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June 20, 2019

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

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

RE: Advisory Opinion 45

Dear Ms. Kelleher:

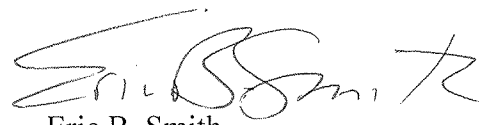
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Charles J. Weiss
Bernard F. Siergiej

Enclosed is a copy of Advisory Opinion No. 45 rendered by the City of Reading Charter Board Tuesday night. The Board concluded that the matter is inappropriate to be addressed as an advisory opinion and instead is more properly addressed as a Charter Board complaint.

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

Thank you.

Very truly yours,



Eric B. Smith

Thomas J. Timoney
(1927-2010)

John P. Knox
(1927-2015)

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

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EBS/plp
Enclosure

THE CHARTER BOARD OF THE CITY OF READING

IN RE	Eligibility of District 3 Council	:	Request Received June 3, 2019
	Person	:	
		:	
		:	Advisory Opinion No. 45

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.

THE CHARTER BOARD OF THE CITY OF READING

IN RE Eligibility of District 3 Council : Request Received June 3, 2019
 Person :
 :
 : Advisory Opinion No. 45

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter dated June 3, 2019 City Councilor Brian Twyman (“Twyman”) (D. District 3) requested an advisory opinion (“Request”) from the City of Reading Charter Board (“Board”). The Request asks the Board “to give an Advisory Opinion as to the status of the eligibility of the current Democratic elect for District 3 Council person.” That person is Melissa Ventura (“Ventura”).

In support of the Request, Twyman attached various documents, such as Ventura’s nominating petition received by Berks County Election Services on March 12, 2019 (“Petition”), Ventura’s candidate’s affidavit filed on that same date (“Affidavit”), and various (but not all) filings from the matter captioned *In re: the Democratic Nomination Petition of Melissa Ventura: Election Matter For City of Reading Council seat District 3, 4 year term*, Berks Co. CCP No. 19-3154, including a petition to set aside the Petition and Affidavit.

Within the petition filed with the Berks County Court of Common Pleas are various allegations concerning the Charter Board’s Advisory Opinion No. 40, *In re: Eligibility of Candidates*, (April 17, 2018) which Twyman contends support his position that Ventura’s Petition and Affidavit must be stricken.¹

¹ With his Request, Twyman did not include the Berks County Court of Common Pleas Order entered March 25, 2019, which dismissed Twyman’s petition to set aside because of untimely service.

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. Ord. No. 46-2005, Charter Board Ordinance, § VI. Twyman specifically requested that the Board provide an “expedited response.”

II. DISCUSSION

As the Board regularly cautions, it is constrained to not answer retrospective questions under the guise of an advisory opinion. The Board will answer as an advisory opinion only those questions that are prospective in application. Also, actual or perceived violations of the Charter or Administrative Code, grounded in actual events that have occurred, are not the proper subject of an advisory opinion. *See* Adv. Ops. No. 11 (September 24, 2018), 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) *and* No. 36 (February 7, 2014).

Here, the context of this advisory opinion request is very specific and addresses a *current* matter, i.e. an ongoing candidacy for the District 3 City Council seat by an allegedly ‘unqualified’ candidate. Twyman references matters that have already come to pass and are ongoing, in fact, he instituted an action in the Court of Common Pleas in an attempt to stop Ms. Ventura’s candidacy. Under the facts stated by Twyman in the Request, Ventura is the candidate for the District 3 seat and is currently not qualified to be a candidate under the Charter.

All of this has come to pass; it has occurred and is ongoing. Under these circumstances, the Request addresses a retrospective matter, not a prospective matter.

Finding that this advisory opinion request addresses a specific retrospective matter, which has already occurred and is ongoing, the Board declines to issue an advisory opinion. The

remedy for an actual or perceived violation of the Charter or Administrative Code *is the filing of a Charter Board complaint*, not a request for an advisory opinion. In other words, if Twyman believes Ventura did, or is now, violating the Charter, then his remedy is to file a Charter Board complaint, not to seek an advisory opinion.

II. OPINION OF THE BOARD

It is the Opinion of the Board that the Request addresses a retrospective matter, not one that is prospective, therefore, the Board declines to issue an advisory opinion. Twyman may obtain a blank copy of a Charter Board complaint from the Board's website, <https://www.readingpa.gov/content/charter-board>, and if he desires to do so, may file a Charter Board complaint.

CITY OF READING CHARTER BOARD

By: 
James R. Fegley, Chair

Date: *June 18, 2019*

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