

DEPARTMENT OF CITY CLERK

CITY HALL

DECEMBER 5, 1983

The Committee on Ordinances meets this evening at 6:30 o'clock P.M. (EST) in Committee Room "A", City Hall.

Present: Chairman Glavin and Councilwomen Brassil, and Fagnoli, Councilmen Annaldo and Farmer - 5.

Also present is Gerard DeCelles, Assistant City Solicitor, Dr. Melvyn Gelch and Jane Sherman of the Charter Advisory Committee, and Steven Brown of the ACLU.

(Helen G. Gibbons, 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 THEREFORE. (TRANSMITTED BY THE CHARTER ADVISORY COMMITTEE).

Chairman Glavin informs of the amendments to the Ordinance as submitted by Councilman Farmer and states that the basic difference being a situation where it is <sup>a</sup>conditional situation of suspension, one subject to a vote of the City Council, and that it would be an automatic suspension.

He further informs that the second amended version would allow for a Public Hearing.

Councilman Farmer informs that all amendments except requiring a Public Hearing are the same in substance in the original version. He further states that the purpose of the amendments is, and in his opinion, the Ordinance as introduced deprives an elected official of due process and violates the Constitution and that the Ordinance that passes will not apply to any person who has already been indicted before the Ordinance is adopted and further informs that there is strong legal support for that.

He further informs that due process is very important after all appeals are exhausted etc., and informs that it is clear that the provision that the City Council can pass an Ordinance, and states that the City Council does not have to make a difficult decision for appealing, but that number 1 of the Ordinance will be ineffective if passed. He further informs of the provision in the Charter which says that if a person is convicted they should step down from that office but this does not provide for due process which is a must.

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Councilman Farmer states that in his opinion the removal or suspension should not be automatic and he further would like to see the word "felony" as used in the Ordinance defined more clearly, there being many things that constitute a felony.

Chairman Glavin refers to Section 206 of the Charter wherein it states "The city council shall provide by ordinance such definitions and procedures as may be necessary and appropriate to carry out its duties under this section, including but not limited to the suspension of an official convicted of a felony from performing any official duties until said official's status is finally determined", and states that the Key Words in that section apply to "performing any official duties until said official's status is finally determined" and is of the opinion that negates Councilman Farmer's remarks.

Councilman Farmer refers to the section which refers to the appeals being exhausted and is of the opinion there should <sup>be</sup> something more specific spelled out, and does not conform to due process rights.

Councilwoman Brassil questions as to whether or not a court record is considered due process rights and Councilman Farmer states it would not be considered due process rights according to establishing statute.

Councilwoman Brassil questions as to leave of absence and Councilman Farmer informs that this would apply <sup>the right of due process</sup> if a person waives and due process applies to someone who wants to retain his rights and stay in office and his appeal is going forward. He further informs that, regarding leave of absence, that would not affect the due process rights and this is the right to have a hearing with explanations of the circumstances, etc and present same to the City Council, and further, the fact that they are still set to hold office despite the fact that they have been convicted.

Councilman Farmer further informs that the question of vacancy and final conviction, that person would not have the right to due process because that was clearly spelled out in the Charter and that is why it is referred to in the Ordinance.

He further states that if the Ordinance as proposed is enacted it will not be effective to anyone.

Councilman Annaldo questions as to whether or not it is

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legal to legislate something after the fact, and thinks it would not be effective, but is of the opinion that the Ordinance should be within constitutional rights, and would like to see a legal opinion regarding same before a vote is taken.

Councilman Farmer informs that a legal opinion has to come from the City Solicitor, same being received relative to the first proposed Ordinance which does not apply until January, but the Ordinance could apply if it applied to due process.

He further states that something that is done automatically without any discretion, is inconsistent with respect for the varying circumstances that a person might find themselves in and further states that there are situations where people could have committed an offense before they were elected but convicted afterwards and straightened themselves out and running for an office and getting elected but then because of a conviction may find themselves thrown out of office without a hearing or without the merits of their appeal.

