

IN RE Appointment to the : Request Received October 11, 2019
Charter Review Commission :
:
: Advisory Opinion No. 50

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 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.

THE CHARTER BOARD OF THE CITY OF READING

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ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By email dated October 11, 2019, Mr. Earnest Schlegel (“Schlegel”) requested an advisory opinion (“Request”) from the City of Reading Charter Board (“Board”). Schlegel serves as an appointed member of the City’s Charter Review Commission, pursuant to Section 1203 of the City’s Charter. Schlegel asks: *“Can appointees to the Charter Review Commission serve on other Boards, Authorities and Commissions simultaneously?”*
See Schlegel’s electronic letter dated October 11, 2019.

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. Schlegel has requested an expedited opinion from the Board.

II. DISCUSSION

A. Prospective v. Retrospective.

Schlegel’s Request is also clear that the appointments to the Charter Review Commission (“Commission”) have already occurred. The Board must therefore consider if the Request in fact seeks a prospective advisory opinion, or is instead asking the Board to address a set of facts retrospectively. The Board has been consistent in holding that actual or perceived violations of the Charter or Administrative Code, grounded in events that have already occurred, are not the proper subject of an advisory opinion. Instead, such retrospective questions are to be addressed

by a Charter Board complaint. Nevertheless, the Board has also recognized that certain retrospective questions are capable of repetition, and are therefore the proper subject of an advisory opinion. *See* Adv. Ops. No. 11 (September 24, 2008), No. 12 (January 12, 2009), No. 14 (May 12, 2009), No. 30 (November 14, 2012), No. 31 (April 8, 2013) (comparing retrospective and prospective application), No. 32 (April 19, 2013), No. 36 (Feb. 7, 2014) and No. 41 (August 28, 2018) (addressing retrospective question capable of repetition).

Here, Charter Section 1203 addresses, among other things, the frequency in which the City shall constitute and appoint a Charter Review Commission. Under Section 1203, a Charter Review Commission shall be appointed by City Council and the Mayor “[a]t least every five years, but no sooner than every three years.” Thus, at least every five years, but not sooner than every three years, the question posed by Schlegel in his Request is capable of repetition.

On this basis, the Board determines that the Request appropriately seeks an advisory opinion that, although is retrospective, is also capable of repetition.

B. Charter Sections 1002(c) and 1203.

The Request focuses squarely on the possible conflict between Charter Sections 1002(c) and 1203. Section 1002(c) provides:

(c) Qualifications. As a general rule, members of boards and commissions shall be residents of the City. At the discretion of Council, persons not residents of the City, but who have a significant property or business interest in the City, may be selected to serve. *No person may concurrently serve on more than one authority, board, or commission.*

(emphasis added). Addressing the appointments to the Commission, Section 1203 provides:

§ 1203. Review of Charter.¹

At least every five years, but no sooner than every three years, City Council and the Mayor shall appoint a Charter Review Commission composed of 11 members. To avoid conflict of interest, no elected City official or employee shall serve on

¹ Amended at the November 2014 General Election.

the Charter Review Commission. Nothing herein shall preclude such officials from attending or participating in the actions of the Commission. Seven members of this Commission shall be appointed by City Council and four members shall be appointed by the Mayor. All appointees shall be current residents and registered voters of the City. The Charter Review Commission shall review the current Charter, submit a report to the City Council, the Mayor, and the citizens of the City, within six months of its appointment, and recommend any proposed amendments to the Charter. City Council and the Mayor, by ordinance, shall place all proposed amendments on the ballot no later than the next municipal election. City Council shall provide appropriations for the reasonable expenses incurred by the Charter Review Commission.

Section 1002(c) provides a clear prohibition on serving on more than one authority, board or commission simultaneously, whereas, Section 1203 is silent.

Resolution of this potential conflict is readily addressed as the Board opined in *In re: Application of Charter Art. X to Reading Local Redevelopment Authority* (Adv. Op. 14, May 12, 2009). There the Board began its analysis with the general observation that Article X of the Charter pertains to boards and commissions, and authorities,² established by ordinance of City Council for the purpose of administering City business, and comprised of non-elected citizens who are not employees of the City.

In Advisory Opinion No. 14, the Board developed a four-part test to determine if a board or commission existed as one organized under Charter, Article X. Article X boards and commissions have the following defining characteristics:

- i) They are *citizen* entities, that is, they are composed of non-elected individuals who are not City employees. Charter, §§ 1001(a)(i) and 1002(a).
- ii) They are established by *ordinance*, with a clear statement of the scope of their powers. Charter, § 1001(a)(i).

² “For these purposes, the Board rejects the notion that the mere title of an organization or entity is dispositive of whether or not Article X of the Charter applies to it. Article X of the Charter employs the terms boards and commissions throughout and mentions an “authority” only a single time. The Board considers those terms interchangeable” and will instead look to the substance of the organization at issue, in this case, the Charter Review Commission. *Quoting in part* Adv. Op. 14 at p.5, footnote 9. *See also*, Adv. Op. 48 at footnote 8.

- iii) They are established to *carry out* a specific aspect of City government, that is they are delegated authority by City Council to execute or administer City business within clearly delineated channels of accountability. Charter, § 1001(a)(i).
- iv) They are *established* entities that have an ongoing existence until such time as they are abolished or dissolved by ordinance. They are not entities, in the nature of a task force, which expire of their own accord once their mission is accomplished. Charter, § 1001(a)(i), (ii).

Entities which have these four defining characteristics are Article X boards and commissions. If this test is not satisfied, the board or commission is not subject to the requirements of Article X.

Here, the Charter Review Commission does not meet parts ii), iii) or iv) of the four part test of Advisory Opinion No. 14. The Commission is not created by an ordinance of City Council, it does not execute authority delegated to it by City Council and the Commission's term is not subject to abolition or dissolution by ordinance. *See* Charter Section 1203. Instead, the Commission is created by the Charter, that is, the Commission exists as the result of Section 1203 and not an ordinance, and fulfills duties delegated by the Charter, not City Council, and the Commission's existence ends by the terms of Charter Section 1203, not an ordinance of City Council.

III. CONCLUSION

Because the Commission is not an Article X board or commission the prohibition of Charter Section 1002(c), relating to service on more than one authority, board or commission, is not applicable in making appointments to the Commission.

IV. OPINION OF THE BOARD

It is the Opinion of the Board that:

A. The Charter Review Commission is not a Charter, Article X, board or commission;

B. The Charter Review Commission is governed by Charter Section 1203, not Charter Article X;

C. Neither the Mayor nor City Council are prohibited from appointing members to the Charter Review Commission that simultaneously serve on other Boards, Authorities and Commissions of the City, so long as all other requirements of such appointment under Charter Section 1203 are met.

CITY OF READING CHARTER BOARD

By:


James R. Fegley, Chair

Date: October ~~22~~, 2019

NOTICE

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