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Via U.S. Mail & Email: johnslifko.cc@gmail.com

John Slifko, Councilor
City of Reading, District 6
919 North 3rd Street
Reading, PA 19601

Re: Advisory Opinion No. 40

Dear Councilor Slifko:

Enclosed please find Advisory Opinion No. 40, relating to the eligibility of candidates for Charter elective office. This is in response to your request received March 22, 2018. The Board voted and announced its opinion at a regularly scheduled meeting held April 17, 2018.

Very truly yours,

Eric B. Smith

EBS/mrh

Enclosure

cc: Mr. James Fegley, Chair, City of Reading Charter Board (via email w/ enc.)
 Elizabeth Magovern, Esquire, Investigative Officer (via email w/ enc.)
 Jan "JD" Krafczek, City Solicitor (via email w/ enc.)
 Linda A. Kelleher CMC, City Clerk (via email w/ enc.)
 Mayor Wally Scott, City of Reading (via U.S. mail w/ enc.)

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IN RE	Eligibility of Candidates	:	Request Received March 22, 2018
		:	
		:	
		:	Advisory Opinion No. 40

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 EXTENT THAT THE QUESTIONS
PRESENTED TO THE BOARD ARE IDENTICAL TO THE
FACTUAL ISSUES 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.*

IN RE	Eligibility of Candidates	:	Request Received March 22, 2018
		:	
		:	
		:	Advisory Opinion No. 40

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

- (1) If an individual is seeking the office of City Councilor for a particular District in the City of Reading, and that individual has not resided continuously in that District for a period of one year prior to the primary election for that office, is that individual eligible to hold the office of City Councilor for that particular District?
- (2) Under Charter Section 202, does the phrase “eligible to hold the office” mean that the requirements of this Section are pre-requisites to the actual holding of the office, and as such, can be determined and adjudicated before an individual is actually sworn in as City Councilor? In other words, is a determination of eligibility under Section 202 ripe for adjudication before the individual is sworn in and actually holding office?

¹ 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 serving upon the Charter Review Commission.

Pertinent to Slifko's Request, the Board has, since its inception, addressed the residency of sitting members of City Council, as well as eligibility of candidates for appointment to vacancies within City Council and for the office of President of Council.² Further, in the last year, three investigations were commenced, Investigation Nos. 48, 49 and 50, each of which concerned eligibility to serve as a City Councilor, where the candidate, or sitting Councilor, allegedly did not reside within the district for which he or she sought or obtained office.³ In two of those circumstances, the Board's Investigative Officer dismissed the complaints.⁴

In addressing the Request, the Board will answer two further questions, in addition to the two questions posed by Slifko, as follows: 1) from what moment is a *candidate* for City Council,⁵ or any other Charter elective office,⁶ required to meet the Charter's eligibility requirements for the office the candidate seeks? and 2) is a candidate, as hereafter defined, for a Charter elective office within the jurisdiction of the Board as it concerns compliance with the Charter's eligibility requirements?

² *In re: Investigation of Councilman Angel F. Figueroa*, Investigation No. 1 (Feb. 25, 2006); *In re: Filling the Vacancy of the Office of City Council President* (Adv. Op. No. 26 & 27, Dec. 29, 2011); *In re: Eligibility Under Charter § 202* (Adv. Op. No. 37, Sept. 10, 2015).

³ The Board is without further information regarding these complaints, other than the basic violation of the Charter as alleged and then summarized by the Investigative Officer. Identifying information within a Charter Board complaint is confidential. Ord. No. 46-2005, Charter Board Ordinance, § V(C), *as amended*.

⁴ The Investigative Officer dismissed Investigations No. 48 and 49. The complainant withdrew the complaint filed in Investigation No. 50.

⁵ Charter § 202.

⁶ As to the office of President of Council, Charter § 202. As to the office of Mayor, Charter § 302. As to the office of City Auditor, Charter § 502.

II. DISCUSSION

A. Eligibility for Office

1. Eligible Defined

The term “eligible” here takes on significance and an understanding of its meaning is imperative. The Board finds the first definition of “eligible”⁷ applicable here:

Eligible: 1. a. *qualified to participate or be chosen* (eligible to retire).

The definition of “eligible” clarifies that the Charter’s eligibility requirements apply both before an election to those who must be qualified to *participate or be chosen* in the election, and to the ultimate office holder after an election, to those who must maintain those qualifications of the office attained to *remain eligible*.

