

City of Reading Charter Board

Annual Report 2012

<u>Summary of Board Activity</u>	2006	2007	2008	2009	2010	2011	2012
<u>Education</u>							
Orientation Sessions Conducted	4	1	0	0	2	0	2
BCTV Programs	5	6	5	6	1	0	1
Community Presentations	-	-	-	-	1	-	-
<u>Advisory</u>							
Requests Received	4	2	6	7	3	5	3
Opinions Issued	4	2	4	7	3	5	3
<u>Enforcement</u>							
Complaints Received	10	9	4	3	5	0	4
Complaints Withdrawn	0	0	1	0	0	0	0
Complaints Dismissed	4	7	2	0	2	0	2
Findings report Issued	3	0	2	0	3	1	2
Evidentiary Hearings	1	0	1	0	0	0	2
Final Orders Issued	2	1	1	0	1	3	1
Rulings on Appeal	1	1	1	1	1	1	1
<u>Miscellaneous Litigation</u>							
	-	-	-	-	-	-	1 ¹
<u>Other</u>							
Right to Know Requests	-	-	-	-	-	-	0
Right to Know Appeals	-	-	-	-	-	-	0

I. Education

The Board conducted the first session of a two part comprehensive education for newly elected City Council members, city employees, and members of the general public. The session, conducted December 4, 2012, dealt with Home Rule Law and The Charter, with emphasis on the executive branch of city government. A second session was scheduled for February 5, 2013.

The League of Women Voters hosted a one hour television program on local cable (BCTV) on July 17, 2012 which featured the Charter Board. This program reviewed Board history, function, rulings, and advisory opinions, with concentration on Board activity over the past year. The Board has also has continued to collaboratively update a web access site where Board information, forms, Advisory Opinions, and Final Orders can be accessed by City officials and the public.

¹ Declaratory Judgment Action

II. Advisory

The Board rendered three advisory opinions concerning matters of home rule and enforcement of the City Charter.

Advisory Opinion #28 – Issued February 22, 2012 Regarding Communications Director and Media Policy

Councilor Donna Reed in a letter dated January 23, 2012 requested an advisory opinion regarding whether or not the Media and Communications Policy issued January 20, 2012 by Mayor Vaughn D. Spencer was enforceable, when the Communications Director was not an ordinance approved position. The Board answered in the negative, opining that a position in City government does not exist if it is not listed on the Annual Position Ordinance and any such position, including the position of Communications Director, created contrary to the Charter and Administrative Code would be null, void and of no effect. Additionally, any policy created which must be enforced by a person holding a City employment position that is not Charter or Administrative Code compliant, nor approved by ordinance, such policies, including the Media Policy, would be unenforceable.

Advisory Opinion #29 – Issued July 17, 2012 Regarding Chief of Police and Civil Service Status

The Board was asked by Police Chief William Heim whether Charter Section 603(b) prohibited him from obtaining civil service status and, if granted such status, would this constrain the Mayor's ability to terminate without cause. After providing analysis of Charter Sections 603, 702 and 705, the Board opined that the Chief of Police, while serving as the Chief, cannot be entitled to civil service status, or the benefits thereof, and that such status is incompatible with that office.

Advisory Opinion #30 – Issued November 14, 2012 Regarding City Purchasing Policy

The Board was asked a series of four questions by Councilors Reed and Corcoran regarding purchasing and contractual matters relating to purchased services. In response to questions #1 and #2 the Board opined respectively that provisions of the Administrative Code may not waive, supersede, or otherwise modify Charter provisions and that according to the Charter, only the Managing Director may waive the need to follow the RFP process for purchasing professional services. The Board declined to opine regarding the substantive matters of question #3, noting that it is constrained from answering under the guise of an Advisory Opinion retrospective questions that apply to actual or perceived violations of the Charter or Administrative Code. Finally, the Board noted that the procedural question regarding an active Charter Board complaint should be directed to the Investigative Officer.

III. Enforcement

Investigation #31– Re: Investigation of Reading City Council Final Order Issued April 25, 2011

Case History:

The Board ordered public censure of City Council for violating the Charter by adopting Bill #24-2007, which impermissibly expands the role of City Clerk, constitutes an impermissible attempt to amend the initiative and referendum process of Charter Article XI, and violates Charter Section 1204. The Board further ordered that City Council, the City Clerk, and the office of the City Clerk shall cease and desist from enforcing any aspect of the Ordinance, including ceasing to refuse to accept or certify any paper, petition or signature presented for filing or submission which is in compliance with Charter Article XI, and refusing to act in accordance with Charter Article XI as applied to the initiative and referendum process. The Board further specified that Ordinance 24-2007 shall be treated as null, void, and stricken for all purposes.

