

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Necessity of a Vote by : Request Received April 9, 2013
Council to Make :
Appointments to Charter : Advisory Opinion No. 33
Review Commission :

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter dated April 9, 2013 the City Solicitor requested an advisory opinion from the Charter Board of the City of Reading (“Board”). The City Solicitor asks: “May City Council appoint members to a Charter Review Commission (HRC Section 1203) without a vote?” As discussed below, the Board advises that a vote must occur for City Council to appoint members to a Charter Review Commission, in accordance with the City of Reading Home Rule Charter (“Charter”), Section 1203.

II. DISCUSSION

A. Pertinent Sections of the Charter and Administrative Code

City Council may only take official action by ordinance, resolution or motion. Admin. Code § 1-121. An ordinance is defined as law, a rule made by authority or decree, and is legislative. Admin. Code §§ 1-121, 1-122; Charter § 215. A resolution is defined as policy or an expression of opinion. Admin. Code § 1-121. The business of City Council is conducted by acting on motions. Admin. Code § 1-118(2). *See also* Charter § 224. The passage of a motion by Council requires a simple majority vote unless otherwise required by law. Admin. Code § 1-122(9). Rule No. 5 of City Council’s Rules of Procedure state that the “vote upon any motion, resolution or ordinance will be taken by roll call.” Admin. Code § 1-118(2)(E)(1).

Section 1203 of the Charter provides:

Section 1203. Review of Charter.

At least every ten (10) years, except for the initial charter review which shall take place under this provision no sooner than five (5) years but no later than ten (10) years after the effective date of this Charter, City Council and the Mayor shall appoint a Charter Review Commission composed of eleven (11) members, the majority of whom shall not be City officials or employees. Seven (7) members of this Commission shall be appointed by City Council and four (4) members shall be appointed by the Mayor. All appointees shall be current residents and registered voters of the City. The Charter Review Commission shall review the current Charter, submit a report to City Council, the Mayor, and the citizens of the City, within six months of its appointment, and recommend any proposed amendments to the Charter. All proposed amendments shall be placed on the ballot no later than the next municipal election. City Council shall provide appropriations for reasonable expenses incurred by the Charter Review Commission.

(emphasis added). Thus City Council as a body, not individual members of City Council, is charged with making seven (7) appointments to the Charter Review Commission. The Charter Review Commission is not an Article X Board and Commission and is not subject to Charter § 309(b). *See In re Application of Charter Art. X to Reading Local Redevelopment Authority* (Adv. Op. 14, May 12, 2009).

All meetings of City Council are to be open to the public, except for legally authorized executive sessions, and all “action” shall be at a public session. Charter § 212(d), (e).

B. The Requirement of a Vote

As a preliminary matter, City Council, as a body, may only act as provided by the Charter, or other superseding laws or constitutions. As a body, City Council must take a valid vote in order to act. *See generally cases discussing the necessity of a valid vote by a body in order for that body to act, DiGiacinto v. City of Allentown*, 486 Pa. 436, 439, 406 A.2d 520, 522 (1979); *Stoltz v. McConnon*, 473 Pa. 157, 373 A.2d 1096 (1977); *Sutter v. Dutch Church*, 3

Grant 336, 1862 WL 5306 (Pa.) (dissenting opinion); *In re: Lemoyne Borough Councilmen*, 15 Pa. D. 241, 1905 WL 3102, *3-4 (Cumb. Co.). Under Charter § 1203, it is clearly written, and so interpreted by the Charter Board, that it is City Council, the body, which shall make seven (7) appointments to the Charter Review Commission.

The Administrative Code calls for a vote on motions of City Council, with a simple majority carrying in most circumstances. A motion is the only method by which City Council may perform business, and an appointment is not within the definitional context of an ordinance or a resolution.¹ All action by City Council shall be at a public session. The Board reads Charter § 212(d) and (e) to be in unison with the Sunshine Act, 65 Pa.C.S. §§ 701, *et seq.*

The Sunshine Act defines “Official action” as:

- (1) Recommendations made by an agency pursuant to statute, ordinance or executive order.
- (2) The establishment of policy by an agency.
- (3) The decisions on agency business made by an agency.
- (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

65 Pa.C.S. § 703. Of course, under the Sunshine Act, “[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public” 65 Pa.C.S. § 704.

¹ However, “[i]n substance, a resolution is merely the formal expression of the will of the majority of an official body.” *Commonwealth ex rel. Fox v. Chace*, 403 Pa. 117, 122, 168 A.2d 569, 572 (1961) (citing *Scudder v. Smith*, 331 Pa. 165, 200 A. 601 (1938)). The City Solicitor did not request, and the Board does not decide, whether a resolution or a motion as a matter of Council business, is the proper method to effect the appointments called for pursuant to Charter § 1203. The Board only determines that a vote, as official action of City Council, as a body, is required to make the appointments under Charter § 1203, and whether that vote is upon a motion or a resolution is not material to this Advisory Opinion.

Here, the appointment by City Council of members of the Charter Review Commission is “official action,” that is it is a vote taken on “any motion, proposal, resolution, rule, regulation, ordinance, report or order.”²

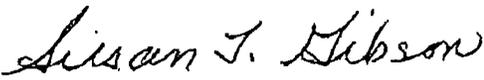
The case of *Morning Call, Inc. v. Bd. of School Dirs. of the Southern Lehigh School Dist.*, 164 Pa. Commw. 263, 642 A.2d 619 (1994) (decided under prior version of the Sunshine Act), is helpful. The Court in *Morning Call* held that a vote constituting official action must be one that commits the agency to a course of conduct. In *Morning Call* that course of conduct (i.e. official action) was the hiring of a specific person as school superintendent and not the reduction of the potential number of candidates.

Here, the course of conduct (i.e. official action) of the City Council is the appointment of members to the Charter Review Commission. City Council’s business is conducted by motion, and motions either pass or fail by vote. A vote on a motion passes by a simple majority. Such an appointment is official action by City Council, and a vote by that body is required.

III. OPINION OF THE BOARD

It is the opinion of the Board that City Council as a body must vote to make the required appointments to the Charter Review Commission under Charter § 1203.

CITY OF READING CHARTER BOARD

By: 
Susan Gibson, Chair

Date: May 9, 2013

² Such an appointment may also be a recommendation “made by an agency pursuant to statute, ordinance or executive order or “a decision on agency business made by an agency,” both of which are also official action. 65 Pa.C.S. § 703.