

CITY OF PROVIDENCE

RHODE ISLAND

CITY COUNCIL

APRIL 10, 1978

IN CITY COUNCIL
APR 20 1978READ:
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.*Rose M. Mendonca* CLERK

Record of Proceedings regarding communication from Ronald H. Glantz, Private Citizen, Advising the City Council April 10, 1978, that Council President Robert J. Haxton, Councilman Anthony C. Merola and Councilman Mario Turchetta, cease to possess the qualifications of Councilmen as specified in Section 3.8 of the Charter of the City of Providence.

ROLL CALL

Present:

Council President Pro Tempore Fagnoli and Councilmen Addison, Ahern, Almagno, Bradshaw, Councilwoman Brassil, Councilmen Cirelli, Flynn, Garan, Glavin, Gorodetsky, Griffin, Henries, Johnson, Lynch, Mansolillo, Merola, Pearlman, Petrosinelli, Salvatore, Tomasso and Xavier 22.

Absent: Council President Haxton and Councilmen Cola, Stravato and Turchetta - 4.

This is a record of the Proceedings before the City Council held this evening at 8:00 o'clock P.M. (E.S.T.) in the City Council Chamber concerning the following, which was submitted for a Public Hearing by vote of the said Council at its meeting held on Thursday, April 6, 1978.

"Pursuant to Section 3.9 of the Charter of the City of Providence (Public Law 1940, Chapter 832, Section 15) please be advised that the aforementioned Councilmen cease to possess the qualifications for Councilmen as specified in the Section 3.8 of the Charter of the City of Providence.

Councilman Robert Haxton, pursuant to 3.8 of the Charter has been found guilty of a crime involving moral turpitude. Councilman Anthony Merola has been found guilty and his appeal to the Rhode Island State Supreme Court has been denied on a felony charge of defrauding an insurance company. Anthony Merola has paid a \$1,000.00 fine to that charge.

Councilman Mario Turchetta has been found guilty and convicted by a United States District Court on a felony charge involving fraudently filing of income tax returns.

Pursuant to Section 3.9 of the Charter of the City of Providence, I am writing this letter in accordance with said provisions and ask that your office comply with those provisions of the Charter which require the filing and placing on the Docket of the next regular council meeting said charges."

Sincerely,
Ronald H. Glantz
Private Citizen

The Clerk informs Council President Pro Tempore Fagnoli that she is in receipt of a Memorandum signed by Ronald H. Glantz, Citizen, dated April 4, 1978, regarding the qualifications of the aforementioned Councilmen, together with Affidavits and Exhibits A through F to be made a part hereof.

"Attached hereto please find a Memorandum and various documents regarding the qualifications of Councilmen Merola and Haxton in relation to the above-cited section of the Providence City Charter.

Enclosed please find Affidavits, Exhibits A through F, which shall be made a part hereof. These affidavits establish the fact that there are no appeals pending in the courts regarding Mr. Merola and Mr. Haxton.

- EXHIBIT "A" - in regard to Anthony Merola and whether or not there are any appeals pending in the United States Supreme Court.
- EXHIBIT "B" - relates to Mr. Merola and whether there are any appeals pending in the United States District Court for the District of Rhode Island.
- EXHIBIT "C" - relates to Mr. Merola as to whether there is any appeal pending in the State Supreme Court.
- EXHIBIT "D" - is in regard to Mr. Haxton and whether there are any appeals pending in the State Supreme Court.
- EXHIBIT "E" - relates to Mr. Merola regarding whether there are any appeals pending in the State Supreme Court.
- EXHIBIT "F" - relates to Mr. Haxton as to whether there are any appeals pending in the State Supreme Court.

The next set of Exhibits pertains to Mr. Haxton:

- EXHIBIT "G" - is the docket sheet of the court which gives the travel of the case.
- EXHIBIT "H" - pertains to the Judgment and Disposition of Mr. Haxton's Case.
- EXHIBIT "I" - pertains to Mr. Haxton's Notice of Appeal to the State Supreme Court.
- EXHIBIT "J" - is the State's Motion to Dismiss which was heard and granted.

The next set of Exhibits relates to Anthony Merola.

- EXHIBIT "K" - is the docket sheet which explains the travel of Mr. Merola's case.
- EXHIBIT "L" - is the opinion of the State Supreme Court in regard to Mr. Merola's Case.
- EXHIBIT "M" - is the Judgment of Conviction Against Mr. Merola.

All the above exhibits have been certified by the State Superior Court Clerk's Office and they are a true copy thereof.

Please find a Memorandum of Law, Exhibit "N", concerning itself with what a final conviction is.

Very truly yours,

Ronald H. Glantz
Citizen

April 4, 1978

(Exhibits A through F are on File in the City Clerk's Department)

Copies of the Affidavits and Exhibits A through F have been submitted to each Member of the City Council and are on file in the Department of City Clerk.

Council President Pro Tempore Fargnoli allows Ronald H. Glantz, Citizen, to be heard before the Members of the City Council.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: The City Clerk will read Citizen, Mr. Glantz's charges to the City Council.

The City Clerk reads the communication under the date of March 20, 1978, from Ronald H. Glantz, Private Citizen, 1258 Reservoir Avenue, Providence, Rhode Island.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Before I call Mr. Glantz to make any formal remarks or comments, I would like to ask him a question? Whether he is a Citizen of Providence or Cranston?

MR. GLANTZ: Pardon me?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Are you a taxpayer of Providence or a taxpayer from Cranston, Mr. Glantz?

MR. GLANTZ: I have lived in the City of Providence all of my life.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: We have a letter here from 1258 Reservoir Avenue.

MR. GLANTZ: That's my office. That's in Providence, also.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: 1258 Reservoir Avenue? I don't think so.

