

THE CHARTER BOARD OF THE CITY OF READING

IN RE	Investigations Pursuant to	:	Request Received October 5, 2018
	Section 210 of the Charter	:	
		:	
		:	Advisory Opinion No. 43

NOTICE

THE "OPINION OF THE BOARD" SECTION OF AN
ADVISORY OPINION MAY BE USED ONLY BY THE
REQUESTOR OF THE ADVISORY OPINION AS A DEFENSE
IN ANY SUBSEQUENT INVESTIGATION OR PROSECUTION
ONLY TO THE EXENT THAT THE QUESTIONS PRESENTED
TO THE BOARD ARE IDENTICAL TO THE FACTUAL ISSUE
FACED IN THE UNDERLYING MATTER IN WHICH THE
DEFENSE IS RAISED. FURTHER, NO OTHER PORTION OF
AN ADVISORY OPINION MAY BE USED IN ANY WAY AS A
DEFENSE AND SHALL NOT BE A DEFENSE. *See* Bill No.
46-2005, *as amended*, Charter Board Ordinance *and* Charter Board
Resolution 2-2015.

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ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter dated October 5, 2018¹ City Councilor John Slifko² (“Slifko”) requested an advisory opinion (“Request”) from the City of Reading Charter Board (“Board”) on the following questions, as stated below, slightly re-organized by the Board:

Under Section 210 of the Reading City Charter,

- (1) does City Council have the power, by ordinance, to institute an investigation into the conduct of the Office of the Mayor, as it pertains to the discipline or dismissal of top Administrative personnel, and
- (2) for the purpose of such investigation, to hire professional assistance? and
- (3) If [professional assistance may be hired by City Council], must such professional assistance be retained through the Request for Proposal (RFP) process?

Slifko, a member of City Council, makes this Request pursuant the Charter Board Ordinance, Section IV, which allows any public official or city employee to request an advisory opinion

1 Slifko made an identical request for advisory opinion by letter of September 26, 2018 “on behalf of City Council.” The Board docketed that request as Advisory Opinion No. 41. The President of City Council, Jeffrey S. Waltman, Sr., advised the Board by letter of October 1, 2018 that Slifko’s September 26, 2018 request made “on behalf of City Council” was not approved by Council and was rescinded.

² The Board acknowledges, and discloses, that Slifko, among many other roles of public service, has served with distinction as a founding member of this Board and as its Vice-Chair for many years, as well as having served upon the Charter Review Commission.

concerning matters of home rule or enforcement of the City Charter. *See* Ordinance No. 46-2005, *as amended*. Slifko need not obtain authorization from City Council to make this request for advisory opinion.

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. ANALYSIS AND DISCUSSION

A. Charter Sec. 210 – Power to Investigate the Mayor

Section 210 of the Charter provides:

§ 210. Investigations.

Council shall have the power, by ordinance, to make or cause to be made, investigations, audits, or studies of the City and the conduct of any City department, office or agency, and, for this purpose may retain professional and technical assistance, subpoena witnesses, administer oaths, take testimony, require the production of evidence, and provide funds for such investigation, audit, or study. The subjects of such investigation, audit, or study shall be specifically stated in the authorizing ordinance.

Section 210 clearly vests City Council with the authority to perform “investigations . . . of the City” and of the “conduct of any City department, office or agency.”

1. The Mayor is not a “City Department, Office or Agency.”

The phrase “department, office or agency” as found within the Charter specifically refers to what the Charter calls the “Administration” as found at Article VI. The phrase “department,

office or agency” is found at, without limitation, Charter Secs. 308(g),³ 406(2),⁴ 601(b),⁵ 603,⁶ 604,⁷ 702(a)⁸ and 705.⁹ Although City Council may investigate departments, offices and agencies, it may not use this power to investigate the Mayor¹⁰ directly, or singularly. The Board concludes that the Mayor is not a department, office or agency, nor is the Mayor the head of a department, office or agency. However, the interactions of a department, office or agency with the Mayor could be the proper subject of an investigation under this grant of power.

