

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Eligibility Under : Request Received August 28, 2015
Charter § 202 :
: Advisory Opinion No. 37

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By email dated August 28, 2015, Mr. William Cinfici (“Cinfici”),¹ requested an advisory opinion from the Charter Board of the City of Reading (“Board”). The questions posed by Cinfici involve the nominating process undertaken for a November 3, 2015 Special Election to fill a vacancy in the Office of City Council President.² A vacancy occurred upon the August 5, 2015 resignation of former City Council President Francis G. Acosta. The deadline for submitting nomination papers for the Special Election is reported by Cinfici to be September 14, 2015.³ Specifically, Cinfici’s request concerns the residency component of a candidate’s eligibility⁴ to fill the vacancy created by Mr. Acosta’s resignation as provided for under Charter §§ 202 and 207.

The substantive issue to be addressed in answering Cinfici’s request is whether, in the context of filling a vacancy, the phrase “primary election for that office” as stated in Charter § 202 refers to a) the primary election held in the year of the most recent municipal election in

¹ Pursuant to Section VI of the Charter Board Ordinance, only public officials or city employees may request an advisory opinion from the Board. Section VI of the Ordinance also provides that the Board may render an advisory opinion “should a majority of the Board deem it in the public interest.” Since the term “public official” is undefined in the Charter, and without addressing the question of whether or not Cinfici is a public official by virtue of his position as Chair of the Republican City Committee, it is the opinion of the Board that rendering an advisory opinion on the issue posited by Cinfici is in the public interest.

² Charter §§ 201, 202, 203, 207.

³ The Board may issue an advisory opinion no later than thirty (30) days after receipt of the request, but as expeditiously as possible. Ord. No. 46-2005, Charter Board Ordinance, § VI.

⁴ The eligibility to fill a vacancy in the Office of City Council President or as a member of City Council are both prescribed by Charter §§ 202 and 207. Here, the Board’s advisory opinion is equally applicable to both offices.

which the vote occurred to fill the Office of City Council President,⁵ or b) the primary election held in the year of the special election to fill the vacancy in the Office of City Council President.⁶

Determining the meaning of the phrase “primary election for that office” is crucial for ascertaining the one year residency period required by Charter § 202, which in turn describes the qualifications for those filling vacancies under Section 207.

The Board answers Cinfici’s request for an advisory opinion as follows.

II. DISCUSSION

A. Applicable Charter Provisions

Charter § 207 provides:

Section 207. Filling of Vacancies.

A vacancy in the Council shall be filled by a majority vote of the remaining members of Council. If the Council fails to act within thirty (30) days following the occurrence of the vacancy the Court of Common Pleas of Berks County shall, upon petition of three (3) members of Council or ten (10) qualified voters of the City, fill the vacancy in such office by the appointment of a qualified resident of the City. In the case of a vacated district seat the person appointed to fill that seat either by Council itself or the Court of Common Pleas must be a resident of the district. The individual appointed will remain in office until the first Monday in January following the next municipal election. *At such municipal election a qualified person shall be elected to serve from the first Monday of January following the election for the remainder of the term of the person originally elected to such office or, if such term would otherwise expire on the first Monday following, for a new full term.*

(emphasis added). Filling a vacancy, requires an examination of eligibility under Charter § 202.

⁵ Making the primary election held in this particular instance in May 2013 and the municipal election held in November 2013.

⁶ Cinfici confirms, and the Board takes notice, that no primary election occurred with respect to the vacancy in the Office of City Council President created by Mr. Acosta’s resignation in as much as the vacancy did not arise until August 2015. The special election in this particular instance is to be held in November 2015, without a primary election, as the candidates for that office are, in this instance, nominated by the Democratic and Republican Committees, respectively.

Charter § 202 provides:

Section 202. Eligibility.

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.

For purposes of this advisory opinion, although Cinfici addresses the provisions regarding eligibility for the Office of City Council President, the Board's advisory opinion is also applicable to vacancies arising in City Council.

B. Analysis

Charter § 207 requires that any person seeking to be elected to fill a vacancy in the Office of City Council President, or a seat as a City Council member, must be a "qualified person." Charter § 202, regarding eligibility, provides the qualifications for the offices of City Council President and City Council member. To qualify for those offices, a person must be a 1) qualified voter of the City, 2) who has resided in the City,⁷ 3) continuously, 4) for one year prior to the date of the primary election for that office.

Cinfici's specifically inquires whether the primary election stated in Section 202 refers the primary election immediately preceding the most recent municipal election for that office, or

⁷ Or, as the case may be for City Council members, reside in the district which they are to represent.

the primary election⁸ for the later special election to fill the vacancy. The Board's focus is on the phrase "for that office." The relevant primary election is the election "for that office."

It is apparent to the Board that the phrase "primary election for that office" could only mean the primary election immediately preceding the municipal election at which the voters of Reading most recently filled the office in question. When an elected official vacates an office, a vacancy of "that office" occurs. Charter § 205. The office continues on, despite being vacant. *See generally* 25 P.S. § 2602(s) ("The words 'public office' shall include every public office to which persons can be elected by a vote of the electors under the laws of this State."). In other words, offices are created by law and persons occupy those offices. Upon a resignation or other vacancy, the office remains, whether or not filled.

This leaves the Board with only one conclusion: the relevant primary election in this instance is the 2013 primary election. Thus, a candidate to fill a vacancy in the Office of City Council President, or as a City Council member, must have resided continuously within the City of Reading (or, in the case of Council, in the district) for one year prior to the primary election immediately preceding the municipal election at which the voters of Reading most recently filled the office in question. The candidates for a vacancy at a special election must have been eligible to hold the office in question at the time of the "primary election for that office," here, the 2013 primary election.

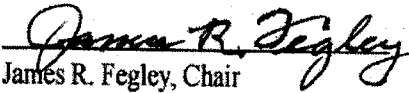
III. OPINION OF THE BOARD

The Board is of the opinion that the phrase "primary election for that office" as stated in Charter § 202 refers to the primary election held in the year of the municipal election on which the vote occurred for the Office of City Council President, or City Council member, as the case

⁸ As pointed out by Cinfici in his request, in this particular instance, in 2015 there was no primary election to fill the vacancy in the Office of City Council President, making the May 2013 primary the last "primary election for that office." Mr. Acosta resigned in August 2015, after the May 2015 primary election.

may be. Residency for any candidate in a special election to fill such a vacancy must be continuous and within the City of Reading, or within the district, as the case may be, for one year prior to the particular primary election described in the foregoing sentence.

CITY OF READING CHARTER BOARD

By: 
James R. Fegley, Chair

Date: September 10, 2015