

City of Reading Charter Board
Annual Report 2014

<u>Summary of Board Activity</u>	2006	2007	2008	2009	2010	2011	2012	2013	2014
<u>Education</u>									
Orientation Sessions Conducted	4	1	0	0	2	0	2	1	0
BCTV Programs	5	6	5	6	1	0	1	0	1
Community Presentations	-	-	-	-	1	-	-	-	-
<u>Advisory</u>									
Requests Received	4	2	6	7	3	5	3	5	1
Opinions Issued	4	2	4	7	3	5	3	4	1
<u>Enforcement</u>									
Complaints Received	10	9	4	3	5	0	4	6	3
Complaints Withdrawn	0	0	1	0	0	0	0	1	0
Complaints Dismissed	4	7	2	0	2	0	2	2	3
Findings report Issued	3	0	2	0	3	1	2	1	1
Evidentiary Hearings	1	0	1	0	0	0	2	0	1
Final Orders Issued	2	1	1	0	1	3	1	0	2
Rulings on Appeal	1	1	1	1	1	1	1	2	2
<u>Miscellaneous Litigation</u>	-	-	-	-	-	-	1 ¹	1 ²	1 ³
<u>Other</u>									
Right to Know Requests	-	-	-	-	-	-	0	3	5
Right to Know Appeals	-	-	-	-	-	-	0	2	0

I. Education

The Board conducted an update to the public on BCTV on February 18, 2014. The hour long program focused on the annual report of Board activities for 2013. Additionally, the Charter Board was asked to meet with the sitting Charter Review Commission on September 18, 2014. The session focused on a review of the history and role of the Charter Board, including major activities since its inception.

¹ Declaratory Judgment Action

² Declaratory Judgment Action (ongoing)

³ Declaratory Judgment Action (concluded)

II. Advisory

The Board rendered one advisory opinion concerning matters of home rule and enforcement of the City Charter.

Advisory Opinion #35 – Issued February 5, 2014 Regarding the Filling of Vacancies under Charter Sections 304 and 505

City Clerk Linda Kelleher in a letter dated November 21, 2013 requested an advisory opinion requesting that the Board clarify what Charter provisions, if any, apply to filling a vacancy in the office of Mayor and City Auditor. The Board opined that the Charter is silent as to the timing of these appointments by City Council; however any potential appointee must possess the qualifications and eligibility criteria in accordance with Charter Sections 302 and 504. Lastly, an affirmative vote of a simple majority of a quorum of City Council must be had to fill the vacancies.

III. Enforcement

Investigation #32– Final Order Issued October 24, 2012

Case History:

In response to a complaint received March 23, 2012, an evidentiary hearing was conducted September 24, 2012. By Final Opinion and Order dated October 24, 2012, the Board ordered administrative fines and public censure of Mayor Vaughn Spencer, substantially holding that the Mayor violated the Charter and Administrative Code by : 1) employing a practice to hire four full-time employees under the guise of being part-time employees, and not having those employees first appear on an amended or revised budget and position ordinance, 2) failing to execute, enforce and obey the ordinances of the City, specifically, Administrative Code §§ 1-122(1)(E), 1-122(1)(b), 1-186(3)(G) and 1-186(9)(c)(2)(d) and, 3) failing to ensure that all provisions of the Charter and acts of City Council, subject to enforcement by the Managing Director, are faithfully executed by the Managing Director. On November 21, 2012 the Mayor, through counsel from Duane Morris LLP, filed a petition for review of the Final Order to the Berks County Court of Common Pleas. Lastly, by order of the Court dated November 27, 2012, all documents filed by the parties in this action, and the entire record before the Charter Board was mandated to be kept and maintained under seal.

