

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Referendum Ordinance on : Request Received November 5, 2013
 the Amendment of the :
 Charter :
 : Advisory Opinion No. 34
 :
 :

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

On November 5, 2013 the City of Reading Charter Board ("Board") received a request for advisory opinion from the 2013 City of Reading Charter Review Commission via letter dated October 29, 2013. The request involves the final work of the Charter Review Commission ("Commission"), specifically, Charter §§ 1203-04 and the placement of the Commission's recommended Charter amendments on the ballot.¹ The question presented to the Board, as stated by the Commission, is as follows: "If in fact the [Berks County] Board of Elections can only receive a referendum through a duly enacted Ordinance from the City of Reading, is the Mayor and City Council in violation of the City Charter if they fail to enact an ordinance requesting a ballot initiative from the recommendations of the Charter Review Commission Report?"

As discussed below, the Board answers that a failure by City Council and the Mayor to enact such an ordinance would be a violation of the Charter.²

¹ The Commission's request for advisory opinion is stated on the presumption that the Berks County Board of Elections will receive a referendum ballot initiative only by either a duly enacted ordinance from the City of Reading or by a properly executed initiative petition by the residents of the City of Reading. This presumption is in accordance with Pennsylvania law. *See* Pa. Const. Art. IX; 53 Pa.C.S. §§ 2941(a), 2942 and 2943(a).

² For purposes of this Advisory Opinion the Board takes as true the presumption stated in footnote 1.

II. DISCUSSION

A. Preliminary Matter

On behalf of the Commission, Mr. Paul Janssen, its duly appointed facilitator, is making this advisory opinion request. Mr. Janssen asks if he possesses standing to make this request for advisory opinion. The Charter Board Ordinance at Section VI specifically states that “upon written request of any public official . . . the Board may render advisory opinions concerning matters of home rule or enforcement of the City Charter.” The Board is of the opinion that Mr. Janssen, the duly appointed facilitator of the Commission, a body constituted by a resolution of City Council, mandated by Charter § 1203 and with its members appointed by the Mayor and Council, is sufficiently a public official so that he may make a written request for an advisory opinion under Charter Board Ordinance § VI on behalf of the Commission.

B. Pertinent Sections of the Charter

Section 1203 of the Charter, regarding the review of the Charter, provides in pertinent part:

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 the reasonable expenses incurred by the Charter Review Commission. (emphasis added)

Section 1204 of the Charter, regarding amendments, provides as follows:

The Charter shall be amended by:

- (a) The citizens of the City through the initiative process provided by this Charter;
- (b) City Council through referendum; or
- (c) A Charter Review Commission by amendments being placed on the ballot in accordance with Section 1103 of this Charter;
- (d) Proposed amendments by a Charter Review Commission being placed on the ballot in accordance with Section 1203 of this Charter.

Further, the City of Reading's Charter is created under the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2901, *et seq.* Section 2941 provides only two mechanisms for amendment of a charter: 1) initiative and referendum or 2) ordinance of the governing body. *See* 53 Pa.C.S. § 2941(a). The ordinance by the governing body only initiates a referendum,³ thereby causing the proposed amendments to be placed on the ballot. *Id.* at § 2942. *See also* Pa. Const. Art. IX, § 2.

C. Legal Discussion

It is clear that the referendum by City Council mentioned in Charter § 1204(b) is the ordinance provided for under 53 Pa.C.S. §§ 2941(a), 2942 and 2943(a). Here Charter § 1203 creates the Commission with seven (7) members appointed by City Council and four (4)

³ In other words, such an ordinance causing a referendum is not a substantive ordinance establishing local law, it is an ordinance in form but is an act by the governing body to convey the proposed Charter amendment(s) to the county Board of Elections. Under the City of Reading's Charter, at § 1203, such an ordinance is mandatory and is in a sense a ministerial act by the governing body to transmit the Commission's proposed Charter amendments to the Berks County Board of Elections for placement on the ballot. *See* 53 Pa.C.S. § 2944 ("A referendum on the question of the amendment of a home rule charter or an optional plan of government shall be held when the election officials find that the initiative petition or ordinance of the governing body is in proper order.")

members appointed by the Mayor. The Commission has a specific mission, i.e., to review the Charter, submit a report to City Council, the Mayor and the City's citizens within six months of its appointment, and recommend any proposed amendments to the Charter. The proposed Charter amendments "shall be placed on the ballot no later than the next municipal election." *Id.*