JOHNSON: I beg to differ, No. No. 400 divides the City of Providence from Cranston. No. 1258 Reservoir Avenue, upon my investigation of your litigation, pursuant to the City Laws of Providence, 1258 Reservoir Avenue, is an empty lot.

MR. GLANTZ: 1258 Elmwood Avenue is my office, that is a typographical error.

FARGNOLI:

COUNCIL PRESIDENT PRO TEMPORE/ The letter states Reservoir Avenue. Mr. Glantz, will you please come forward and I would like to ask you a question, is there a letter that you sent to the City Council last Thursday, do you have any additional charges or anything else to say?

MR. GLANTZ: Yes, I do. I submitted a list of all of the Exhibits against the two individuals, Mr. Haxton and Mr. Merola; Mr. Turchetta should not be the subject of this Hearing.

Although he was convicted and sentenced today, he still has avenues of appeal left open to him. In regards to the Exhibits that I sent, I ask that they become part of the record which they are, I submitted a copy to the City Clerk. I would like to start off by reading an opinion that was given Mr. Louis Mascia, the City Solicitor on March 5, 1975 and it was addressed to Councilman William G. Bradshaw and in essence, I won't go through it, cites Section 3.8 of the Charter:

"that after examination of the Law, various applicable cases cited, it is my opinion that the word, convicted, is used in the above quoted section of the Charter would be interpreted by a

Court to require final judgment of conviction. This would include appropriate and appellate review, jury decision and not until final determination by the Court", to further and substantiate this opinion, please refer to the attached case, Carmino vs. Redding and Carmino vs. Tillman, both Pennsylvania cases. This Pennsylvania case is clearly appointed and the Court states, "the word convicted within the Constitutional provision that no person convicted of an infamous crime should hold any office of the Commonwealth, means that a final judgment of sentence and that really is referred to guilty directed by a jury."

First of all with regards to Mr. Haxton. Mr. Haxton was found guilty of a crime of transporting a minor for indecent purposes after a trial. He did not plead guilty, he did not plead nolo, he pleaded not guilty, and went to trial. He started with a jury during the middle of the trial the jury was waived and Judge Needham after hearing all the evidence presented, rendered a decision of guilty. That decision by Mr. Haxton was then appealed after a sentencing of probation. That appeal was filed before the State Supreme Court and on January 27, of 1978, Julius Michaelson, the Attorney General, moved to dismiss that appeal for lack of prosecution of that appeal, and on January 27, 1978, that dismissal was finalized. Therefore, Mr. Haxton has concluded his probation which probation after a finding of guilty by a Judge, is a final conviction and one of the Exhibits that is submitted, is a Memorandum of Law to accompany that.

With regards to Mr. Merola, Mr. Merola's case is a little bit different. He was found guilty after a jury trial of defrauding an insurance company. Mr. Merola filed an appeal to the State Supreme Court. The State Supreme Court, with Mr. Justice Bevilacqua, found not participating in the decision found that there was no reason, or no basis for the appeal, the appeal was denied and dismissed. Mr. Merola filed in the United States Supreme Court after paying a fine of One Thousand Dollars (\$1,000.00) through his Attorney, the United States Supreme Court for an extension of time to file the brief and an appeal in the said Court.

That time was up to and including November 8, 1977. No appeal is now pending before the United States Supreme Court. No Memorandum was filed with the United States Supreme Court, as a matter of fact, I believe the first exhibit, Exhibit A through Exhibit B are affidavits that were taken from the Clerks of the Various Courts with regard to the conviction. I would also add that with regard to Mr. Merola, on the certified copy and all of these by the way, that you have, are certified copies. On the certified copy of the travel of the case against Mr. Merola which indicates the plea, the trial, etc., you will find that on April 23, 1975,

on the Docket sheet of Exhibit K you will notice the entry, Justice McKenzie defendant appears and sentence is paid a fine of One Thousand Dollars (\$1,000.00) at cost. Fine and cost is not paid judgment of conviction is entered. Certified copy signed by Joseph Q. Calista, Clerk.

Now, with regard to certain points I would like to make. There are three things here that are important:

One is this issue first arose in 1975 upon the convictions of Mr. Merola in a lower court prior to any of the appeals. All the newspaper articles at that time that quoted the Majority Leader, Mr. Lynch, as saying that he was going along with the opinion of Mr. Mascia waiting until all final judgments. Those articles are available and will be supplied to you. Now, any votes taken by Mr. Merola or by this Council or by the Committee's that Mr. Merola or Mr. Haxton sit on, Mr. Haxton sits on none, do come into play as to whether or not that vote is a valid vote. Now, I don't know whether or not any of the votes of the Providence Redevelopment Agency upon which he sits as a Member, or the Ordinance Committee, upon which he sits as a Member, come into play. I don't know what those votes were, but they certainly at this point, are a challenge.

Secondly, I think that this is important, that all members of the Council who sit here have to set some example of law to the rest of the community. The law 3.8 of the Charter is quite clear. I'm not so naive to believe that this Council as it sits, will not try or attempt to be dilatory. I will be surprised if it did not. I think that you have out there not only the Citizens of the Community, the 185,000 that are there, but there are some 18,000 to 20,000 school children there who do read the papers who do know what's going on and who do know that this is the Law. The law is that they forfeit their seat upon final conviction. Now, Mr. Merola I might add, last Friday, filed a motion for a new trial claiming new evidence. That motion, I submit, is nothing more than a dilatory action upon his part, to delay proceedings. I would submit to you that is an extraordinary action. That is not part of the appeal process, which has been exhausted to him. If he desires to take his appeal to the United States Supreme Court he has until November 8 from sometime in July to prosecute that appeal through his Attorney, he chose not to.

