THE CHARTER BOARD OF THE CITY OF READING

IN RE	City Auditor's Hiring Responsibilities	:	Request Received August 20, 2019
		:	
		:	
		:	Advisory Opinion No. 47

ADVISORY OPINION
NOTICE

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I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter dated August 21, 2019, received by email on August 20, 2019, the City of Reading's interim City Auditor,[1] Maria M. Rodriguez, ("Auditor") requested an advisory opinion ("Request") from the City of Reading Charter Board ("Board"). The Request asks the Board to:

> "render an advisory opinion on the City Auditor['s] hiring responsibilities including having the ability to make the final recommendation to Human Resources for the Auditing Coordinator position as provided by the City Charter 702(A)(IV)."

The Auditor supplied no further information to the Board in connection with the Request.

Pursuant to the Charter Board Ordinance, if the Board issues an advisory opinion, it must do so no later than thirty (30) days after receipt of the request, but as expeditiously as possible. Ord. No. 46-2005, Charter Board Ordinance, § VI.

II. DISCUSSION

First, the Board must express that the Auditor's Request is somewhat vague and open-ended, in that it fails to identify an issue beyond general guidance on the Auditor's hiring responsibilities. The Board is unclear as to what is intended by the phrase "having the ability to make the final recommendation to Human Resources for the Auditing Coordinator position as provided by the City Charter 702(A)(IV)." From the Board's reading of the Request, the

[1] *See* Charter § 505(a).

Auditor may be asking any number of questions. For example, is Request asking if the Auditor, and not Human Resources, may make the final decision to hire the Auditing Coordinator? Or, is the Request asking if the Auditor may be permitted to give input on a final hiring decision? Is the Auditor being denied the opportunity to give input, or to participate? The Board is unsure as to what issue the Auditor is directing her Request and cannot render an opinion due to vagueness on that point.

To that end, the Board will limit this Advisory Opinion to answer the first part of the Request, rephrased slightly, that is, *does the Auditor have any hiring responsibilities under the Charter or Administrative Code?* The Auditor may, of course, re-frame or re-state the question as part of a separate advisory opinion request.

A. <u>Applicable Charter Provisions</u>

Charter Section 702 provides:

> **Section 702. Personnel System and Personnel Code.**
>
> Each elected official, officer, and employee of the City shall be a member of either the career or exempt service.
>
> (a) The exempt service shall consist of:
>
> (i) All elected officials;
>
> (ii) The Managing Director and City Solicitor;
>
> (iii) The heads of departments, offices, and agencies immediately under the direction and supervision of the Managing Director;
>
> (iv) One clerk or secretary for each of the full-time elected City officials and the heads of each City department;[2]

[2] In 2009, the then City Auditor, David M. Cituk, requested an advisory opinion asking whether or not Section 702(a)(iv) of the Charter requires that the one clerk or secretary be budgeted for, staffed and funded for his use as City Auditor. The Board concluded that Charter § 702(a) merely defines which City personnel are part of the exempt service and does not require that those personnel or positions exist and Charter § 702(a)(4) does not require for the budgeting, staffing, or funding of one clerk or secretary for use by the City Auditor. *In re*

(v) The City Clerk;

(vi) The members of authorities, boards, and commissions;

(vii) Temporary, part-time, or seasonal employees;

(b) All other officers and employees shall be members of the career service.

(c) Merit Personnel System. There shall be a merit personnel system, the purpose of which shall be to require that all personnel decisions be made solely on the basis of merit and qualifications, applicable to all employees. Any appointment, promotion, transfer, demotion, suspension, dismissal, or disciplinary action shall be carried out in accordance with the merit personnel system.

Further pertinent to the Board's analysis is Charter Section 406, relating to the powers and duties of the City's Managing Director, and provides as follows:

Section 406. Powers and Duties.

The Managing Director shall be the chief administrative officer of the City, responsible to the Mayor for the administration of all City affairs placed in the Managing Director's charge pursuant to this Charter. In addition to other powers and duties prescribed by this Charter, the Managing Director shall:

* * *

(2) Direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this Charter or by law;

(3) Appoint, suspend, or remove any City employee, except as otherwise provided by this Charter or by law;

* * *

Of course, the powers and duties of the Auditor as defined by the Charter are also pertinent here:

Application of Charter Section 702(a)(4) to City Auditor, (Adv. Op. 19, Nov. 20, 2009) at 2-3.

Section 503. Responsibilities.

