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March 26, 2021

VIA EMAIL: linda.kelleher@readingpa.gov
AND FIRST CLASS MAIL

Linda A. Kelleher, CMC, City Clerk
City of Reading
815 Washington Street
Reading, PA 19601

**RE: In Re: Charter §§ 226 and 801
Advisory Opinion No. 54**

Dear Ms. Kelleher:

The Charter Board voted to approve Advisory Opinion No. 54 today. A copy of Advisory Opinion No. 54 is enclosed.

I am requesting on behalf of the Board that the Advisory Opinion be circulated among City Council members and posted on the City's website as is customary. Thank you for your assistance.

Very truly yours,

Eric B. Smith
Solicitor, City of Reading Charter Board

EBS/plp
Enclosure

cc w/enclosure (via email):
City of Reading Charter Board

Thomas J. Timoney
(1927-2010)

John P. Knox
(1927-2015)

Mark E. Weand, Jr.
(1936-2018)

John V. Hasson
(1936-2019)

Δ Member DC Bar
* Member NJ Bar
φ Member NY Bar
Φ Member MD Bar
Ω Member Ohio Bar
† LLM Taxation

IN RE	Charter §§ 226 and 801	:	Request Received February 24, 2021
		:	
		:	
		:	
		:	Advisory Opinion No. 54

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.*

IN RE	Charter §§ 226 and 801	:	Request Received February 24, 2021
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I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

Schlegel asks, in summary, does Charter Amendment § 226, regarding the creation of the office of City Council Solicitor, create a conflict with Charter § 801, relating to the City Solicitor's office?

Bill No. 46-2005, Charter Board Ordinance, § VI.³

³ See Admin. Code § 23-606(C).

II. DISCUSSION

A. Background and Pertinent Charter Provisions

1. Review of Charter and Proposed Amendments

The review of the City's Charter is governed by Charter § 1203 and also by statute.

§ 1203. Review of Charter.⁴

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 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.

Charter § 1203 (pertinent portions *italicized*).

53 Pa.C.S. § 2943, regarding petition for referendum or ordinance proposing amendment, states:

(a) Filing. — A petition containing a proposal for referendum on the question of amending a home rule charter or an optional plan of government signed by electors comprising 10% of the number of electors voting for the office of Governor in the last gubernatorial general election in the municipality *or an ordinance of the municipal governing body proposing amendment of a home rule charter or an optional plan shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election.*

53 Pa.C.S. § 2943(a) (pertinent portion *italicized*).

⁴ Amended by referendum on the ballot during the November 2014 General Election.

2. 2020 Primary Election Referenda

It is against this legislative backdrop that the City placed five referenda on the 2020 Primary Election ballot, including a proposal for a new Charter § 226 to create the office of City Council Solicitor. *See* Bill No. 9-2020, passed by City Council on January 13, 2020, and signed by the Mayor of the City on January 14, 2020. Bill 9-2020 specifically proposed the amendment to the Charter, Article II, which would result from a “YES” vote, as follows:

§ 226. City Council Solicitor

City Council shall appoint a Council Solicitor who shall be a member of the Bar of the Supreme Court of Pennsylvania and experienced in municipal law. The Council Solicitor shall serve as legal advisor to City Council. Council’s Solicitor shall perform professional legal services for City Council. The primary responsibility of the position of Council Solicitor is to advise City Council on questions of law. City Council’s Solicitor shall have his or her own legal secretary to assist in the preparation of all opinions, memorandums, and whatever other correspondence is required in the performance of the Council Solicitor’s duties. Compensation shall be fixed as Council, by budgetary provisions, provides, and who, in all other respects, shall be considered employees of the City.

(hereafter “Amendment”). On June 2, 2020, the majority of primary voters of the City answered the referendum on the proposed Amendment with a “YES” vote.⁵ A simple review of the City’s Charter,⁶ as amended, reveals that, despite passage, and unlike other past Charter amendments, the Amendment has not been codified and included in the body of the Charter. Nevertheless, the Amendment is effective.⁷

⁵ The Berks County certified results showed a “YES” vote of 4,780 and a “NO” vote of 2,259.

⁶ *See* https://codelibrary.amlegal.com/codes/readingpa/latest/reading_pa/0-0-0-6 (accessed March 17, 2021).

⁷ Certainly, any City official seeking to obstruct the implementation of the Amendment, or any of the other Charter amendments adopted at the 2020 primary election, may be in violation of the Charter.

3. Charter Section 801

Charter § 801, an original section of the Charter,⁸ provides:

§ 801. Qualifications and responsibilities.

(a) The Mayor shall appoint, with the approval of Council, a Solicitor who shall be a member of the Bar of the Supreme Court of Pennsylvania and experienced in municipal law. The Solicitor, as Head of the Legal Department, shall serve as chief legal advisor to the Mayor, the Council, and all City departments and agencies; and shall represent the City in all legal proceedings and shall perform such other duties prescribed by law, by this Charter, by the City Administrative Code or action of Council. It is the intent of this Charter that only one person shall be the legal advisor of the City except as may be otherwise required by law.

(b) The Mayor, with the approval of Council, shall have the power, if needed, to engage other temporary Solicitors to represent the City as the need may be. Such appointments shall be temporary and shall be for the purpose of representing the City in specific individual legal matters. Such representation shall be secured by requests for proposal.

This Charter provision provides that the City Solicitor:

1. Shall be the head of the Legal Department;
2. Shall be the chief legal advisor to the Mayor, the Council and all City Departments and Agencies;
3. Shall represent the City in all legal proceedings;
4. Shall perform such other duties prescribed by law, by this Charter, by the City Administrative Code or action of Council.