He chose not to even to ask for additional extension of time, so it became final. Thirdly, its the hypocrisy that exists, its a hypocrisy that existed with regard to Anti-Discrimination Ordinance on the one year and Mr. Haxton sitting on another. Its the hypocrisy that exists with regard to the handling of the mailing matter by the Board of Canvassers for example and yet, these Councilmen are allowed

to sit. I would submit to you that this Committee, is a Council sitting as a whole, or a Committee sitting as a whole, judging a Public Hearing as to one thing and one thing only; the qualifications of these candidates. There can be a motion made tonight, if someone has the courage to make the motion, and it can be voted on tonight if someone has the courage to stand up and vote; if not, the alternative is Court Action. Now, that's not a threat, it is just something that is going to take place, this is not going to end here. It is not going to let the Council sit or to refer it, or to decide, the time is now since 1975 to stand up and say something one way or the other. This Council even if Section 3.8 or 3.9 of the Charter did not exist has the right to judge the qualifications of its members. It is done in the Legislature, and it can be done here. This is a co-equal branch of Government. If you do not want these people to sit, or do not choose these people to sit, a motion can be made and they don't sit, and a burden for them to go to Court to prove that they have a right to sit, which I submit they do not, falls upon them and doesn't castigate any Member of this Council.

Now, not to get into any intrinsical discussions, but we are a Country of Laws. A lot of laws, and 3.8 of the Charter happens to be one of them, and its a system that works and its a system that functions and its each man that sits here is elected representing a constituency. Not representing his own political feelings, which obviously play a part of it, but they represent a constituency of people, honest decent people who only expect from you that you will oppose the Oath that you swore to take, and that is, to uphold not only the Constitution of the United States, but the Charter and the Laws and Ordinances of the City of Providence and this is one of those laws and anything else is pure rhetorical and anything else by filing any motions at this late date of the new evidence it can be brought forth now, if you so desire, is nothing more than dilatory to delay the operation of the Law. And I submit that you have an opportunity, or this Council has the opportunity, or members of this Council have the opportunity to stand up, be counted, and set an example for the rest of the Community by obeying the laws that are there. If you don't want the Law, then change it. But its there its a good Law, its been there for a reason for a purpose and all and everything's been exhausted to these men except for Councilman Turchetta; a classic example would be that Mr. Turchetta is not convicted. Well, I submit that Mr. Turchetta is not here, and unless you want to go to the New Bedford Correctional Institution to get his vote,.....

COUNCILMAN XAVIER: A point of order, we don't need to embarrass a Member of the Council.

MR. GLANTZ: This is a Public Hearing, you can say anything you want to say.

COUNCILMAN XAVIER: We don't need that, you just talk about what you were talking about.

MR. GLANTZ: Well, I think that's a perfect example of the hypocrisy of what we are trying to do. And I would ask that they take a vote and I ask that there be a motion made by somebody who could stand up and make it, second it and vote, to uphold the Constitution and uphold the Laws of the Charter of the City. Thank You.

COUNCILMAN XAVIER: Mr. President, I have a question.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Councilman Xavier.

COUNCILMAN XAVIER: He knows the Laws that's why he works for the City. The point is, he knew since 1975 about 3.8 and 3.9, why does he bring it up in 1978 because its an Election Year, its very obvious.

MR. GLANTZ: If I may respond sir. The final conviction of Mr. Haxton was not until January 27, 1978.

COUNCILMAN XAVIER: Mr. Merola's was the case you stated last April, 1975 or March.

MR. GLANTZ: Mr. Merola filed a motion on Friday, so I guess he thinks----

The records and documents speak for themselves.

COUNCILMAN JOHNSON: I'm a little confused by the great degree of moral turpitude expressed by City Solicitor Glantz. I sit here at a particular time and this is what he says, if I could believe everything that was stated, this individual here is better than apple pie and ice cream and everything else. He sits there and his favorite choice of words is hypocrisy. Think about hypocrisy and what we mean are we here in sincerity or are we being a hypocrite. I think hypocrite is the word as we read in the paper how the City Solicitor is criticizing the Committee on Ordinances for supposedly, turning down an Ordinance that states that we do not want homosexuals on the----

he stands there and tells us that. I just got through hearing it. I heard it five times, I never heard it said so many times. Yet, he turns around and what does he say, that Councilman Haxton was convicted of transporting a minor for immoral purposes. I sometimes wonder just what he is here for. Sounds to me like one political thing. That is not the point. That is just bringing up the point that we heard so often, hypocrisy, hypocrisy.

We have to doubt the creditability of this individual that stands there and supposedly is voicing his opinion, the second thing that I'm concerned about is that we are placed in position, that if you can stand up and show why anyone here does not believe that we could come to a vote immediately, my gosh, gentlemen, we are here to study a particular bill, not bill, a Law. Now, I don't know how many Lawyers we have on this Council but I, as an individual would have to do a

number of case studies, we would have to evaluate a number of things, there are briefs that have to be filed, but this individual stands there and would have me believe that I should review this immediately and be able to vote. I say not. I say at this particular time that we have to have some type of individual, whether its through the Courts or whether its through legal advice, to evaluate this for us.

COUNCILMAN FARGNOLI: Would the defense attorney like to get up and say anything?

MR. CHAIRMAN: My name is Attorney Peter DiBiase and I'm from the Law Firm of Eugene Toro, and I'll be here on behalf of Mr. Haxton.