The City Auditor shall:

(a) Have financial oversight of City finances, independent of the Executive and Legislative branches and shall review all expenditures of the Mayor, City Council, and City Boards, Commissions and Agencies;

(b) Review the Annual Budget before approval by City Council, and make nonbinding recommendations to City Council for consideration;

(c) Be present or represented at all Council meetings;

(d) Perform specific audits of City finances from time to time as determined by the City Auditor or City Council;

(e) Report to Council on the progress of the implementation of any recommendations as found in the Annual Audit and Management Letter;

(f) Assist in all audits conducted by independent auditors;

(g) Assure the accurate and timely completion and submittal of audit reports along with appropriate follow-up recommendations;

(h) Furnish to City Council, the Mayor, the Managing Director, and others, as appropriate, periodic reports of audits conducted;

(i) Interpret and communicate audit policies and procedures to all City management and staff;

(j) Direct internal financial security and loss investigation activities;

(k) Prepare an annual budget for the office of City Auditor and operate the office of City Auditor within approved budget limitations; and

(l) Issue and subpoenas in order to fulfill the duties and responsibilities of the office of City Auditor.

Regarding direct personnel responsibility, Charter, Section 607, creates the Department of Administrative Services, which, “shall be responsible for the administration of the City of Reading personnel and finance departments and their functions as set forth in the Administrative

Code." The Administrative Code, at § 5-805, regarding the Department of Administrative Services, vests responsibility for the administration of the City's financial management, human resources, information technology, and purchasing functions in that Department. Section 5-805(A)(2) identifies the Department's specific human resources responsibilities as including: recruiting, recommending, hiring, assignment, reassignment, bidding, training, performance evaluation, discipline and discharge of all employees.

The Director of the Department of Administrative Services reports to the City's Managing Director. Admin. Code at § 5-801.

Finally, under the Personnel Code,[3] Part 3, Section 70-305, relating to selection of employees, provides:

> A. The Administrative Services Director or his/her designee and department director will establish an interview schedule mutually convenient to the candidate, Administrative Services Director and the department director.
>
> B. The Administrative Services Director and department director and/or their designees will interview candidates and make the selection. Selection will be based on qualifications, test results (if applicable), state and federal regulations and the Affirmative Action Plan.
>
> * * *
>
> F. Should the interviews produce no viable candidate, the Administrative Services Director or his/her designee and the department director should develop a new recruitment plan.

[3] The Charter Board Ordinance, at Section III(B) limits the Board's advisory powers to interpreting the Charter and the Administrative Code. Therefore, the Board should not issue an advisory opinion with respect to an interpretation of the Personnel Code. However, pertinent sections of the Personnel Code at times must be reviewed and interpreted to determine compliance with other Charter provisions. *See for example In re: City Residency Requirement for Union Employees*, (Adv. Op. 2, May 25, 2006) at 2-3.

C. Analysis

Upon review of the Charter and Administrative Code, the Board can find no basis to ascribe independent hiring responsibilities of any nature to the Auditor. The applicable Charter and Administrative Code provisions cited above provide no authority for specific hiring responsibilities vested solely in the Auditor. It does appear to the Board that the Auditor is involved in the hiring process of those employed by that office as provided by the Personnel Code, Part 3, § 70-305,[4] relating to selection of employees. It appears to the Board that references to "the department director" in section 70-305 also includes Charter created office holders that function as a department head equivalent. That is the limit of the Auditor's hiring responsibility: participation in the process as prescribed by the Personnel Code. Based upon the nature of the Request and the information provided by the Auditor, the Board can opine no further.[5]

The Board does not address in this Advisory Opinion the balance of the Auditor's Request, specifically, whether or not the Auditor has "the ability to make the final recommendation Human Resources for the Auditing Coordinator position as provided by the City Charter 702(A)(IV)." Likewise, the Board does not address other responsibilities, if any, the Auditor may have in connection with employees (i.e. recruitment, screening, discipline, etc.).

[4] Certainly, the Personnel Code applies to all employees. *See* Charter 703 (directing adoption of a Personnel Code for all City employees).

[5] The Board noted earlier in this Advisory Opinion that the Request is vague and lacks context and a statement of the issue.

III. CONCLUSION

The Auditor's *hiring* responsibilities are limited to those provided for under the Personnel Code, Part 3, § 70-305, relating to selection of employees.

IV. OPINION OF THE BOARD

It is the Opinion of the Board that the Auditor's hiring responsibilities are limited to those provided for under the Personnel Code, Part 3, § 70-305, relating to selection of employees, as explained herein.

CITY OF READING CHARTER BOARD

By: James R. Fegley, Chair

Date: September 17, 2019

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