2. *Investigations “of the City” include investigations of the Mayor.*

Charter Sec. 210 also affords City Council the power to “make or cause to be made, investigations, audits, or studies of the City.” An investigation of the Mayor would fall under this catch-all allowing investigations “of the City.” The Charter provides for no limitation here, and, the language being clear and free of any ambiguity, the Board will not provide a limitation and will rely on the language used in the Charter: City Council may “make or cause to be made, investigations . . . of the City.”

³ Providing that a power and duty of the Mayor is to direct and supervise the administration of all departments, office and agencies of the City, except as otherwise provided by the Charter or by law.

⁴ Providing that the Managing Director shall have the power and duty to direct and supervise the administration of all departments, office and agencies of the City, except as otherwise provided by the Charter or by law.

⁵ Providing for the Administrative Code, as enacted by City Council, setting forth a specific enumeration of departments, offices, and agencies and the division of powers and responsibilities among them.

⁶ Providing for the Mayor’s power to appoint or remove the head of any department, office and agency.

⁷ Providing for the qualifications of the heads of departments, office and agencies.

⁸ Defining the exempt service, and clearly defining “all elected officials” as a different category of the exempt service than “heads of departments, offices, and agencies.”

⁹ Providing for compensation of the heads of departments, offices and agencies.

¹⁰ And the Office of Mayor.

Charter Section 301 vests in the Mayor all executive, administrative and law enforcement powers of the City. Further, Section 301 provides the Mayor the right to control, and the duty to be accountable for, the executive branch of City government. The Mayor bears tremendous power and authority, and responsibilities and obligations, as the elected executive of the City. The Board concludes that an investigation “of the City” includes an investigation of the Mayor.¹¹

Further, Charter Section 211(c) provides City Council with the “power to remove any elected official or appointed Department Head from office if the Council finds such person guilty of malfeasance in office.” With the Charter providing Council the power to remove any elected official, including the Mayor, after a finding of malfeasance in office, that grant of power certainly supports the conclusion that City Council also has the power to investigate any elected official, including the Mayor. The power to make a finding necessarily infers the power to investigate.

B. Charter Sec. 210 – Power to Retain a Professional

1. Retention of Professionals is Permitted.

Regarding investigations, City Council “for this purpose may retain professional and technical assistance.” Charter Sec. 210. The language of the Charter is clear and without ambiguity. The Board concludes that in connection with investigations permitted under Charter Sec. 210, City Council may retain professional and technical assistance.

2. Regulations for Purchasing of Professional Services are Not Applicable.

Slifko next asks whether or not City Council’s retention of “professional and technical assistance” is subject to the City’s Purchasing Policy and Procedure, Sec. 5-809 (“Purchasing

¹¹ And the Office of Mayor.

Policy”). For the following reasons, the Board concludes, definitively, that professional services¹² retained by City Council are not subject to Section 5-809 of the Administrative Code.

a) The Charter is Supreme.

As the Board just recently stated in *In re: Jurisdiction of the Board of Ethics*, (Adv. Op. 41, August 28, 2018) at pp. 4-5:

Charter, Amendment I, Section 1(a) guarantees the supremacy of the Charter, under all circumstances, regardless of the method of circumvention, whether active or passive, express or implied, the Charter is the supreme document of City government. *See In re: Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 5. A policy created that is not Charter compliant is unenforceable. *In re: Communications Director and Media and Communications Policy* (Adv. Op. 3, Nov. 22, 2006) at 5. The Administrative Code may not waive, supersede or modify provision of the Charter. *In re: Purchasing Policy* (Adv. Op. 30, Nov. 14, 2012) at 2. The Charter has the same force and effect as a statute passed by the General Assembly, *see In re: Addison*, 385 Pa. 48, 57, 122 A.2d 272, 275-76 (1956) and *Gans v. City of Philadelphia*, 403 A.2d 168, 170 (Pa. Cmwlth. 1979), while the Administrative Code is a mere ordinance.