On May 25, 2011 City Council, represented by their Solicitor Charles Younger, filed a petition for review before the Berks County Court of Common Pleas. The case was briefed by both parties and heard for argument on December 5, 2011 before Judge Jeffrey Sprecher.

On December 9, 2011 Judge Sprecher denied the appeal and sustained the Final Order of the Charter Board in full.

Activity during 2012:

On January 6, 2012 City Council, represented by their Solicitor Charles Younger, filed a notice of appeal to the Commonwealth Court. The City's notice of appeal was followed by a filing of concise statement of errors complained on appeal dated January 25, 2012. On February 17, 2012, Judge Sprecher issued an opinion to deny the appeal. The case was briefed by both parties and heard for argument in Harrisburg on September 10, 2012 before Judges Leadbetter, Simpson and Covey. On October 23, 2012 a memorandum opinion by Judge Covey denied the appeal of City Council and sustained the Final Opinion and Order of the Charter Board in its entirety. No petition for allocatur was filed to the Pennsylvania Supreme Court.

On December 19, 2012 the Board, through Solicitor Eric Smith, sent correspondence to the City Solicitor requesting confirmation that the Administrative Code (Chapter 1, Part 11) would be reinstated to the form and context that existed prior to the adoption of Ordinance #24-2007, and issued a reminder that the City should cease and desist all specific actions as outlined in the Final Opinion and Order of Investigation #31.

Investigation #32– Final Order Issued October 24, 2012

On November 21, 2012 the subject, through counsel, filed a petition for review of the Final Order to the Berks County Court of Common Pleas. Hearing date remained pending as of the end of the year.

Declaratory Judgment – Filed November 26, 2012

A complaint seeking Declaratory Judgment was filed in Berks County Court November 26, 2012. The Plaintiff, Mayor Vaughn Spencer named The City of Reading Charter Board and each individual member in their official capacity as Charter Board members as defendants. This action (Docket #12-24830) seeks declarations including:

- a) The Charter Board's Opinion #28 is erroneous and conflicts and is inconsistent with the Charter and is void;
- b) The Charter Board's Opinion #28 is otherwise being applied and relied upon erroneously and impermissibly in a precedential, non-advisory fashion by the Charter Board, by its agents and by other City officials;
- c) It is not a violation of the Charter for the Mayor to hire employees in any job position as he deems necessary to effectively operate the City government even absent an identification of each such employee's job position in the annual budget or annual position ordinance and/or without receiving prior approval of Council, except to the extent that the Charter expressly provides otherwise in Sections 400(a), 501, 603, 607, and 801.

IV. Administrative Issues:

a) Membership

- The Board received with regret the resignation of member Barry Lloyd effective January 30, 2012. The Board noted the excellent service of Mr. Lloyd and accepted his resignation with regret. Mr. Lloyds seat remained vacant through the remainder of 2012.
- Board member John Slifko was reappointed to a five year term ending April 26, 2017.
- Bill # 39-2012 was passed by City Council, rescinding Bill #59-2010 which failed to conform to the Charter provisions of Amendment I regarding the process of removal for Charter Board members. The Board had advised that the Ordinance should be immediately rescinded or amended to conform to the Charter.

b) Staffing

- In February 2012 the Board agreed by common consensus to re-issue an RFP for the position of Investigative Officer. Following protracted conversation with the city purchasing department, an initial RFP was issued April 17, 2012. The initial RFP was however fatally flawed and inconsistent with language the Board had proposed for the document. Following public retractions, the RFP was reissued and an opening conference was conducted June 5, 2012. Application review and ranking of candidates was conducted June 19, 2012, and candidates were interviewed July 3, 2012. On July 17, 2012, the Board unanimously voted to retain Elizabeth McGovern, Esq. of Hartman Shurr as Charter Board Investigative Officer.

c) Budget

- The Board maintained an ongoing dialogue with City Council regarding the Charter Board budget, approved at \$50,000 for 2012 with expenditures through December 2012 approximating \$126,269.64.

d) Projects

- The Board, with legal assistance from High Swartz, continued its work on the Charter annotation project. The Board's goal is to incorporate and reference all Charter relevant case law and Advisory Opinions. Work started during the summer of 2011 and continues through the present.
- In culminating the Boards efforts for full compliance with the provisions of the Pennsylvania Sunshine Act and Right to Know Law, the Board formally adopted the City of Reading Charter Board Right to Know Law Policy and Procedure. The policy, adopted March 6, 2012 was posted on the Charter Board web site March 19, 2012. Ms. Gibson continues as the Open Records Officer for the Charter Board.

Respectfully submitted,
Susan J. Gibson, Chair
City of Reading Charter Board