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December 16, 2019

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

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

**RE: In Re: Report of the Charter Review Commission, Charter § 1203
Advisory Opinion No. 52**

Dear Ms. Kelleher:

The Charter Board voted to approve Advisory Opinion No. 52 on Friday, December 13, 2019. A copy of Advisory Opinion No. 52 is enclosed.

I am requesting on behalf of the Board that the Advisory Opinion be circulated among City Council members and Charter Review Commission members and posted on the City's website as is customary.

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

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THE CHARTER BOARD OF THE CITY OF READING

IN RE	Report of the	:	Request Received November 29, 2019
	Charter Review Commission,	:	
	Charter § 1203	:	
		:	Advisory Opinion No. 52

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.

IN RE	Report of the	:	Request Received November 29, 2019
	Charter Review Commission,	:	
	Charter § 1203	:	
		••	Advisory Opinion No. 52

II. DISCUSSION

A. Pertinent Charter and Statutory Provisions

The review of the City's Charter is governed by Charter Section 1203.

§ 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 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.

(pertinent portions *italicized*).

Regarding the ordinance proposing referenda to amend the Charter, 53 Pa.C.S. Sec. 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.*

(pertinent portion *italicized*).

Charter Sec. 1203 provides that all proposed amendments shall be on the ballot no later than the next municipal election. This sets the latest date by which the referenda must be on the ballot. The Charter provides no definition of "municipal election" and the Board determines that phrase is

¹ Amended at the November 2014 General Election.

required to have the meaning afforded it by state law.² 53 Pa.C.S. Sec. 2943 provides for the timing of the filing with the election officials of the ordinance proposing an amendment.

The Commonwealth of Pennsylvania's Election Code defines a "municipal election" as follows:

The municipal election shall be held biennially on the Tuesday next following the first Monday of November in each odd-numbered year. All judges of courts of record of the various judicial districts and counties, and all counties, city, borough, township, ward, school district, poor district and election officers shall be elected at the municipal election. Judges may be elected at the municipal election.

25 P.S. § 2752. Simply, a municipal election is the November election held in odd numbered years.³ All municipal elections are in November, and are not primary elections. Therefore, under the Charter, Sec. 1203, the municipal election in November 2021 would be the latest date by which all proposed amendments must have been on the ballot. This does not preclude the proposed amendments being on the ballot in earlier elections, or even multiple elections. 53 Pa.C.S. Sec. 2943 requires that the ordinance with the proposed amendment must be filed not later than the 13th Tuesday before the next election, whether it be a primary, municipal or general election. Multiple ordinances also appear permitted.

It is clear that it is the timing of the ordinance(s) that dictates at which election the proposed amendments will be balloted, and not the timing of the report.

B. The Charter Review Commission's Report

The language of Charter Section 1203 is clear. Borrowing from the italicized language above, after reviewing the current Charter, "*the Charter Review Commission shall . . . submit a report to the City Council, the Mayor, and the citizens of the City.*" The Commission must do this "*within six months of its appointment, and recommend any proposed amendments to the Charter.*"

² 53 Pa.C.S. Sec. 2962(a)(5), relating to the limitations on the powers of a home rule municipality.

³ See <https://www.votespa.com/About-Elections/Pages/Types%20of%20Elections.aspx> (accessed Dec. 3, 2019).

By ordinance, City Council and the Mayor “*shall place all proposed amendments on the ballot no later than the next municipal election.*”

The plain and unambiguous language of Section 1203 speaks of the submission of “a report,” in the singular. Of course, the Commission in this one report may submit “any proposed amendments to the Charter,” which unambiguously is an unlimited phrase. Also, Section 1203 provides the Commission six months in which to 1) review the current Charter, 2) submit a report, and 3) recommend any proposed amendments to the Charter. Section 1203 does not create a six-month term, rather, Section 1203 provides the Commission six months in which to complete its work. There is a difference.

Upon reviewing the current Charter and making the submission of a report containing the proposed amendments to the Charter, the Commission’s charge is complete, whether or not six months has elapsed.⁴ Section 1203 of the Charter speaks of submitting a single report containing “any” proposed amendments the Commission might have. The Commission is free to finish its work early, and to submit its single report in less than six months, in the hope of reaching the 2020 primary election ballot. It is important to again state that it is the timing of the ordinance(s) that dictates at which election the matter will be placed on the ballot, not the timing of the Commission’s report.⁵

C. Veto by the Mayor is not Permitted

The language of the Charter is clear: “City Council and the Mayor, by ordinance, *shall* place all proposed amendments on the ballot no later than the next municipal election. The Mayor may not

⁴ Nevertheless, six months is the maximum time permitted for the Commission to perform the tasks assigned by Charter Section 1203.

⁵ Although the Commission may only issue a single report, the content of that report is within its control, presuming it is of the proper subject matter. The Commission is free to recommend in its report to City Council that the proposed Charter amendments be placed on different ballots at different elections. Such a recommendation to City Council would not change the latest date for the proposed amendments to be on the ballot, “the next municipal election,” in this case the election in November 2021.

veto an ordinance containing the proposed amendments, nor may City Council refuse to adopt such an ordinance after receiving the report.⁶ As the Board stated in Advisory Opinion No. 34:

“City Council must adopt, and the Mayor must sign, a referendum by ordinance in such form and in such time so that the Berks County Board of Elections will place the Commission's proposed amendments on the ballot. To opine otherwise would render amendment of the Charter through the Charter review process speculative, meaningless and perhaps futile. The law will not require a futile, absurd or impossible act.”

In re: Referendum Ordinance on the Amendment of the Charter, Adv. Op. 34 (Dec. 4, 2013).

III. OPINION OF THE BOARD

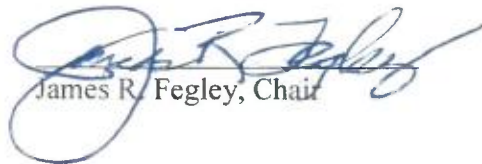
It is the Opinion of the Board that:

A. Within six months of its appointment, the Charter Review Commission is empowered to submit “a report” containing “any proposed amendments to the Charter.”

B. The Mayor has no veto power over the ordinance adopting the proposed Charter amendments reported by the Charter Review Commission.

CITY OF READING CHARTER BOARD

By:


James R. Fegley, Chair

Date: December 13, 2019

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⁶ However, given the latest election date found in Charter Sec. 1203, being the municipal election of 2021, and the timing of 53 Pa.C.S. Sec. 2943 after an ordinance is adopted, being the 13th Tuesday prior to the next primary, municipal or general election, conceivably, regardless of when the Commission submits its report, the ordinance need not be adopted any earlier than near the 13th Tuesday prior to the municipal election of 2021.