Activity during 2013

On or around May 2, 2013, the Mayor, by joint stipulation, waived his rights of confidentiality under the Charter Board Ordinance regarding Investigation No. 32, and by Order of Judge Timothy Rowley, all records and proceedings were unsealed on May 10, 2013. The case was briefed by both parties and heard for argument on June 20, 2013 before Judge Timothy Rowley. On July 16, 2013 Judge Rowley reversed and vacated the Final Opinion and Order of the Charter Board. The Board appealed to the Commonwealth Court on August 14, 2013. On August 22, 2013, through its Solicitor Eric Smith, the Board submitted a Concise Statement of Matters

Complained of on Appeal. On October 1, 2013, the Board voted to retain attorney Kevin McKeon as Special Counsel. In late October 2013, through counsel, the Mayor filed an application to quash the appeal, alleging that the Charter Board lacked standing before the Court. Argument for the application to quash was heard telephonically on November 1, 2013. Commonwealth Court Judge Robert Simpson opined on November 4, 2013 that action on the application would be deferred, and would be argued, on its merits along with other issues raised on appeal. At the end of 2013, the case remained on appeal to the Commonwealth Court.

Conclusion of case - 2014

The case was argued before Commonwealth Court Judges Leavitt, Brobson and Covey on May 13, 2014. The motion to quash was denied, as the court noted the Charter Board had direct and substantial interest in the appeal, and therefore had standing before the court. However, the prior trial court ruling of July 13, 2013 was affirmed. The Charter Board issued a press release concerning these outcomes on September 9, 2014. Neither side sought allocatur with the Pennsylvania Supreme Court.

Investigation #34 – Final Order Issued January 18, 2013

Case History:

In response to a complaint received June 18, 2012, an evidentiary hearing was conducted December 19, 2012.

Activity during 2013

By final Opinion and Order dated January 18, 2013, the Board ordered both administrative and punitive fines, as well as public censure of Mayor Vaughn Spencer, substantially holding that the Mayor violated the Charter and Administrative Code by: 1) combining and exercising the powers of the Offices of Mayor and Managing Director as related to matters of employment, contracts for professional services, and the transfer of funds and 2) electing to combine the power, person and the office of the Mayor and the Managing Director instead of appointing a Temporary Managing Director with Council approval. The Mayor, through counsel from Duane Morris LLP, filed a petition for review of the Final Order to the Berks County Court of Common Pleas on February 15, 2013. The petition for review was accompanied by a joint stipulation to file and maintain the case under seal.

The case was briefed by both parties and heard for argument on September 16, 2013 before Judge Timothy Rowley. On September 17, 2013 Judge Rowley reversed and vacated the Final Opinion and Order of the Charter Board. The Board appealed to the Commonwealth Court. In October, through its Solicitor, Eric Smith, the Board submitted a Concise Statement of Matters Complained of on Appeal. Also, in October 2013, through counsel, the Mayor filed an application to quash, alleging that the Charter Board lacked standing before the Court. Argument for the application to quash was heard telephonically on November 1, 2013. Commonwealth Court Judge Robert Simpson opined on November 4, 2013 that action on the application would be deferred, and would be argued, on its merits along with other issues raised on appeal. On November 8, 2013, through its Solicitor Eric Smith, the Board submitted a

Concise Statement of Matters Complained of on Appeal. At the end of 2013, the case remained on appeal to the Commonwealth Court, and the trial court record remained under seal.

Conclusion of Case – 2014

The case was argued before Commonwealth Court Judges Leavitt, Brobson and Covey on May 13, 2014. The motion to quash was denied, as the court noted the Charter Board had direct and substantial interest in the appeal, and therefore had standing before the court. However, the prior trial court ruling of September 17, 2013 was affirmed. The Charter Board issued a press release concerning these outcomes on September 9, 2014. Neither side sought allocatur with the Pennsylvania Supreme Court.