I would like to request to be heard by Mr. Chairman and Members of the Council. I would like to respond first to Mr. Glantz's observation that Mr. Haxton was in the midst of a jury trial when Judge Needham then heard his case during which jury waived. That in fact, is completely correct. Mr. Haxton never began his trial before a jury, no evidence was ever presented to a jury. The entirety of Mr. Haxton's case was heard by Mr. Justice Needham. However, the more important issues that I would like to address myself to are or is, the issue that Mr. Haxton has never been convicted of a crime. Now, this evening I was presented with a Memorandum of Law by Mr. Glantz and I would at the outset, concede that a finding of guilty, coupled with a fine, is certainly a conviction.

A finding of guilty coupled with a suspended sentence and probation, is a conviction. However, the finding of guilty coupled with probation has been deemed historically, not to be a conviction. I would point the Courts attention to Mr. Glantz's own observations in the very large paragraph of this very brief memorandum. Wherein he indicated that in his opinion, the majority of the Courts feel that guilty coupled with probation constitutes a conviction. I submit to this body that there are a number of very significant cases which comes to the conclusion that guilty coupled with probation is not a conviction for impeachment purposes. Now, I would like to bring to the attention of this body the language of Mr. Justice Needham speaking on November 8th, the time of Mr. Haxton's sentencing. It was as though Mr. Justice Needham anticipated a meeting such as this. And I might add, that Mr. Justice Needham had no political concern, in the matter, it simply was to do justice to the person who was before him and I would like to read from his opinion and I'm reading from page 234 of the Transcript of Mr. Haxton's trial; Mr. Justice Needham said as follows: "I am well aware that there is a provision in the Providence City Charter concerning your right to hold Office. I am well aware that other people, perhaps motivated in somewhat of a retaliation, where certain people in your defense have said that these

charges were politically motivated, have responded in a political vain. I condemn those who use your difficulty for political advantage. You hold office by reason of the fact that the people in this Community put you there. I would have no hesitancy in sentencing you to a sentence that would deprive you of your office had there been some violence involved in this event." Now, there is a substantial amount of language here that I will go over, its essentially Mr. Justice Needham discussing what the amount of probation will be that he will impose. I will read this to all Members of the Council so that there will be no implication that perhaps I am leaving out something important.

Mr. Justice Needham concluded by stating: "I think it inappropriate for me to pass sentence that would deprive you of your seat" and he went on to give Mr. Haxton One Year of Probation.

I submit to this body, that I have not made this research for Law and come up with a favorable case. I'm reading to this body the actual language and concerns of Mr. Justice Needham.

I submit to the Council, that if it requires or requests additional legal memorandum, I would certainly be willing to prepare it within the next 48 hours. I was not going to present it with Mr. Glantz's material until this evening. However, I think that very precise and thorough language of Mr. Justice Needham indicates that Mr. Haxton was never convicted, it was never his intention to convict him, and it was never his intention to place him in any situation that would cause him, under the City Charter, to lose his seat. There is also language in here where Mr. Justice Needham indicates to Mr. Haxton that the issue of whether or not he should sit any further, would be up to his electives and not by means of the sentence that he imposed on November 8, 1976. Quite frankly, I think this language is sufficient to refute all the allegations that have been made of Mr. Glantz and in the material that I have seen this evening. However, once again I respectfully suggest to this Council that I would be willing to prepare a Legal Memorandum expanding on the issues that I have mentioned here this evening. Thank You.

COUNCILMAN GORODETSKY: Are you suggesting, Mr. DiBiase, is it, that Judge Needham decided this case in advance and that he decided what that Section of the Charter means?

MR. DIBIASE: I don't think that Mr. Justice Needham made a ruling that he had any intentions of binding this Council with. I think Mr. Justice Needham in equity, in the spirit of doing justice to the person that was before him, was confronted with the problem of what sentence do I impose upon this man? Do I impose a sentence which would be a conviction which will certainly deprive him of his Council Seat, or do I impose a sentence that would permit him to run again and let

his electorates decide as to whether or not he should be deprived of that seat. And Certainly that is the consideration that Judge Needham had. The language makes specific reference to the City Charter and his right to sit as a Member of the Council.

COUNCILMAN GORODETSKY: Are you then saying that Judge Needham made a legal interpretation of what is a conviction in this instance?

MR. DIBIASE: Yes, I suggest that to you sir. It is not only my statement at this point, without any cases to support my proposition, that guilty followed with probation does not constitute a conviction, but the trial judges the interpretation of what guilty coupled with probation means.

COUNCILMAN GORODETSKY: What do you think about the cases that are cited in the Memorandum sir?

MR. DIBIASE: Well, I received them this evening and I respectfully suggest to you the case at 20 Rhode Island, 367 decided in 1898 may leave a little bit to be desired by way of its vintage. And I suggest that I would like to have the opportunity to give you the current law and I also suggest that Judge Needham is conversant with the recent law.

COUNCILMAN GORODETSKY: Well, Mr. DiBiase, you understand that this is not a trial do you not?

MR. DIBIASE: I certainly do, but I think the issue that is before this body is whether or not Mr. Haxton has been convicted of a crime.

COUNCILMAN GORODETSKY: Well, what do you call being found guilty under trial by a Judge and receiving a sentence?

MR. DIBIASE: I think the case is elaborate, that you go beyond the finding of guilty and go to what actually happened to the sentencing. Now, there are various theories as to what happened.

COUNCILMAN GORODETSKY: Well, let me ask you a question. I agree with you, I'm a Lawyer too; I would agree with you if you told me that somebody went in and with pre-trial bargaining entered the nolo plea, nolo contendere and got some kind of probationary disposition of the case, I might agree with you that might not be a sufficient and formal record to impeach creditability for purposes at a trial. But, after a plea of guilty or a finding of guilt and then being sentenced to a probationary period, where certain impositions and sanctions are placed on a defendant you would stay here and tell me face to face that is not a conviction?

