

Executive Chamber, City of Providence, Rhode Island

Vincent A. Cianci, Jr.
MAYOR

February 13, 1984

The Honorable Members
The City Council of the
City of Providence
City Hall
Providence, Rhode Island 02903

Dear Honorable Members:

I hereby disapprove and veto an Ordinance in amendment of Section 17-22 of the Code of Ordinances of the City of Providence by adding subsection (a) "It shall henceforth be unlawful to hire any temporary, part-time or permanent employees without prior approval of the City Council by resolution".

I have taken this action for the following reasons;

1) This Ordinance would impair the orderly function of administering City Government by precluding the Personnel Director from performing the function of his office.

2) The opinion of the City Solicitor concerning the validity of this Ordinance clearly documents that this Ordinance is in direct conflict with the Home Rule Charter of 1980, specifically Sections 903, 904, 402 and 302, (copy attached).

Respectfully,

Vincent A. Cianci, Jr.
VINCENT A. CIANCI, JR.
Mayor of Providence

IN CITY COUNCIL
FEB 16 1984

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.

Joseph Mendonca
CLERK



RECEIVED
FEB 17 11 27 AM '84
OFFICE OF THE
TREASURER

RECEIVED
FEB 18 1984
CITY OF LOS ANGELES
CITY CLERK



DEPARTMENT OF LAW

September 13, 1983

Carolyn F. Brassil, Chairwoman
Committee on Finance
c/o Office of the City Clerk
City Hall
Providence, Rhode Island 02903

Dear Chairwoman Brassil:

This department is in receipt of your request for a legal opinion dated September 7, 1983 which deals with a proposed change in the procedure for appointing permanent, temporary and emergency employees. In essence, the prospective ordinance would require prior council approval of each employee hired.

It appears that the proposed ordinance is illegal in that it contravenes the strictures of the Home Rule Charter. Section 904 of the Charter clearly posits that:

"All department heads and all boards, agencies and commissions shall have the responsibility for the appointment, promotion, demotion, suspension and dismissal of all employees under their jurisdiction in accordance with the provisions of this Charter and such personal rules and regulations as may be made pursuant thereto."

Some argument may be offered that the "...personal rules and regulations as may be made..." language of this section may provide the predicate for the proposed ordinance. However, Section 903, generally, and that section - paragraphs (g), (h) and (i) - specifically, grant broad authority over personnel regulation to the Director of Personnel. In those cases where City Council participation in personnel matters contemplated, that participation is clearly postu-

Carolyn F. Brassil, Chairwoman
Committee on Finance
September 13, 1983

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lated (e.g. See Section 903, paragraphs (b) and (c)). Thus, one may infer that if council participation were anticipated in hiring, such would also have been stated and that since it is not, council action is precluded.

Hence, the hypothetical argument fails and the correct view, in the opinion of this department is that such council participation is prohibited.

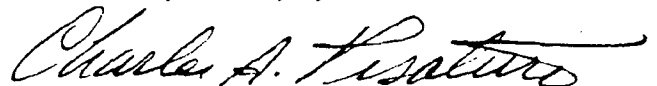
This interpretation is supported by reference to Section 402 of the Home Rule Charter which explicitly prohibits the council and every member of it from interfering in any manner "...with the appointment or promotion of any of the personnel of the city government."

Further, the conclusion that the authority and power for the administration of personnel matters is vested in the executive branch (through mayoral appointees approved by the council) is confirmed by the language of the following charter sections, in "Article III. Mayor:"

- (a) Section 302(a) "To supervise, direct and control the activities of all departments and agencies of city government to the extent and in the manner provided by this Charter and by the ordinances of the city, and the laws of the state."
- (b) Section 302(c) "To prepare and implement the city budget." emphasis added. Note part of the budget to be implemented is the Personnel Ordinance prepared by the Mayor and enacted by the City Council.
- (c) Section 302(g) "To insure that all officers of the city faithfully comply with and discharge their official duties."

The Home Rule Charter did not contemplate the city council involving itself so intimately in personnel decisions, but the council is constrained by the precepts of the charter to affecting personnel decisions primarily through its role in the budgetary process.

Very truly yours,



CHARLES A. PISATURO
City Solicitor

CAP/vav

PERSONNEL DIRECTOR

Frank Merlino



VINCENT A. CIANCI, JR.
MAYOR

PERSONNEL DEPARTMENT
CITY HALL, PROVIDENCE, RHODE ISLAND 02903

January 26, 1984

Charles A. Pisaturo, City Solicitor
c/o Law Department
55 Eddy Street
Providence, Rhode Island 02903

Dear Mr. Pisaturo:

The City Council Finance Committee has now under review an ordinance restricting the hiring of all employees. A draft of the ordinance is enclosed. I have been requested to attend the Finance Committee meeting on Monday, February 6. In order to be prepared to address the question of the proposed ordinance, I need a legal opinion on the questions raised.