Investigation #39 – Final Order Issued March 6, 2014

In response to a complaint received July 18, 2013 an evidentiary hearing was convened January 7, 2014 for the express purpose of reviewing and approving a stipulated administrative settlement. The settlement, as addressed within the Final Opinion and Order dated March 6, 2014, imposed a penalty of admonition on City Council for violation of Charter Section 213. The Order notes that the practice of imposing a 5:00 pm registration deadline for citizen participation at Council meetings is unreasonable and violates Charter Section 213. The settlement required the amendment of Ordinance 43-2012, Policy and Procedures of Council, to reflect these findings.

Investigation #44 – Final Order Issued October 14, 2014

In response to a complaint received August 15, 2014, a Final Opinion and Order was issued October 14, 2014, finding that while the subject, Aaron Thomas, did violate Charter Board Ordinance Sections 23-605.C.1, relating to confidentiality of board information, that said provisions of the ordinance are unconstitutional and unenforceable.

IV. Miscellaneous Litigation

Declaratory Judgment – Filed November 26, 2012

Case History

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) sought declarations including: 1) the Charter Board's Opinion #28 is erroneous and conflicts and is inconsistent with the Charter and is void; 2) 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; and 3) 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.

Action during 2013

On April 12, 2013 a demand letter was sent to the Mayor requesting dismissal of the declaratory judgment action; the Mayor, through counsel, declined. An amended complaint was subsequently filed in April 2013, followed by preliminary objections of the Board filed on April 23, 2013. The Mayor, through counsel, then filed a second amended complaint on or around May 13, 2013. Preliminary objections raising the same grounds as prior objections were filed by the Board May 30, 2013. The Board again sought dismissal by the Mayor in November 2013; again, the Mayor, through counsel, declined. The Board also successfully sought dismissal of individual members in their official capacity as Charter Board members as defendants. However, at the end of 2013 the action remained ongoing before the Court of Common Pleas.

Action during 2014

A third amended complaint was filed by the Mayor on February 7, 2014. Through stipulation, individual board members were removed from the litigation. Argument was heard before Judge Sprecher August 15, 2014. The action was summarily dismissed with prejudice by order of Judge Sprecher September 16, 2014. No appeals were filed.

V. Other

Right to Know Requests

Request #4 – filed January 7, 2014 (legal fees for Inv.32, 34 & Dec. Action for 2012 & 2013)

Request #5 – filed May 2, 2014 (legal fees for Inv. 32 & 34 from 12/1/13 – 5/2/14)

Request #6 – filed July 15, 2014 (legal fees for Inv. 32 & 34 from 5/1/14 – 7/15/14)

Request #7 – filed September 11, 2014 (legal fees for Dec. Action from Nov. 2012 – 9/11/14)

Request #8 – filed September 11, 2014 (legal fees for Inv. 32 & 34 from 7/2/14 – 9/11/14)

All above requests were filed by Mr. Don Spatz of the Reading Eagle concerning the Board's litigation expense related to Investigations #32 and #34, and the Declaratory Judgment Action as noted. All requests were answered in accordance with the Board Right to Know Policy and Procedure.

VI. Administrative Issues:

a) Membership

- The term of member Elizabeth Stanley expired April 26, 2013. Ms. Stanley completed the application for reappointment which continues to await mayoral approval.
- On September 2, 2014 the Board proceeded with nomination of officers, unanimously electing Board member James Fegley as Chairperson September 3, 2014, and Susan Williams as Vice Chair, also effective September 3, 2014.

b) Staffing

- The Board continued to retain Eric Smith, Esq. of High Swartz as Charter Board Solicitor and Elizabeth McGovern, Esq. of Hartman Shurr as Charter Board Investigative Officer. As previously noted, Kevin McKeon, Esq. was retained October 1, 2013 as Special Counsel for the Commonwealth Court appeals of Investigations #32 and #34.

c) Budget

- The Board maintained an ongoing dialogue with City Council regarding the Charter Board budget, with expenditures through December 2014 approximating \$146,898.88.

d) Projects

- The Board, with legal assistance from High Swartz, began work on a proposed mediation process, which will be added to the Charter Board rules of Administration and Procedure, pending final approval in 2015.

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