

IN RE: Suspension of : Request Filed: October 7, 2009
Charter § 706 respecting :
residency : Advisory Opinion No. 16

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

The Board answers in the negative.

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“I am respectfully requesting a time extension relative to the City of Reading’s residency requirement. Due to the national economic downturn and the decline of the housing/real estate market, the sale of my home would cause a massive substantial financial hardship to both me and my family. I would have to potentially absorb a monetary loss of \$100,000 to \$150,000 which would be a loss I simply cannot afford to take. This collapse was an unforeseen situation and simply not the case a year ago.”

The second letter is an undated letter from the Mayor of the City of Reading, the Honorable Thomas M. McMahon. In pertinent part, that also letter cites to the current economic condition in the United States, particularly with respect to the current significant and sudden fall in home prices. The Mayor’s letter states:

“[t]he loss of \$100,000 to \$150,000 is significant for an individual and can potentially cause a financial hardship for Mr. Mayes and his family. I recommend he be given a minimum six month[s] to fulfill the City’s residency requirement.”

Finally, Mayes submitted a letter dated October 5, 2009 from a Ms. Sherylee Rubin, a real estate agent in Hillsborough, New Jersey, which was intended to inform the Board of the real estate market conditions in that town. Mayes’s current residence is located in Hillsborough. Ms. Rubin’s letter states:

“If [the Mayes’s home] were to be put on the market at this time they would have to come to the closing table with a considerable amount of money. This is due to market conditions and what they presently owe on their mortgage at this time.”

Although these three letters recite Mayes’s particular situation, the Board is not addressing this matter as pertaining only to Mayes.¹ Rather, generically, the factual basis for Mayes’s request for advisory opinion is that the housing downturn² has made complying with the Charter’s residency

¹ See Advisory Opinions No. 11 (September 24, 2008) and 12 (January 12, 2009) (cautioning against treating retrospective questions or issues as advisory opinions). *But see* Advisory Opinion No. 14 (May 12, 2009) (issuing advisory opinion where issue presented, although retrospective, was, in the Board’s opinion, capable of repetition).

² See for example “Prime Report Forecasts 12% Drop in Home Prices,” *The Wall Street Journal*, October 19, 2009 (accessed October 21, 2009 at <http://blogs.wsj.com/developments/2009/10/19/pmi-report-forecasts-12-drop-in-home-prices/>).

requirement economically damaging. In other words, in even broader, more widely applicable language, the factual scenario presented here to the Board becomes whether or not a possible or actual economic loss or an economically emergent situation is sufficient to warrant non-compliance, even temporary non-compliance, with Section 706's residency requirement?

C. Analysis

Primarily, in reference to our powers as delineated in the Charter, Amendment I, it is nowhere stated or implied that the Board has the power to suspend, extend, or not enforce, any provisions of the Charter. In fact, the rule here is just the opposite – the Board is charged with upholding and enforcing the Charter. Amendment I of the Charter is entitled “Enforcement of Charter” and Section 2 of that amendment creates the Charter Board as one of the entities to carry out this enforcement.³ Furthermore, Amendment I makes clear that any body created under the Charter, including the Charter Board, is prohibited from taking any action (for example, suspension of specific Charter provisions) which is contrary to the governing law of the City.⁴ To suspend provisions of the Charter on a case by case basis, or on the basis of individual crises, is a power this Board does not have and is a precedent this Board will not set.

The residency provisions of Section 706 may be changed only by amending the Charter.

³ Charter, Amendment I, § 2(b) (relating to jurisdiction).

⁴ Charter, Amendment I, § 1(a), relating to the supremacy of the Charter, provides:

Governing law of the City. This Charter is the governing law of the City of Reading. No action or inaction by City Council, the Administration, or any other body created by this Charter shall be taken contrary to it, whether individually or collectively, by ordinance, resolution, practice, executive order or decision, or any other means.

The wording of the Charter, and acts pursuant to it, shall in all cases be strictly construed so as to effectuate its clear intent.

III. OPINION OF THE BOARD

The Opinion of the Board is that the provisions of Charter § 706 respecting residency cannot be suspended, or extended, by the Board and may be changed only by amending the Charter.

CITY OF READING CHARTER BOARD

By: *Susan T. Gibson*
Susan Gibson, Chair

Date: *November 5, 2009*