Specifically:

1. Is this proposed ordinance in conflict with the Providence Home Rule Charter, Section 904, because it effectively would remove the authority and responsibility of department heads and agencies and commissions to appoint employees under their jurisdiction.
2. Do Sections 302(b) Powers of Mayor, and 401(b) Legislative Powers, allow the council to pass ordinances extending their authority with a requirement that the council must approve any and all appointments. This would seem to go far beyond the wording of the charter which requires such approval for "heads of departments and agencies".

Very truly yours,

Frank Merlino

FRANK MERLINO
Personnel Director

Enclosures (2)
FM:cmv

AN EQUAL OPPORTUNITY EMPLOYER

CHAPTER

No.

AN ORDINANCE IN AMENDMENT OF SEC. 17-22 OF THE CODE OR ORDINANCES OF THE CITY OF PROVIDENCE BY ADDING SUB-SECTION "(a) IT SHALL HENCEFORTH BE UNLAWFUL TO HIRE ANY TEMPORARY, PART-TIME OR PERMANENT EMPLOYEES WITHOUT PRIOR APPROVAL OF THE CITY COUNCIL BY RESOLUTION."

Approved

Be it ordained by the City of Providence:

SECTION 1. Sec. 17-22 of Article I of the Code of Ordinances of the City of Providence, entitled: "Same record to be kept by Personnel Director; is hereby amended by adding the following:

(a) It shall henceforth be unlawful to hire any temporary, part-time or permanent employees of the City of Providence without prior approval of the City Council by Resolution, except during emergencies, which shall receive prior written approval by the City Council President and Chairperson of the Committee on Finance and said employee shall not remain on the payroll for any longer than three (3) weeks without aforementioned Resolution.

SECTION 2. This Ordinance shall take effect upon its Passage.

IN CITY COUNCIL

AUG 4 1983

First Reading Read and Passed

Referred to Committee on

FINANCE

Rose M. Meniloune CLERK

IN CITY COUNCIL

FEB 2 1984

FINAL READING
READ AND PASSED

PRESIDENT

CLERK

I hereby disapprove
and veto.

Vincent Liang
Mayor Feb 10, 1984

No.

CHAPTER
AN ORDINANCE

IN CITY COUNCIL

IN CITY COUNCIL

READ AND PASSED
AFTER READING

COMMITTEE ON
FINANCE

Approves Passage of
The Within Ordinance

The Second Time

Rose M. Mendonca
Clerk Chairman

January 30, 1984

IN CITY COUNCIL
JUL 14 1983
FIRST READING
REFERRED TO COMMITTEE ON FINANCE

Rose M. Mendonca CLERK

THE COMMITTEE ON
FINANCE

Approves Passage of
The Within Ordinance

Rose M. Mendonca
Clerk Chairman

July 25, 1983

THE COMMITTEE ON
FINANCE

Recommends Be Continued

Rose M. Mendonca
Clerk

*August 9, 1983
Sept 6, 1983
Dec 12, 1983
Dec 27, 1983
Jan 9, 1984
Jan 23, 1984*

Councilman Easton and Councilwoman Bussell

CHARLES A. PISATURO, ESQ.
CITY SOLICITOR



VINCENT A. CIANCI, JR.
MAYOR

DEPARTMENT OF LAW

September 13, 1983

Carolyn F. Brassil, Chairwoman
Committee on Finance
c/o Office of the City Clerk
City Hall
Providence, Rhode Island 02903

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Carolyn F. Brassil, Chairwoman
Committee on Finance
September 13, 1983

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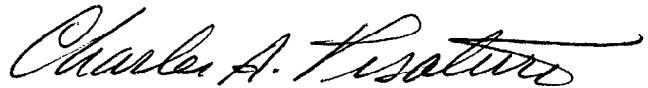
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Very truly yours,



CHARLES A. PISATURO
City Solicitor

CAP/vav

FILED

SEP 16 11 31 AM '83

DEPT. OF CITY CLERK
PROVIDENCE, R.I.

City of Providence



Rhode Island

Department of City Clerk

MEMORANDUM

DATE: September 7, 1983

TO: City Solicitor, Charles A. Pisaturo

SUBJECT: DRAFT OF ORDINANCE RELATIVE TO HIRING OF EMPLOYEES

CONSIDERED BY: Councilwoman Carolyn F. Brassil, Chairwoman/Committee on Finance

DISPOSITION: VOTED: To request a legal opinion as to the
legality of the accompanying Ordinance,
the same being self-explanatory.

The Committee requests a response as
soon as practical.

City Clerk

City of Providence



Rhode Island

Department of City Clerk

MEMORANDUM

DATE: January 24, 1984

TO: Frank Merlino, Personnel Director

SUBJECT: PENDING ORDINANCE RELATIVE TO HIRING OF EMPLOYEES

CONSIDERED BY: Councilwoman Carolyn F. Brassil, Chairwoman/Committee on Finance

DISPOSITION: The above named Committee requests your attendance at the next scheduled meeting of the Committee on Finance to be held Monday, February 6, 1984 at 3:30 o'clock P.M. (EST) in Committee Room "A", City Clerk's Department, relative to the attached Ordinance.

City Clerk