Councilman Farmer further informs that you may have a person who has a drinking problem or a drug problem but might have rehabilitated themselves and <sup>an</sup> automatic suspension provision does not take into consideration the human factors which again makes it more difficult to decide a persons position. He further states that the Ordinance as drafted cannot apply until January of 1987 regardless, and if you go to applying due process it could apply to people in office today as long as the said due process is provided and further informs that due process is the right that a person has to protect the property right which they obtained when they took office, and informs that the question seems to be whether it would apply to the people held in office right now or someone that has already been indicted.

Councilwoman Brassil informs that that would have to be up to the courts to decide.

Councilwoman Fagnoli questions as to whether or not any compensation would be involved regarding suspension.

The question arises at this time as to whether or not the Municipal Court could decide whether a convicted official should be suspended, rather than a vote of the City Council.

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Chairman Galvin informs that suspension would be without pay or any benefits.

Steven Brown of the ACLU is present this evening and states that he is here on a policy point of view and has not researched the matter but informs that it is important that there not be an automatic suspension rule. He states that Automatic suspension ignores legality of the entire appeals process, and is of the opinion that elected officials should be held on a higher level and should be held accountable for their actions, because they are elected by the public electorate and suspension should not be taken lightly and informs that it is very important that the City Council should take some responsibility of engaging in a balancing process and to keep in mind that public officials <sup>have a duty</sup> as officers of the public and they should be held accountable for the things they do and further informs that also to be thought of is the fact they are democratically elected and that appeals can be valid and that it is an abdication of responsibility to come up with an automatic rule. He further states that it would perhaps prevent political considerations from coming into play and at the same time, prevent the City Council from engaging in the duties in his opinion, it has to make these decisions as to whether or not a public official should be suspended pending the outcome of an appeal.

Councilwoman Brassil informs that as the amendments stand now, is of the opinion that political considerations will come into play.

Mr. Brown further states that the civil liberties consideration of due process will have to come into play and states it has to be either automatic or not automatic and there is also a question of the 2/3 vote.

Further discussion ensues relative to suspensions and Chairman Glavin suggests possibly incorporating something with the Committee such as making the suspension automatic unless the official requests a hearing from the City Council.

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and at that time he should give cause why he should be suspended, and put the responsibility on the individual.

The members at this time discuss the appeals process and the length of time involved in some cases.

Gerard DeCelles, Assistant City Solicitor, is present at this time and states that he does not think the matter of retroactive matters or not and states that when you talk about due process it is in the constitution which basically means fundamental fairness and in order to take somebody out of their job that has been duly elected, you have to afford that person a Public Hearing, they have the right to speak, and informs that every person that goes before a judge at a sentencing has the right to speak. He further states that a public official, elected official has the property right to continue in his office and if that is taken away from him, there must be a Public Hearing provided, to contest the evidence that is brought etc.

Councilman Farmer informs that a decision has to be made and is of the opinion that a Hearing is required.

Dr. Melvyn Gelch of the Charter Advisory Committee is present at this time and states that there is a difference between vacating an office and suspending someone from office and states that upon final conviction you are vacated you have no office, suspension would be stripping the title from a person and seeing to it that a convicted felon does not exercise the powers of his office and that is a big difference, and this Ordinance is not meant for the Mayor alone, and what we are saying here is that if someone who is an elected official, held to a high standard of morality and justice is found guilty of a felony and by themselves does not resign, then they ought not to exercise the powers because those people who voted for the Charter knew at one time there were 3 convicted felons serving on the City Council and no one wants that. He further states that it boils down to the fact whether or not to make the suspension a political football or not and if so then you would have the 2/3 vote and if you feel that the honor and respect of an elected official is held to a higher standard then they should give up their power and authority of the office by being suspended

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until the legal matters are put in motion.

Councilwoman Fargnoli questions as to compensation and Dr. Gelch is of the opinion the person should be compensated; and you would want to make sure that a convicted felon does not hold his office or exercise the powers and duties of such.

Discussion ensues as to the legal aspects of same, there being many different interpretations that can be used.

Further discussion<sup>ensues</sup> at this time whether or not the question of suspension should be referred to the Legislature regarding the constitutional issues at hand.

Steven Brown refers to the Ordinance being retroactive and the setting up of the automatic suspension, and is of the opinion that there are serious constitutional problems with the Ordinance and agrees with Councilman Farmer.