MR. DIBIASE: Mr. Glantz makes himself the following observation if you care to listen. In closing, Mr. Haxton was adjudged guilty of certain acts and then judgment and disposition was entered, he was then placed on probation the majority of Courts hold that Mr. Haxton's conviction is not erased and can stand by itself even a close reading of this memorandum which I submit to you, may not be very thorough, in that its three

pages on very complicated legal issues, suggest that there are decisions to the contrary.

COUNCILMAN GORODETSKY: I've read them all.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Are they're any other questions? Councilman Merola's Attorney?

MR. CHAIRMAN, I'm John F. Cicilline, 380 Broadway, Providence, Rhode Island, I represent Councilman Mario Turchetta and Councilman Anthony C. Merola.

Well, I understand from Mr. Glantz's remarks that the matter of Mario Turchetta was no longer before this body.

MR. GLANTZ: That's true.

COUNCILMAN GORODETSKY: That's up to this Council, not up to Mr. Glantz.

MR. CICILLINE: Well, I understood from the factors, Mr. Glantz wrote a letter as a Citizen and he was withdrawing that portion in his letter in which he made reference to Mr. Turchetta.

I might say that at the Council's edification that today I filed an appeal on behalf of Mr. Turchetta and in keeping in mind the rulings of this Council based on opinions from Mr. Mascia, Former City Solicitor, this Council took the position that one man had an appeal pending. That it was not a final conviction in terms of the City Charter, of conviction of procedure.

With respect to Mr. Merola, I'd like to feel that this strictly, as a Lawyer, would deal with the problems before the Council rather than becoming involved in some of the prelimits we have heard about the local political situation. As Mr. Glantz well knows, our first appeal to the United States Supreme Court came at a time when Mr. Merola had recently been convicted. We took that appeal at that time in order to give us an opportunity to review the transcript of the case and to consider the Constitutional Issues that would permit us to have that case heard before the United States Supreme Court. After considering those issues for some time, it became apparent that there was no body or constitutional issue alive on which Mr. Merola could rely. As Mr. Glantz pointed out, last Friday, we filed on behalf of Mr. Merola, an application that post conviction be waived which is another form of appeal. And I think in order to properly understand Mr. Merola's situation, you would probably understand the basis of application to post conviction of relief, it is important in a sense something about the case that was originally heard before the Judge of the Superior Court and the jury. Mr. Merola was originally charged with the crime of obtaining money under false pretenses. He was alleged by the State that at the time he represented that he was employed by an Agency referred to as Federal Mill Incentive Corporation. The State's proof during the course of that trial left some

question as to whether or not he was in fact employed because the program that he ^{was} re-hired for was not ever officially funded. Mr. Merola, throughout my discussions with him after his conviction, maintained his innocence and insisted that certain evidence that certain physical evidence, has been destroyed in the file of the Federal Hill Incentive Corporation.

I'm not being critical of the manner in which the case originally was tried. I would remind the Council that there were certain physical pieces of evidence that were no longer available to the Council to be tried that case. There were certain other people who were involved in the Anti-Poverty Effort at that time who were not familiar to the Council who tried that case.

Thereafter, we continued a search for the kind of evidence that would establish beyond any doubt, that Mr. Merola had told the truth, he testified in that case, he told the truth when he made the affidavit concerning his employment record back in 1970. I would remind the Council that it took several months in this case, not only to get the transcripts, but portions of other parts of the transcript that we needed to make the decisions that was openly made in this case. I would point out to the Council that through this portion of the construction made to the jury, it took place before the jury and was filing and paneled. It was never made available until not more than three weeks ago. We took those facts and took the fact that we now have available to us, a witness who completely verifies the story that Mr. Merola told back in the trial that took place in 1975 and I would say that the State's witnesses in that case were uncertain, unclear, didn't recall how his employment came about whether or not they would be able to verify it but these facts are now available to us. Again, speaking to you as a Lawyer, I can recognize that this Council wishes to deal, not only with its members, but deal with everyone here, and what we are asking the Council to do in this instance, give us an opportunity to be heard on this application for post conviction relief. Its an application which in my mind, can set the record straight once and for all concerning Anthony Merola. It shows that he was employed as a Community Organizer for the Federal Hill Incentive Corporation back in 1970 when he said he was and in the manner that he said he was. I think that if this Council reaffirms the earlier position it took on the question of conviction and the upholding to Mr. Mascia's decision in this matter, you will give Mr. Merola the opportunity to be heard again in Court on this appeal which is still pending and alive before the Superior Court of the State of Rhode Island at present. I think given that opportunity this Council can see one of his brothers vindicated and see that what he did say was actually the truth and I simply ask the Council to

defer any action on this Hearing at this time until we have this opportunity to be heard by the Court, as I said before, this Council has taken the position that an appeal is not final until it is openly exhausted. There is an appeal pending on behalf of Mr. Merola. Thank You.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Any Questions?

COUNCILMAN GORODETSKY: Suppose Jack, that you are unsuccessful in your application for post conviction relief that you were just talking about and One Year from now, Mr. Merola is still serving on the Council and you come up with some other newly discovered evidence.

Now, suppose at that time, there was such a Proceeding like this one in the Council, would you use the same argument a year from now? You can continue with your post conviction for relief right up until the time that the sentence is completely finished, can't you, if there is an incarceration, right.

MR. CICILLINE: No.

COUNCILMAN GORODETSKY: Well, how long do you have to go on with post conviction for relief?

MR. CICILLINE: In response to that, there are two things that make this unusual. Firstly, under the post conviction relief statute you are only permitted to do this once, there is only one time that you can go in and you must claim all the alleged areas in that single application. After that is heard, you get no further chance, through the post conviction relief, and the second thing and I think things that we alleged in the Petition for post conviction relief, go right to the heart of the conviction.