2. Eligibility under the Charter

Eligibility to serve as a City Councilor, and for the office of President of Council, are found in the Charter at section 202. Section 202 provides:

Only qualified voters of the City who have resided continuously in the City one year prior to the date of the primary election for that office shall be eligible to hold the office of president of council.
Only qualified voters of the City who have resided in the district which they are to represent continuously one year prior to the date of the primary election for that office shall be eligible to hold the office of council member.

The president of council must retain residency in the City during his or her term of office. District council members must retain residence in the district of the City from which they were elected, during their term of office.

⁷ “Eligible.” Merriam-Webster.com. Merriam-Webster, n.d. Web. 7 Apr. 2018.

Summarized, section 202 requires that, to be eligible serve as a City Councilor, one must: a) be a qualified voter of the City,⁸ b) reside in the district which they are to represent,⁹ c) continuously, d) for one year prior to the date of the primary election for that office.

The offices of Mayor and City Auditor each have similar eligibility requirements. *See* Charter §§ 303 *and* 502. Regarding the office of Mayor, section 303 provides:

“The *candidate* for Mayor shall be a registered voter of the City who shall have resided in the City continuously for at least one year immediately preceding the primary election in which the Mayor seeks office. The Mayor shall continue to reside in the City throughout the term of office.”

(italics added). Eligibility for the office of City Auditor requires that:

The *candidate* for City Auditor shall be a registered voter of the City who shall have resided in the City continuously for at least one year immediately preceding the primary election in which the City Auditor seeks office. The City Auditor shall continue to reside in the City throughout the term of office. In addition, the City Auditor must have a Bachelors Degree in Business Administration, Municipal Government, Accounting, Management or a related field and be a CPA with a minimum of five (5) years experience in business administration, accounting, management or municipal government.

(italics added).

3. Only those who are eligible may be candidates for election.

The Charter expressly requires that candidates for the offices of Mayor and City Auditor meet the eligibility requirements for each respective office. However, the Charter is silent on whether or not the eligibility requirements for City Councilors and the office of President of Council as stated in Section 202 also apply to *candidates*. The silence of the Charter here does

⁸ See *In re Proposed Ordinance for Initiative and Referendum Process* (Adv. Op. 5, March 6, 2007) at 6; Adv. Op. Nos. 26 & 27, *supra.*, citing PA Const. Art. 7, § 1, defining “qualified voter.”

⁹ The only requirement for the office of President of Council that is different than a City Councilor, is that to be eligible for the office of President of Council one must reside continuously within the City for one year prior to the date of the primary election for that office, instead of within any particular district. Charter § 202.

not prohibit the Board from interpreting Section 202 so as to apply its eligibility requirements to candidates for those offices.

As the Charter Board Ordinance requires,¹⁰ the Board turns to the rules of statutory construction to assist in the interpretation of the Charter.¹¹ As is oft recited law, “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921(a). “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” *Id.* at § 1921(b). But, “[w]hen the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

(1) The occasion and necessity for the statute.

* * *

(3) The mischief to be remedied.

(4) The object to be attained.

* * *

(6) The consequences of a particular interpretation.

* * *

(8) Legislative and administrative interpretations of such statute.”

Id. at § 1921(c). Here, the Board also finds helpful the statutory construction tool of *pari materia*, which allows statutes or parts of statutes to be read together as one statute when they

¹⁰ Ord. No. 46-2005, at § IV, relating to standards of interpretation.

¹¹ 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), and should likewise be interpreted as any other statute, utilizing the rules of statutory construction. Home rule charters are interpreted under the rules of statutory construction. *City Council, City of Reading v. Eppihimer*, 835 A.2d 883, 887 (Pa. Commw. Ct. 2003).

relate to the same persons or things or to the same class of persons or things. *Id.* at § 1932. The Board presumes that the drafters of the Charter did “not intend a result that is absurd, impossible of execution or unreasonable.” 1 Pa.C.S. § 1922.

First, there is no language within the Charter that would limit the applicability of the residency requirements for City Council or the office of President of Council to those who have only been *elected* to those offices, and not be applicable to *candidates* for those offices. The Charter is also clear that its residency requirements are part of eligibility for office, not something to be met *after* a candidate is duly elected or seated. As an example, Charter Sec. 207 specifically requires that to be eligible¹² to fill a vacancy in City Council or the office of President of Council, that the person to fill the vacancy must be, in the case of appointment, a “qualified resident” or, in the case of election, a “qualified person.”¹³ In either case, to be *eligible* for appointment, or to be elected, to fill a vacancy the candidate must meet the residency requirements of Charter § 202.¹⁴ *In Re Eligibility Under Charter § 202* (Adv. Op. 37, Sep. 28, 2015) at 5.