Councilman Farmer suggests amending to provide for due process rights in the future.

Mr. Brown informs that if the Ordinance was applied perspectivevely the actual legal issues would be resolved favorably.

Discussion ensues regarding the 2/3 vote, Chairman Glavin being of the opinion that Section 207 of the Home Rule Charter should be referred to and Councilman Farmer is of the opinion that the recommendations of the Charter Advisory Committee be followed regarding the 2/3 vote, and informs that this is one area not dealing with a Veto.

Chairman Glavin informs that if the suspension or removal has to go before the City Council, he would rather see a majority vote than a 2/3 vote.

Mrs. Jane Sherman of the Charter Advisory Committee is present at this time and states that the legal issues regarding due process should be looked<sup>at</sup> from both sides and prefers immediate suspension, not having the City Council voting on suspension. She further states that the City Council being a political body the vote would be a political one rather than an objective assessment of an individual. She states that the Charter Advisory Committee felt very strongly about this and is concerned regarding the impressions that people might have of the City Council regarding convicted felons.

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She states that she is in favor of suspension with compensation.

At this time, Chairman Glavin refers once again to Section 206 of the Charter which states "the city council has the authority.....including but not limited to the suspension of an official convicted.....performing any official duties until said official's status is finally determined" and informs that it states right in that Section that Suspension is warranted.

Councilman Farmer disagrees and states that it does not state that the office can be taken away without due process and does not apply.

After further discussion, Councilman Annaldo suggests continuing the matter until a legal opinion is received and informs that he would be in favor of same being referred to Municipal Court.

Chairman Glavin informs that if there is a constitutional challenge at question here then <sup>he</sup>would be in favor of same going to municipal court and possibly to the legislature.

Discussion ensues among the members regarding a legal opinion being received by a Constitutional Attorney one who specializes in this field, maybe someone out-of-state or a recent graduate from Law School, someone with no political affiliations.

Chairman Glavin informs that if necessary, a Resolution could be submitted to the City Council requesting the appropriate funds <sup>be</sup>extended for this purpose.

After further discussion, on motion of Councilman Annaldo, seconded by Councilwoman Brassil, it is voted that the Ordinance be Continued.

RELATIVE TO AN ORDINANCE REQUIRING THAT ALL LICENSED ESTABLISHMENTS WHICH SELL ALCOHOLIC BEVERAGES IN THE CITY OF PROVIDENCE PLACE A NOTICE IN A CONSPICUOUS PLACE INDICATING: "ATTENTION PREGNANT WOMEN: THE CONSUMPTION OF ALCOHOLIC BEVERAGES MAY BE INJUROUS TO THE FETUS".

Assistant City Solicitor DeCelles informs that he sees no problem with the Ordinance and does not require any legislation.

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He further states that if there is a requirement and an establishment fails to do this the license could be revoked.

Councilman Farmer is of the opinion that State Law preempts this, and Assistant City Solicitor DeCelles informs that it still would be referred to the local Bureau of Licenses.

Councilman Annaldo informs that the intent of the Ordinance is to communicate a message to pregnant women that 1 or 2 drinks could be harmful to the fetus, no matter what stage of pregnancy they are in, and states that many people already know this, but many people do not. He further states that in his conversations with doctors at Women & Infants Hospital, they were supportive and stated that it was worth the effort to reach the 1 or 2 people that did not know that alcoholic beverages were hazardous to the fetus.

Chairman Glavin informs that he does not believe City Government has the power to legislate such matters and it is <sup>not</sup> within jurisdiction, and feels that the City Council should not be legislating in the area, but is sympathetic with the Ordinance.

Accordingly, after further discussion, on motion of Councilman Annaldo, seconded by Councilwoman Fagnoli it is voted that the Ordinance be transmitted to the City Council with recommendation of adoption.

ADJOURNMENT. On motion of Councilwoman Brassil, seconded by Councilwoman Fagnoli, adjournment is taken at 7:50 o'clock P.M. (EST).

*Helen D. Gibbons*  
ASSISTANT CLERK

*Michael R. Clement*  
CLERK