We are not suggesting that Mr. Merola was convicted because of procedural error or of something that happened during the course of the trial. What we are saying is that we have proof now that establishes beyond any doubt that he is innocent of the crime he has been convicted of. I think that makes it different from the regular post conviction addum in which they allege some constitutional procedure, which doesn't get to the heart of it.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Any more questions? Thank You Mr. Cicilline.

COUNCILMAN LYNCH: I have a question that I wanted to raise and I would ask the City Clerk if the City Council is in receipt of any correspondence from Mr. Glantz withdrawing the name of Councilman Mario Turchetta from the matters that we presently have before consideration in this City Council.

CITY CLERK MENDONCA: No, I don't.

COUNCILMAN LYNCH: Well, I heard Mr. Glantz get up there and say and Councilman Gorodetsky questioned it and I think rightfully so, that Mr. Glantz considers that Councilman Turchetta is not properly of subject of what we are considering before the Council and I think that he properly is being considered along with Councilman Haxton and Councilman Merola.

The point I would like to make is that Mr. Glantz gets up here and talks about hypocrisy and Mr. Glantz is a Past Master at hypocrisy. He is trying to conduct the Hearing rather than conduct it before the City Council where it properly stands. He is trying to conduct this Hearing before the news media. I think that is a great disservice to the members of the City Council and I think that he owes us an apology after he considers the fact that we are not considering the case of Councilman Turchetta before us.

COUNCILMAN GORODETSKY: Mr. President, I don't agree with that at all. I think that's an unfair statement by Mr. Lynch. I think Mr. Glantz came up here and made his statements precisely, briefly and unemotionally without castigating anybody. I think it was very good and I don't think he owes me an apology. Maybe you feel like that Mr. Lynch, but I don't. I feel that maybe some other people owe some apologies around here, not Mr. Glantz.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: This is a Public Hearing and if anybody wishes in the audience to speak for or against, they will have three minutes to express their opinions. Come forward please, state your name and address, and whether you are for or against.

COUNCILMAN MANSOLILLO: Mr. Council President, if you are asking who is for or against, I think you ought to state what they are for or against.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: For relieving the Councilmen from the City Council or to continue them until all evidence and all appeals are exhausted.

COUNCILMAN FLYNN: Mr. President, as a member of this City Council, I did not believe that this was a Public Hearing, I believe that this was a Hearing of the City Council. Is this a Public Hearing or a Hearing of the City Council?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: I believe it is a Public Hearing.

COUNCILMAN FLYNN: Let's get it straight, is this a Public Hearing or a Hearing of the City Council, I would like to know.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Let us clarify Councilman Flynn's statement, first I asked the City Clerk whether it was a Public Hearing and she said Yes. That's what I'm talking about.

COUNCILMAN FLYNN: Mr. President, I would like to know whether this is a Public Hearing or a Hearing of the members of the City Council. I want a legal opinion from the City Solicitor's Office. I have the floor, excuse me, Mr. President, I think that I deserve an answer.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Mr. Rotondi, give us a legal opinion, please.

DEPUTY CITY SOLICITOR ROTONDI: Section 3.8 says the Council shall hold a Public Hearing.

COUNCILMAN FLYNN: So, Mr. Rotondi, is this a Public Hearing?

DEPUTY CITY SOLICITOR ROTONDI: Yes.

COUNCILMAN FLYNN: Thank You, Mr. Rotondi. Mr. President, is a Public Hearing supposed to be advertised? for One Day?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: No.

COUNCILMAN ALMAGNO: I thought a Public Hearing was supposed to be advertised 24 hours in advance.

COUNCILMAN FLYNN: I think my brother is right. I have the floor and I think I deserve an answer.

DEPUTY CITY SOLICITOR ROTONDI: Well, there was notice posted in the Department of City Clerk which is the ordinary course of posting and giving notice to the City of Providence of Public Hearings. To my knowledge, is that not correct City Clerk?

COUNCILMAN FLYNN: Did the City Clerk post this in the newspaper?

CITY CLERK MENDONCA: The City Clerk did not have to post it in the newspaper according to the Charter it did not say anything about the advertising. It said Public Notice, and it was posted in that Department.

It did not say that a Public Hearing had to be advertised in the newspaper, it did not call for a newspaper advertisement to be used according to Section 3.8 of the Charter, it said Public Notice.

COUNCILMAN GRIFFIN: Yes, Mr. President, I think that we do the Public a disservice if we do not hear what they have to say. I think that we should hear what they have to say and that it is indeed, in my opinion, a Public Hearing. The other thing that I wanted to suggest, as opposed to for or against let's just hear them. We are not going to be keeping notes if this one is for or against. I think that we can all hear whatever they are saying.

COUNCILMAN JOHNSON: I think that is an excellent suggestion.

COUNCILMAN BRADSHAW: Briefly, spelling out how we are conducting this Hearing, it says that it must be held within five days, in my mind this would forfeit any kind of a public announcement in the paper.

MY NAME IS ANGELA SMITH AND I LIVE AT 196 SACKETT STREET IN THE CITY OF PROVIDENCE.

I'm here tonight mainly as a concerned parent. I have teenage children and I'm trying to raise them to abide by the Laws. It is very difficult in 1978 with the pressure that is put on by their peers, in that they look at City Council Members who are convicted of crimes. I don't understand all the legal terminology that was used here tonight, all I'd like to say is this. When City Councilmen are convicted of a crime, and I know that by reading in the newspapers that it is in fact, if you commit a felony or a crime of moral turpitude, you are to forfeit your seat in the City Council.

All it looks like to me is that these three Councilmen, who I do not know personally, are thumbing their nose at the taxpayers of the City of Providence.