¹² The Board addressed eligibility for a person seeking to be elected or appointed to fill a vacancy in the office of President of Council and City Council in *In Re Eligibility Under Charter § 202* (Adv. Op. 37, Sep. 28, 2015) and concluded that eligibility requirements must be met by a candidate for appointment or election to a vacant office.

¹³ Charter Sec. 207 uses the phrase “*qualified person*” when referring to those who seek to be *elected* to fill a vacancy, and uses the phrase “*qualified resident*” when referring to those who may be *appointed* to fill a vacancy. The Board determines that these phrases hold the same meaning in this context, that is, as explained in Advisory Opinion No. 37 at p. 3, *supra.*, to be eligible to be appointed or elected to fill a vacancy in the City Council or the office of President of Council, one must be a: “1) qualified voter of the City, 2) who has resided in the City, or, as the case may be for City Councilor, within the district they are to represent, 3) continuously, 4) for one year prior to the date of the primary election for that office.” Whether elected, or appointed, to fill a vacancy, the requirements are the same, and consequently, the terms “qualified person” and “qualified resident” as used in Section 207 must have the same meaning.

¹⁴ Also, in the case of the offices of Mayor or City Auditor, the applicable eligibility requirements of the Charter must be met, whether a candidate seeks to be appointed, or elected to the office.

Second, reading Section 202 in *pari materia* with Sections 207, 303 and 502, governing the same class of persons, and the same thing, that is, candidates seeking to hold a Charter elective office, leads the Board to the inescapable conclusion that the drafters of the Charter intended Section 202 to apply to candidates as expressly stated in Sections 303 and 502, governing the offices of for Mayor and City Auditor, respectively. Coming to a different conclusion would be an absurd result, and would insert a specific exclusion (i.e., the exclusion of candidates) from Section 202 eligibility requirements where no such exclusion now exists.

Finally, by definition, to be “eligible” means to “be qualified to participate or be chosen.”¹⁵ This definition encompasses those not yet chosen, that is, not yet elected, i.e. candidates.

The Board has already reached this same conclusion as it relates to appointments¹⁶ and elections¹⁷ in the context of a vacancy in City Council and the office of President of Council, and applies the same result now to all candidates for election to all Charter elective offices. A candidate for any Charter elective office must comply with the Charter’s eligibility requirements for the office sought.

B. Jurisdiction of the Board and Ripeness

The Board next must consider: 1) at what moment must a candidate be Charter compliant by meeting all eligibility requirements for a Charter elective office; 2) is a candidate that must be compliant with the Charter’s eligibility requirements within the jurisdiction of the

¹⁵ See footnote 7.

¹⁶ Adv. Op. 26 & 27, *supra*.

¹⁷ Adv. Op. 37, *supra*.

Board; and 3) when does the question of a candidates' compliance with the eligibility requirements become ripe for a determination by the Board.

1. Candidates Who Must be Eligible

The Election Code states at 25 P.S. § 2602(a):

“The word ‘CANDIDATE’ shall, unless the context otherwise requires, include both candidates for nomination and election.”

(capitalization in original). A candidate must file a nominating petition and with that petition, an affidavit. 25 P.S. §§ 2867, 2870. The affidavit must contain ten items, the following three of which are of interest to the Board in addressing the Request:

- a) his residence, with street and number, if any, and his post-office address;
- (b) his election district, giving city, borough, town or township;
* * *
- (d) that he is eligible for such office;
* * *

See 25 P.S. § 2870. The filing of the section 2870 affidavit stating residence, election district, and that the candidate is eligible for the office he or she seeks, is the triggering event for the moment a candidate for any Charter elective office must be Charter compliant and have met the eligibility requirements. It is at that point that a mere office seeker becomes more, becoming a candidate and, as a result, required to meet the eligibility requirements of the Charter.

2. Jurisdiction and Ripeness

a. *Jurisdiction*

The Board must next answer whether or not the Board has jurisdiction over a candidate¹⁸ for a Charter elective office, or, does jurisdiction by the Board not attach until the ineligible candidate becomes an ineligible elected official. To fully answer this question, the Board must look to the jurisdiction given to it by the Charter, Amendment I.

The jurisdiction of the Board is found within the Charter at Amendment I, § 2(b).

