

and agencies, apply to the proposed position of Economic Development Manager, where the job responsibilities and salary remain the same as the position of Community Development Director?

The Board answers this question in the affirmative.

III. DISCUSSION

A. The Charter and Administrative and Personnel Codes

Section 603(a) of the Charter provides that only the Mayor may remove the head of any department. Section 702 of the Charter provides, in summary, that all elected officials, officers and employees of the City shall be a member of either the exempt or the career service. Section 702(a) lists the composition of the exempt service, which includes the heads of departments, offices, and agencies immediately under the direction and supervision of the City's Managing Director.¹ Charter at § 702(a)(iii). All other officers and employees shall be members of the career service. Charter at § 702(b). The Charter is clear that all heads of departments, offices and agencies need not be residents of the City at the time of appointment, but after appointment shall reside in the City. Residency is required within twelve (12) months of being appointed. Charter at § 706.

The definitions section of Chapter C of the City's Administrative Code defines department directors as follows:

DEPARTMENT DIRECTOR – any person employed by the City of Reading as the Finance Director, Managing Director, Public Works Director, Director of Human Resources, Chief of Police, Chief of the Department of Fire and Rescue Services, Director of Community Development or City Solicitor. A department director shall also include any such person who is employed by the City of Reading as the acting director of any of the aforementioned departments for a period of more than 6 months.

¹ Others comprising the exempt service are elected officials, the Managing Director and City Solicitor, one clerk or secretary for each of the full-time elected City officials and the heads of each City department, the City Clerk, the members of authorities, boards and commissions, and temporary, part-time, or seasonal employees. Charter at § 702(a)(i), (ii), (iv), (v), (vi), (vii).

Administrative Code at § 1-133. The administrative service of the City of Reading shall be under the Managing Director and shall be comprised of the various departments, including the Department of Community Development, and the directors of each department. Administrative Code at § 1-181. As with the Charter, the Administrative Code provides that all Department Directors shall be appointed by the Mayor and operate under the Managing Director's direction and supervision. Administrative Code at § 1-183. Furthermore, Section 1-189 of the Administrative Code provides that the Department of Community Development "shall be headed by a Director who shall be responsible to the managing director for the performance of the function of the department."

Finally, Section 1-207 of the Personnel Code provides that all employees hired by the City of Reading after the effective date of the Personnel Code shall become residents of the City within one year of their date of hire.

B. Conclusions of Law

The case of *Bailey v. Zoning Bd. of Adjustment of City of Philadelphia*, 569 Pa. 147, 163-64, 801 A.2d 492, 502 (2002) is instructive on the interpretation of municipal ordinances. *Bailey* provides that, like statutes, the primary objective of interpreting ordinances is to determine the intent of the legislative body that enacted the ordinance. *See* 1 Pa.C.S. § 1921. Where the words in an ordinance are free from all ambiguity, the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit. *See id.*; 1 Pa.C.S. § 1903 (words and phrases in a statute shall be construed in accordance with their common and accepted usage). Alternatively, when the words in an ordinance are not explicit, the legislative body's intent may be ascertained by considering, among other things, the ordinance's goal, the consequences of a particular interpretation of the ordinance, and interpretations of the ordinance by an administrative agency.

See 1 Pa.C.S. § 1921. Furthermore, in determining the proper interpretation of an ordinance, courts and agencies shall also presume that the legislative body "[did] not intend a result that is absurd, impossible of execution or unreasonable." *See* 1 Pa.C.S. § 1922; *County of Allegheny v. Moon Township Municipal Auth.*, 543 Pa. 326, 671 A.2d 662, 666 (1996).

