28, 1983

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So that while the issue of the suspension of a convicted elected official prior to exhausting all appeals, may very well ultimately end up in Court, (see Adam C. Powell v McCormack, 395 U.S. 486 (1969)) it must be a court of competent jurisdiction.

If this department can be of further assistance to this Committee, please advise.

Respectfully submitted:

CHARLES A. PISATURO
City Solicitor

CAP/vav

Chairman Glavin informs that each Committee Member will have to think about the question of vacancy versus suspension and how to construe Section 206 of the Charter.

Further Discussion ensues regarding the legal opinion whether it is aimed at the Mayor and the members are of the opinion that this is irrelevant and City Solicitor Pisaturo informs that it is not aimed at any specific individual or Office.

Chairman Glavin informs that the Ordinance is not intended for any specific individual or office even though some people might think different.

Councilwoman Brassil informs that it gets a little confusing when we are talking about vacancy and suspension, they are not the same and that is where the question is.

When do we have the right to suspend and when is a vacancy declared? She further states in the Ordinance we are not necessarily declaring a vacancy, we are declaring a suspension and is of the opinion that we have lost the ball somewhere.

Further discussion ensues regarding the terms and conditions of an office and Chairman Glavin at this time informs in his opinion that the Committee cannot legislate to provide every possible liability; probability, specifically dealing with the appellate process.

Councilman Annaldo informs that in his opinion there is a difference between vacancy and suspension but states that the result has to be weighed.

Mr. Gernstein at this time suggests that it is not necessarily the same thing because what happens after initial conviction by a jury motion for a new trial is filed, and the Judge decides 30 days later and grants a new trial, well that original conviction is purged, the suspension is lifted, the person is back in office.....

Chairman Glavin informs that all we are trying to do is to construct a law that is fair and reasonable and hopefully constitutional, and the bottom line is for the Committee to get as much information as possible and then make a decision.

Mr. Gernstein informs that whatever Ordinance is decided upon, to apply to officials who were sworn in January 1, 1983 that you make that clear in the Ordinance itself, merely and also put in effective upon passage as is applicable to present office holders, put in exactly what is wanted because the Courts do look at things like that; if you want a specific date put it in, and informs that that could be a legal issue that could be avoided by doing that. Mr. Gernstein informs that whatever Ordinance is adopted you have to live with because after enactment it will become part of the terms and conditions of the office, that is the basis upon which cases were cited in Mr. Pisaturo's legal opinion, so there is nothing persay requiring these hearings it is just that those Charters provided for it.

Chairman Glavin directs Mr. Gernstein to submit his answers in writing to the Committee for further study, to be submitted at the next meeting of the Committee.

Mr. Gernstein informs that he has given lay explanations this evening, it being easier to understand and that is the reason that he did not cite many cases and questions as to the Committee's preference in writing the opinion, and the members are of the opinion that it is not necessary to cite more than 2 or 3 cases for examples.

City Solicitor Pisaturo informs that as a Lawyer it is very important to cite cases and informs ..... an opinion is as good or as bad as the Law that it relies on and is of the opinion the Courts would be very curious as to what cases, what law the, Committee was relying upon.

He further informs that you have to look at the facts that the courts were addressing,/ what did the law state, that the courts was addressing If it is not in point, it may have nice language and appear at first to be applicable, but unless you read

the case or the statute you will never know definitely how correct or how sound that conclusion is.

Chairman Glavin informs that all memorandums and opinions, etc. will be considered.

Chairman Glavin at this time requests that the City Solicitor and Mr. Gernstein in rendering opinions in writing, to address the question of bringing an individual back if indeed they are suspended.

After further discussion, on motion of Councilwoman Brassil, seconded by Councilman Annaldo, it is voted that the ACLU be contracted for their opinion regarding the memorandum that was passed at the last City Council meeting.

ADJOURNMENT: On motion of Councilman Annaldo seconded by Councilwoman Fargnoli, it is voted to adjourn at 9:00 o'clock P.M. to meet again on Tuesday, January 3, 1984 at 7:00 P.M.

Assistant Clerk
Michael R. Clement

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