THE CHARTER BOARD OF THE CITY OF READING

IN RE	Independence of the Employees of the City Auditor	: : : :	Request Received September 25, 2019 Advisory Opinion No. 49

ADVISORY OPINION
NOTICE

THE "OPINION OF THE BOARD" SECTION OF AN ADVISORY OPINION MAY BE USED AS A DEFENSE ONLY BY THE REQUESTOR OF THE ADVISORY OPINION IN ANY SUBSEQUENT INVESTIGATION OR PROSECUTION ONLY TO THE EXENT 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.

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ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By email dated September 25, 2019,[1] Maria M. Rodriguez, the City's Interim City Auditor, ("Auditor") requested an advisory opinion ("Request") from the City of Reading Charter Board ("Board"). The Auditor, referencing the Board's Advisory Opinion No. 46[2] and No. 47,[3] states in her Request:

> *. . . When the Charter Board drafted the response to my question regarding the elected Auditor's ability to retain legal counsel - Advisory Opinion 46 (attached), the response opines that the elected Auditor is an independent office that is legally enforceable and must provide the free and full oversight of the City's finances.*
>
> *[When the Charter Board] responded to my question [in Advisory Opinion No. 47] about the Administration's role in the selection and hiring of my employees, you pointed to Personnel Code 70-305 which provides this selection and hiring authority to the Administrative Services Director and Department. I find this concerning and believe this would interfere with the independence of the Auditor's Office.*
>
> *If the employee working under the direction of the Elected Auditor is selected and hired by the Administration, I believe that this person would feel an allegiance and requirement to take direction from that person working for the Administration, which would compromise the independence of the Auditor's Office to review the financial activities of the Administration. While I recognize*

[1] The email enclosed a letter from the Interim City Auditor dated September 23, 2019.

[2] *In re: City Auditor's Right to Independent Counsel*, Adv. Op. 46 (Aug. 22, 2019).

[3] *In re: City Auditor's Hiring Responsibilities*, Adv. Op. 47 (Sept. 17, 2019).

> *that the Charter provides the mayor and managing director with the authority to hire/fire employees, other than the City Clerk. I believe that as the Charter defines the need for the Auditor's Office to be independent, having staff selected by the administration would be a conflict and place great limitations on that independence.*

Auditor's letter dated September 23, 2019

The Board, in addressing the Request, notes that there is not a discernable question presented, however, the Board understands the issue the Auditor presents, and rephrases the Auditor's statement above, to the question: "*In light of the Charter, Article V, and Advisory Opinion No. 46, does the hiring of the Auditor's personnel pursuant to the Personnel Code 70-305, which assigns this selection and hiring authority to the Administrative Services Director, violate the Charter required independence of the Auditor?*"

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. Bill No. 46-2005, Charter Board Ordinance, § VI.

II. <u>DISCUSSION</u>

The Request contrasts the required independence of the Auditor, as extended to independent counsel in appropriate circumstances,[4] with the practicalities of routine hiring (and termination) of non-exempt employees under the Personnel Code. It is not within the Board's purview to examine every non-exempt employee hiring protocol within the City, and the Board

[4] *See* Advisory Opinion No. 46, *supra.*, Footnote 2.

will do so only in the narrowest of circumstances relevant to a Charter Board investigation, or when the issue is clear and unambiguous in connection with an advisory opinion request.[5]

Could a non-exempt employee hired under the Personnel Code, Sec. 70-305, serving within the Auditor's office, compromise the Auditor's independence to such a degree that a Charter violation might occur? The Board believes the answer is "yes." However, not every hire is suspect, and until independence is compromised, the Board and Auditor are left only to speculate.

It appears to the Board that should an employee within the Office of the Auditor be hired through the Administrative Services Department with the intent to, knowledge of, or purpose to, compromise the Auditor's independence, or in fact does compromise the Auditor's independence, then the Auditor's non-exclusive remedies include the filing of a Charter Board complaint[6] and other internal remedies as may be found in the City's Charter, Administrative Code and/or Personnel Code to enforce its independence, or other appropriate action.

III. CONCLUSION AND OPINION OF THE BOARD

It is the Opinion of the Board that:

The City's Personnel Code, Part 3, Sec. 70-305, relating to selection of employees, as applied to the Auditor, does not, automatically on its face, compromise the Charter-required independence of the Auditor. If the Auditor's independence is compromised in the application of Section 70-305 to the Auditor, in the hiring of employees for the Office of the City Auditor,

[5] 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 *and* Advisory Opinion No. 47, *supra.*, at 6, note 3.

[6] https://www.readingpa.gov/content/charter-board-complaint-form (accessed October 13, 2019).

the Auditor's non-exclusive remedies include the filing of a Charter Board complaint and other internal remedies as may be found in the City's Charter, Administrative Code and/or Personnel Code to enforce its independence, and other appropriate action.

CITY OF READING CHARTER BOARD

By: James R. Fegley, Chair

Date: October 22, 2019

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