MR. PRESIDENT AND MEMBERS OF THE CITY COUNCIL, MY NAME IS JOHN J. SHEEHAN, JR., I'M A TAXPAYER OF THE CITY OF PROVIDENCE AND RESIDE AT 32 WINDHAM AVENUE, PROVIDENCE.

I have stood in the back for approximately one hour and listened to the discussion of this particular matter before the Council. There was a point raised by Mr. Johnson prior to Mr. Glantz's testimony regarding the original letter that was submitted by Mr. Glantz as a Citizen of the City of Providence, with an address of 1258 Reservoir Avenue, Providence. It is my understanding that there is no 1258 Reservoir Avenue, Providence. The 1258 is a vacant lot in the City of Cranston. Mr. Glantz just stood here and said that this Council is bound by the laws of the City of Providence, of the Ordinance, of the City Charter and he stated 3.8 and 3.9, and 3.9 specifically states that the request can be made to the City Clerk by a Citizen or a Resident of the City of Providence.

On it states, Mr. Glantz's request, was not as a Citizen of the City of Providence. And I would submit to you, Mr. President and Members of the Council, that this matter which is presently before the Council is not in its legal and proper forum. And I would request that it be shipped back to Mr. Glantz, he has been a Lawyer in this City for a great number of years in this State, and have him put it in its proper forum before it is considered. Thank You.
(QUESTIONED BY COUNCILMAN GORODETSKY.)

MR. SHEEHAN: Mr. Gorodetsky has asked a question as to where the address 1258 Reservoir Avenue came from, that address was on a letter dated March 20, 1978 to the Honorable Rose M. Mendonca requesting the Council to have this Hearing. My request, and I don't even know if I can legally make this request, I would request of the City Council that any testimony given here prior to my request be stricken from the record and that the request of the private citizen for this particular Hearing be put in its proper form and be made legal so that whenever proceedings do take place by the Council, are legal and above board.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: We will take that into consideration.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI DECLARES THE CITY COUNCIL AT EASE.

COUNCILMAN LYNCH: Mr. President and Members of the Council. There have been questions raised concerning memorandum which was submitted to the Council by Mr. Glantz concerning the three Councilmen in question. Over and above the fact that there is glaring error in the address of the communication which Mr. Glantz admitted to the City Council

which he off the cuff, has dismissed as a typographical error. I think the question remains that perhaps there are other errors in the memorandum as submitted by Mr. Glantz some points were raised by legal counsel for Councilman Haxton, Councilman Merola and Councilman Turchetta and I think it is the general feeling of the members of the City Council that the several Councilmen involved in this should have, through their Lawyers, a chance to respond to the allegations as presented by Mr. Glantz. And with these thoughts in mind, I make a motion that this meeting of the City Council, meeting as a Committee as a whole, stand adjourned at this time to meet again two weeks from tonight at April 24, 1978, at 8:00 o'clock P.M. (E.S.T.) at which time we would entertain memorandum from the various legal counsel representing the Councilmen in question, and I so move.

This motion being seconded by COUNCILMAN ADDISON.

COUNCILMAN PEARLMAN: Mr. President, I, in doing with the motion of the Majority Leader, Councilman Lynch, however in addition thereto, I would also move as a separate motion and I would like my right to make this motion before the motion to adjourn is acted upon.

COUNCILMAN LYNCH: If it is possible Mr. President, I request that my motion be withheld from consideration until such time as Councilman Pearlman has a chance to present his motion.

COUNCILMAN PEARLMAN: Mr. President, I move that the City Council request the Attorney General of the State of Rhode Island to render an opinion on or before April 24, 1978, on the following questions:

1. What constitutes a conviction under Rhode Island Law? i.e. Does probation, after the finding of guilty, constitute a conviction?
2. In the cases of Robert J. Haxton, indictment No. 75-504, and Anthony C. Merola, indictment No. 72-483, do they constitute final conviction at the present time?
3. What constitutes a conviction under Section 3.8 of the Charter of the City of Providence?

COUNCILMAN JOHNSON: I would like to second that motion of Councilman Pearlman's.

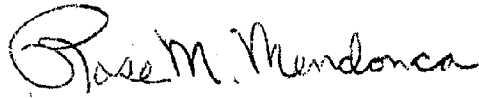
COUNCILMAN LYNCH: Mr. President, I now would like to move for adjournment.

COUNCILMAN FLYNN: I second that motion of Councilman Lynch's to adjourn.

COUNCILMAN GARAN: Will this be a Public Hearing, the next meeting?

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: Yes, by the Charter of the City a Public Hearing every time we meet will be a Public Hearing.

COUNCIL PRESIDENT PRO TEMPORE FARGNOLI: The motion is made and seconded to adjourn at 11:05 o'clock P.M. (E.S.T.) until Monday, April 24, 1978.


ROSE M. MENDONCA,
CITY CLERK.

Rose M. Mendonca
City Clerk

Clerk of Council

Clerk of Committees



Michael R. Clement
First Deputy

Grace Nobrega
Second Deputy

DEPARTMENT OF CITY CLERK
CITY HALL

April 7, 1978

TO: Members of the City Council
FROM: City Clerk, Rose M. Mendonca
SUBJECT: CITY COUNCIL HEARING

A hearing is to be held in the Chamber of the City Council on Monday, April 10, 1978, at 8:00 o'clock P.M. (E.S.T.) in accordance with the following:

"Communication from Ronald H. Glantz, as a Private Citizen, Requesting the City Clerk Submit to the City Council, His Communication dated March 20, 1978, for Its Consideration of the Provisions of Section 3.9 of the Providence City Charter, Concerning the Qualifications as Members of the City Council of Council President Robert J. Haxton, Councilman Anthony C. Merola and Councilman Mario Turchetta."