With certainty, the Board concludes that a mere ordinance, i.e., the Purchasing Policy, does not change, conflict with or supersede the Charter in any way whatsoever. The Charter permits City Council to retain professional and technical assistance and the Purchasing Policy cannot restrict that grant from the Charter.

b) The Purchasing Policy is Inapplicable to City Council.

Second, in answering Slifko’s request, as a simple matter of applicability, neither the Purchasing Policy generally, nor, more specifically, the regulations for Purchasing of

¹² Although asked by Slifko only within the context of Charter Sec. 210, the Board answers this question broadly, as the issue of the Purchasing Policy and Procedure, Sec. 5-809, and Sec. 8, concerning Purchasing of Professional Services, have much wider application than just the context of services retained by City Council under Charter Sec. 210.

Professional Services found at Sec. 8 of 5-809 of the Administrative Code, have any application at all to City Council. The language is clear, both 5-809, Sec. 1.02 and Sec. 8.02 are applicable only to “all departments, divisions, offices or agencies.” City Council is not any of these, therefore these purchasing regulations are inapplicable to Council.

The Purchasing Policy generally, and specifically, Section 8, Purchasing of Professional Services, applies only to “all departments, divisions, offices or agencies.” This is the plain, clear, unambiguous language of the City’s own ordinance. This is not a question of interpretation, but of plain, obvious, clear and unambiguous meaning. The Board concludes that it would be a violation of the Administrative Code for the City’s Administration, or any official or employee within the Administration, to impose the requirements of Section 5-809, and specifically, Section 8 of 5-809, upon any other body, official, or person, in connection with the City of Reading, other than “departments, divisions, offices or agencies.”¹³

¹³ See, *supra*, for a discussion and citation on the meaning of “departments, offices and agencies.” The term “division” is unused within the Charter and appears undefined in the Administrative Code, however, by context, it is clear to the Board that the term “division” means a division of the City, department, office or agency. As discussed, herein, departments, offices and agencies mean the City’s Administration, and the Board concludes so does the term “division.”

C. Charter Sec. 210 – City Council’s Power to Investigate is Not Unlimited

The Charter, Amendment I, Section 2(b), relating to jurisdiction, provides: “The Charter Board shall hear and decide all cases alleging violations of the Charter or Administrative Code.” This jurisdiction of the Charter Board is exclusive and the Board is empowered to “conduct investigations” concerning violations of the Charter and Administrative Code. *Id.* Although Charter Section 210 empowers City Council to undertake certain investigations and grants powers of removal under Section 211, Council should be mindful of the later Charter Amendment I, Section 2(b), in the context of violations of the Charter and Administrative Code.

III. OPINION OF THE BOARD

It is the Opinion of the Board that:

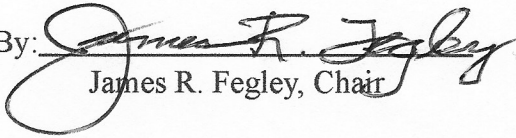
- A. Section 210 vests City Council with the authority to perform “investigations . . . of the City” and the “conduct of any City department, office or agency.”
- B. The Mayor is not a department, office or agency, nor is the Mayor the head of a department, office or agency.
- C. The interactions of a department, office or agency with the Mayor could be the proper subject of an investigation under this grant of power.
- D. An investigation “of the City” includes an investigation of the Mayor.
- E. In connection with investigations permitted under Charter Sec. 210, City Council may retain professional and technical assistance.
- F. Professional services retained by City Council are not subject to Section 5-809 of the Administrative Code.

G. A mere ordinance, i.e., the Purchasing Policy, does not change or supersede the Charter in any way whatsoever.

H. The Purchasing Policy generally, and specifically, Section 8, Purchasing of Professional Services, applies only to “all departments, divisions, offices or agencies.”

I. A violation of the Administrative Code would occur if the City’s Administration, or any official or employee within the Administration, imposed the requirements of Section 5-809, and specifically, Section 8 of 5-809, upon any other body, official, or person, in connection with the City of Reading, other than “departments, divisions, offices or agencies.”

CITY OF READING CHARTER BOARD

By: 
James R. Fegley, Chair

Date: 10-30-18

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