See Charter § 801(a). Further, without question it was the intent of the Charter, as expressed in this original section 801, that only one person shall be the legal advisor of the City, except as may be otherwise required by law.

⁸ The Charter was submitted to the voters at the general election of 1993, and took effect on the first Monday of January 1996. Charter § 1302.

Of course, this original section 801 is free to be amended, or repealed, in whole or in part.

B. Interpretation of Statutory Amendments

First, it is clear that Home Rule Charters are interpreted in the same manner as statutes. *See City Council of Reading v. Eppihimer*, 835 A.2d 883, 887 (Pa. Commw. Ct. 2003) (citing *Williams v. City of Pittsburgh*, 168, 531 A.2d 42, 44 (Pa. Commw. Ct. 1985)); *Lodge No. 5 of the FOP v. City of Phila.*, 677 A.2d 887, 889 (Pa. Commw. Ct. 1996).

“[S]tatutes which relate to the same persons or things” . . . “must be construed together as one statute.” *Bd. of Revision of Taxes v. City of Philadelphia*, 4 A.3d 610, 622 (Pa. 2010) (citing 1 Pa.C.S. § 1932). If and to the extent to which the relevant statutes are irreconcilable, the legislative act latest in date of final enactment is to prevail. *See* 1 Pa.C.S. §§ 1935, 1936. An amendment to a provision of an act is “construed as merging into the original statute, becom[ing] a part thereof, and replac[ing] the part amended, and the remainder of the original statute and the amendment shall be read together and viewed as one statute passed at one time” 1 Pa.C.S. § 1953. The “portions of the statute which were not altered by the amendment shall be construed as effective from the time of their original enactment” *Id.* The object of statutory construction is to ascertain and effectuate the General Assembly’s intent. *See Bd. of Revision of Taxes*, 4 A.3d at 622. The plain language of a statute is, as a general rule, the best indicator of such legislative intent. *Id.* (citing cases). This general rule is subject to several important qualifications, including the precept that the General Assembly “does not intend a result that is absurd, impossible of execution, or unreasonable.” *Commonwealth v. Shiffler*, 879 A.2d 185, 189-90 (Pa. 2005) (citing 1 Pa.C.S. § 1922(1), (2)).

Where two enactments are irreconcilable, or, as the law also calls it, repugnant, then, only one may exist. The law is:

‘An implied repeal is one which takes place when a new law contains provisions which are contrary to, but do not expressly repeal, those of a former law’: *Kingston Borough v. Kalanosky et al.*, 155 Pa. Superior Ct. 424, 427, 38 A. 2d 393.... ‘an intent to repeal inconsistent provisions of an earlier act may be inferred from the fact that provisions of the two acts are so repugnant and irreconcilable as to render it impossible for both to stand...’: *Commonwealth ex rel. v. Matthews et al.*, 303 Pa. 163, 171, 154 A. 359....

Newton Estate, 47 A.2d 229, 230 (Pa. 1946). Importantly, if there is an irreconcilable conflict between an original statute and a subsequent amendment, the amendment is read to repeal the repugnant language in the original statute. See *United States Steel Co. v. Cnty. of Allegheny*, 86 A.2d 838, 842-43 (Pa. 1952).

C. Interpretation of Section 801 and the Amendment

After amendment of the Charter, of which both sections 226 and 801 are a part, section 801 may now only be read and applied in light of, and taking into account, the Amendment. Section 801 is now modified in its application in a number of respects. First, the City Solicitor is now no longer the chief legal advisor to the City Council. Second, although the City Solicitor may represent the City as an institution,⁹ the City Council is, for all purposes, represented by the City Council Solicitor created by the Amendment. The Amendment does not alter or amend section 801’s intention that “only one person shall be the legal advisor of *the City*.” Charter § 801 (emphasis added). That solicitor representing the City as an institution is the City Solicitor.

⁹ This advisory opinion expressly does not render any opinion on the scope or limitations on the representation of the City as an institution by the City Solicitor’s Office.

However, the City Solicitor does not represent the body of City Council, nor any City Council member. That representation is the responsibility of the City Council Solicitor under the Amendment.

The provisions of Section 801 that are irreconcilable with the Amendment, as set forth above, are repealed by implication, being repugnant to the Amendment. The Amendment provisions do not expressly repeal any part of Section 801, but the recommendation of the 2019-20 Charter Review Commission, Bill 9-2020, and the vote in the 2020 Primary to adopt the Amendment, express a clear intent to repeal these inconsistent provisions of Section 801, as it is impossible for both to stand.

III. CONCLUSION

The Amendment, section 226, is a valid amendment to the City Charter, which must be read together with section 801 and viewed as one statute passed at one time. The portions of section 801 that are irreconcilable with the Amendment are repealed by implication.

IV. OPINION OF THE BOARD

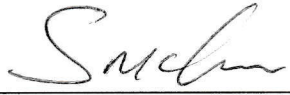
It is the Opinion of the Board that:

- A. The Amendment, section 226, creates the Office of City Council Solicitor;
- B. The Charter, section 801, is repealed by the Amendment, section 226, such that the City Solicitor is no longer a legal advisor to City Council;
- C. The Charter, section 801, is repealed by the Amendment, section 226, such that the City Solicitor does represent the City Council in any capacity; and

D. The City Solicitor remains the legal representative of the City as an institution.¹⁰

The Board renders no further opinion at this time in connection with any other aspect of the Amendment and/or any conflict with section 801.

CITY OF READING CHARTER BOARD

By: 
Shane McFarlane, Chair

Date: March 26, 2021

NOTICE

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¹⁰ *See* footnote 9.