A handwritten signature in cursive script that reads "Rose M. Mendonca".

ROSE M. MENDONCA,
CITY CLERK.

(H)

March 20, 1978
1258 Reservoir Avenue
Providence, Rhode Island

The Honorable Rose Mendoca
City Clerk
City of Providence
City Hall
Providence, Rhode Island

RE: Qualifications of Councilmen Robert Haxton,
Anthony Merola and Mario Turchetta

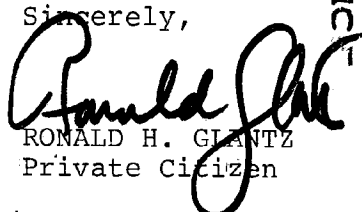
Pursuant to Section 3.9 of the Charter of the City of Providence (Public Law 1940, Chapter 832, Section 15) please be advised that the aforementioned Councilmen cease to possess the qualifications for Councilmen as specified in the Section 3.8 of the Charter of the City of Providence.

Councilman Robert Haxton, pursuant to 3.8 of the Charter has been found guilty of a crime involving moral turpitude. Councilman Anthony Merola has been found guilty and his appeal to the Rhode Island State Supreme Court has been denied on a felony charge of defrauding an insurance company. Anthony Merola has paid a \$1,000.00 fine to that charge.

Councilman Mario Turchetta has been found guilty and convicted by a United States District Court on a felony charge involving fraudulently filing of income tax returns.

Pursuant to Section 3.9 of the Charter of the City of Providence I am writing this letter in accordance with said provisions and ask that your office comply with those provisions of the Charter, which require the filing and placing on the docket of the next regular council meeting said charges.

Sincerely,


RONALD H. GLANTZ
Private Citizen

RECEIVED
CITY CLERK
MAY 1 1978

RHG

FILED
MAR 20 9 02 AM '78
DEPT. OF CITY CLERK
PROVIDENCE, R.I.

IN CITY COUNCIL
APR 6 1978

READ: and referred to full Council hearing

Joe V. Menefee CLERK

B

TO THE HONORABLE CITY COUNCIL
CITY OF PROVIDENCE

Re: SEC. 3.8 of the Charter of the City of Providence

Attached hereto please find a Memorandum and various documents regarding the qualifications of Councilmen Merola and Haxton in relation to the above-cited section of the Providence City Charter.

Enclosed please find Affidavits, Exhibits A through F, which shall be made a part hereof. These affidavits establish the fact that there are no appeals pending in the courts regarding Mr. Merola and Mr. Haxton.

EXHIBIT "A" - in regard to Anthony Merola and whether or not there are any appeals pending in the United States Supreme Court.

EXHIBIT "B" - relates to Mr. Merola and whether there are any appeals pending in the United States District Court for the District of Rhode Island.

EXHIBIT "C" - relates to Mr. Merola as to whether there is any appeal pending in the State Supreme Court.

EXHIBIT "D" - is in regard to Mr. Haxton and whether there are any appeals pending in the State Supreme Court.

EXHIBIT "E" - relates to Mr. Merola regarding whether there are any appeals pending in the State Supreme Court.

EXHIBIT "F" - relates to Mr. Haxton as to whether there are any appeals pending in the State Supreme Court.

The next set of Exhibits pertains to Mr. Haxton:

EXHIBIT "G" - is the docket sheet of the court which gives the travel of the case.

EXHIBIT "H" - pertains to the Judgment and Disposition of Mr. Haxton's case.

EXHIBIT "I" - pertains to Mr. Haxton's Notice of Appeal to the State Supreme Court.

EXHIBIT "J" - is the State's Motion to Dismiss which was heard and granted.

The next set of Exhibits relates to Anthony Merola.

EXHIBIT "K" - is the docket sheet which explains the travel of Mr. Merola's case.

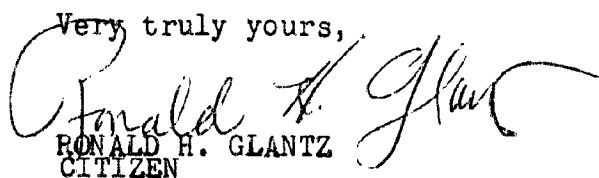
EXHIBIT "L" - is the opinion of the State Supreme Court in regard to Mr. Merola's case.

EXHIBIT "M" - is the Judgment of Conviction against Mr. Merola.

All the above exhibits have been certified by the State Superior Court Clerk's Office and they are a true copy thereof.

Please find a Memorandum of Law, EXHIBIT "N", concerning itself with what a final conviction is.

Very truly yours,


RONALD H. GLANTZ
CITIZEN

April 4, 1978

76 Overhill Road
Prov., RI 02906
April 5, 1978

TO THE HONORABLE COUNCILMEN
CITY OF PROVIDENCE

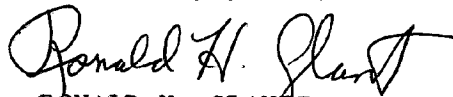
Re: Sec. 3.9 of the Charter of the City of Providence

Dear Councilmen:

Please be advised that unless the provisions of Section 3.9 of the Charter of the City of Providence are complied with in that a hearing on the qualifications of Councilmen Robert Haxton and Anthony Merola is held within the time prescribed by the aforementioned Charter section, you are hereby notified that a Writ of Mandamus will be sought in the Superior Courts of the State of Rhode Island on Friday, April 7, 1978 at 9:30 a.m.

This constitutes notice to you of my appearance before the Superior Court in the event the appropriate Charter sections are not complied with.

Very truly yours,



RONALD H. GLANTZ
PRIVATE CITIZEN