Section 2(b) provides in pertinent part:

b.) Jurisdiction. The Charter Board shall hear and decide all cases alleging violations of the Charter or Administrative Code, except that its jurisdiction shall not extend to any case arising under the Ethics Code or the Personnel Code. Insofar as permitted by state law the Board shall issue binding opinions, impose penalties and administrative fines, refer cases for prosecution, and conduct investigations on its own initiative and on referral or complaint. . . .

The Charter mandates certain eligibility requirements of candidates, expressly for the offices of Mayor and City Auditor, and by interpretation of the Board for City Councilor and the office of the President of Council. *See discussion, supra*. Also, importantly, the citizens of the City of Reading have rights under the Charter, and , for example, City Council has an obligation to protect and promote those rights.

Charter § 1101 specifically provides:

The Council shall protect and promote the right of the citizens of the City of Reading to participate in a positive and constructive manner in the government of the City. Any citizen of the City may participate in the government of the City by:

¹⁸ “Candidate” shall mean a candidate that filed the necessary nominating petition and affidavits required by the Election Code.

(a) Seeking elective office of the City as prescribed by this Charter and voting for candidates for elective office;

* * *

The Board's broad jurisdiction to "hear and decide all cases alleging violations of the Charter" encompasses alleged Charter violations by candidates seeking to hold Charter elective offices. Ineligible candidates and ineligible elected officials not only violate the Charter's eligibility requirements, but also violate the right of the citizenry to participate in their own government as guaranteed by Charter § 1101. Citizens have the right to seek office as eligible candidates, or serve as eligible elected officials; or vote for eligible candidates; or be governed by eligible elected officials. The Charter Board Ordinance allows the Board to hear and decide such cases either through complaint, or through its own independent investigatory powers. Ord. No. 46-2005, § III(A), *generally, and* III(A)(3), (4), (5).

b. *Ripeness*

The doctrine of ripeness is a judicially-created principle which mandates the presence of an actual controversy. When determining whether a matter is ripe for judicial review, courts "generally consider whether the issues are adequately developed and the hardships that the parties will suffer if review is delayed." *Bayada Nurses, Inc. v. Pa. Dept. of Labor & Indus.*, 607 Pa. 527, 542, 8 A.3d 866, 874 (2010) *citing* *Twp. of Derry v. Pa. Dept. of Labor & Indus.*, 593 Pa. 480, 485, 932 A.2d 56, 60 (2007).

Ripeness is, of course, different than a question of jurisdiction. A matter may well be within the jurisdiction of the Board, but, nevertheless, the issues presented may not be adequately developed and lacking of an actual controversy, thereby not being ripe for judicial review. The Board has determined that it possesses jurisdiction over candidates for Charter elective offices and now must determine if a controversy concerning whether or not such a

candidate meets the Charter's eligibility requirements, is ripe for determination before the candidate is elected to a particular office.

As the eligibility requirements for the Charter's elective offices are applicable to candidates,¹⁹ as discussed herein, there is an actual controversy at the time when a mere office seeker become a candidate. The candidate need not be ineligible and elected in order for that dispute to be ripe for determination. The Board determines that to be an absurd result, and not intended by the drafters of the Charter.

III. OPINION OF THE BOARD

The Board is of the opinion that:

A. Candidates must be eligible.

A candidate who seeks to be elected to City Council, or the offices of President of Council, Mayor or City Auditor, must comply with the specific eligibility requirements for the particular office the candidate seeks to hold as mandated by the Charter, or, otherwise, is not eligible to be elected to, or to hold, the office sought.

B. Whether a candidate meets eligibility requirements is ripe for decision.

The question of whether or not the eligibility requirements of Charter Section 202, and of all other Charter elective offices, is ripe for determination as to a candidate before the candidate is duly elected or seated in office, from the time of filing of nominating petitions and affidavits by the candidate as required under the Election Code..

C. Candidates must be eligible at the time they become candidates.

The time upon which a candidate for any Charter elective office is required to meet the eligibility requirements of the Charter for the office the candidate seeks begins upon the filing of nominating petitions and affidavits required under the Election Code, legally making the mere office seeker a candidate for office.

¹⁹ See footnote 9.

D. The Board has jurisdiction over candidates.

A candidate for any Charter elective office is within the jurisdiction of the Board as it pertains to eligibility for office upon the filing of nominating petitions and affidavits by the candidate as required under the Election Code.

CITY OF READING CHARTER BOARD

By: 
James R. Fegley, Chair

Date: 04.17.18

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 EXTENT THAT THE QUESTIONS PRESENTED TO THE BOARD ARE IDENTICAL TO THE FACTUAL ISSUES 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.