


Memorandum

TO: Michael Harrington, Trust Office  
Lynn Johnson, Law Department

FROM: Mark Sweeney, Treasury Legal Staff 

DATE: August 7, 1985

SUBJECT: Cummings Estate

I read with interest the memoranda prepared by Liz Mailett. I commend her thoroughness, although I am still not content with a couple of points.

The first point is the starting point for all discussion of the Cummings property. The memos seem to concede, without discussion, that the property is "park" land and therefore subject to numerous political restrictions including the 2/3 legislative vote required by Mass. Const. Ammend. Art. 97. Because of the obvious political benefits, I would prefer to explore and develop an argument that this property is not "park" land at all, but rather is "trust" land not subject to the requirements of Art. 97, etc.

Acceptance of this "trust" argument would allow the City to sell the property on its own motion upon application of cy pres or modification doctrine by an equity court of appropriate jurisdiction.

I also feel a certain continued unease about the safety easement issue. The memo's conclusions appear to be based on limited facts. I haven't seen the Cummings files in many months but I sense that there is something more on the easement issue. I would like to know how it is treated in the deed to Northeastern and whether a search of federal records might reveal anything. In any event I think the issue needs further factual development.

In the meantime, I remain available to discuss this matter.