The Charter mandates that the Director of Community Development reside within the City within twelve months of hiring. The Administrative Code mandates the existence of the position of Director of Community Development, and contemplates that whoever fulfills that role must be responsible to, and serve organizationally under, the Managing Director. City Council is powerless to eliminate the position of Director of Community Development without amending the Administrative Code. City Council is further powerless to remove a Director of Community Development; that power is vested solely in the Mayor.²

The Personnel Code plainly states that all employees must reside in the City. However, the Charter goes further and mandates that "heads of departments, offices and agencies" must reside in the City. Under the Charter, "residency" is not required merely due to a specific title, but rather the requirement of residency is placed upon the person charged with responsibility for a particular department, regardless of the precise title. This is clear from the language of Section 706 of the Charter which does not list specific titles subject to residency, rather stating that "all such heads of departments, offices and agencies" shall reside in the city. The proposed position of Economic Development Manager, if encompassing the same responsibilities as Director of Community Development, would remain subject to Charter Section 706.

Merely modifying the title of an individual does not do away with the residency requirement for the position held by that individual, especially where the position's responsibilities and salary remain the same.

² Charter at § 603(a).

City Council may not do indirectly what it cannot do directly. *Macallen Co. v. Commonwealth of Massachusetts*, 279 U.S. 620 (1929) (citing the “well established rule” that what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation); *Frank M. Fairbank v. United States*, 181 U.S. 283 (1901) (citing the same as a “great principle”); *Harrisburg City Pass. Railway Co. v. City of Harrisburg*, 149 Pa. 465, 24 A. 56 (1892) (“It need hardly be remarked that, if the city of Harrisburg cannot directly prevent the exercise of the rights guaranteed to the [Railway] by its [corporate] charter, it cannot accomplish this in an indirect manner.”) Creating a new title for a position, but maintaining the same job responsibilities and salary, and retaining the same person for the position, will not operate to end the residency requirement for the department head of the Department of Community Development.

Any person who remains “in charge” of a Department, immediately under, and responsible to, the Managing Director, shall be considered a Department Director.³ Administrative Code at §§ 1-133, 1-183. Section 1-183(E) further provides that if the position of Department Director is vacant, the Managing Director must appoint a qualified employee from the department to the acting director position “until such time as the Mayor nominates a replacement” Even “acting directors,” after six months, are then considered Department Directors,⁴ and would be subject to the Charter’s residency requirement. Charter at § 706. The Charter and the Administrative Code require, regardless of title, residency for any person having

³ The Administrative Code’s intent to keep the City’s Department Directors accountable, and if possible, their offices not vacant, is demonstrated by Section 1-183, which provides for extensive regulations for acting directors, and for the filling of vacancies.

⁴ Administrative Code at § 1-133.

the responsibilities of Department Director, who reports to the Managing Director and is under the Managing Directors direction and supervision.⁵

IV. OPINION OF THE BOARD

The Opinion of the Board is as follows:

A. In the opinion of the Board, the proposed position of Economic Development Manager, having the same responsibilities and salary as the Director of Community Development, constitutes one and the same office as the Director of Community Development and is subject to the residency requirement of Section 706 of the Charter;

B. The proposed position of Economic Development Manager, if not considered a mere change of title and the equivalent of the Director of Community Development, subject to the same requirements and qualifications, is a career service position under Section 702 of the Charter and is subject to the provisions of the Personnel Code;

C. To be part of the exempt service, the proposed position of Economic Development Manager must be a mere change in title for the position of Director of Community Development, and thus, continues to be subject to the residency requirement of the Charter;

D. The office of Director of Community Development is an office mandated by the Administrative Code and cannot be eliminated merely by amending the 2006 Full Time Position Ordinance;

E. The office of Director of Community Development must not remain vacant, and when it is vacant, the Managing Director must appoint an acting director until the Mayor fills the vacancy;

⁵ Organizationally, the various Department Directors are directly under the Mayor and the Managing Director is beneath the Mayor and above the Departments. Administrative Code at § 1-182.

F. City Council is without power to remove the Director of Community Development from his position, as such power rests only with the Mayor.

CITY OF READING CHARTER BOARD

By: *Susan J. Gibson*
Susan Gibson, Chair

Date: 4/12/2006