Examining the Statutory Construction Act, the Board is reminded:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921(a); *Commonwealth v. McCoy*, 599 Pa. 599, 962 A.2d 1160, 1167–68 (2009). A statute's plain language generally provides the best indication of legislative intent. *McCoy*, 962 A.2d at 1166; *Ephrata Area Sch. Dist. v. County of Lancaster*, 595 Pa. 111, 938 A.2d 264, 271 (2007); *Pennsylvania Fin. Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 664 A.2d 84, 87 (1995) ("Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words."). Only where the words of a statute are not explicit will we resort to other considerations to discern legislative intent. *Ephrata Area Sch. Dist.*, *supra*; see also 1 Pa.C.S. § 1921(c); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 843 A.2d 1223, 1230 (2004). Moreover, in this analysis, "[w]e are not permitted to ignore the language of a statute, nor may we deem any language to be superfluous." *McCoy*, 962 A.2d at 1168. Governing presumptions are that the General Assembly intended the entire statute at issue to be effective and certain, and that the General Assembly does not intend an absurd result or one that is impossible of execution. See 1 Pa.C.S. § 1922(1)-(2).

We are also mindful that statutes which relate to the same persons or things must be construed together as one statute. See 1 Pa.C.S. § 1932. "[S]ections of a statute must be read together and in conjunction with each other, and construed with reference to the entire statute." *Housing Auth. of County of Chester v. Pa. State Civil Serv. Comm'n*, 556 Pa. 621, 730 A.2d 935, 945 (1999). A word or phrase whose meaning is clear when used in one section of a statute will be construed to mean the same thing in another section of the same statute. *Id.* at 946.

Board of Revision of Taxes, City of Philadelphia v. City of Philadelphia, 607 Pa. 104, 124-25, 4

A.3d 610, 622 (2010). Of course, “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.” 1 Pa.C.S. § 1903(a). The Board is also mindful that it must construe the Charter “if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921(a). The term “shall” generally is construed as mandatory. *Chanceford Aviation Properties, LLP v. Chanceford Township Bd. of Supervisors*, 592 Pa. 100, 108, 923 A.2d 1099, 1104 (2007); *Commonwealth v. Ferguson*, 381 Pa. Super. 23, 33-34, 552 A.2d 1075, 1080 (1988), and discussion stated therein, 381 Pa. Super. 23, 30-34, 552 A.2d 1075, 1079-80.

Charter § 1204 provides four methods to amend the Charter. Only two of the four methods, 1204(c) and (d), are specific to the Charter review process by the Commission under Charter § 1203.⁴ Section 1204 (c) authorizes the Commission to place amendments on the ballot in accordance with Charter § 1103⁵ and Section 1204(d) authorizes the placement of the proposed amendments on the ballot by the Commission in accordance with Charter § 1203.⁶ Section 1203(c) is clear that if any amendment is proposed by the Commission under the charter review process, it must be placed on the ballot no later than the next municipal election. Only an ordinance,⁷ in proper form,⁸ can meet the requirements of § 1203, that is that “[a]ll proposed amendments shall be placed on the ballot no later than the next municipal election.”

⁴ The other two methods, a citizens’ initiative petition and City Council “through referendum,” could occur either after the Commission’s report under Charter § 1203 or at any other time.

⁵ Regarding initiative petitions and referendum. This is consistent with 53 Pa.C.S. §§ 2941(a), 2942 and 2943(a).

⁶ Regarding review of the Charter.

⁷ See also Charter § 1204(b), authorizing City Council to amend the Charter through referendum and, according to Pennsylvania law, such a referendum shall take the form of an ordinance. *Accord* 53 Pa.C.S. §§ 2941(a), 2942 and 2943(a).

⁸ The Board presumes for purposes of this Advisory Opinion that the proposed Charter Amendments are of a proper legal subject matter for a home rule charter and that the ordinance is in proper form without substantive or technical error. See for example *Penna. Gaming Ctrl. Bd. v. City Council of Phila.*, 593 Pa. 241, 928 A.2d 1255 (2007) (ordinance allowing ballot question concerning location of gaming facilities invalid as authority on question presented rested solely with the Gaming Control Board).

The Board acknowledges that Charter § 1203 does not specifically reference an “ordinance,” but it clearly requires that the proposed amendments “shall” be placed on the ballot no later than the next municipal election. It is also clear that the Commission submits a report of its proposed amendments to City Council, the Mayor and the citizens of the City. *Id.* Also, Charter § 1204(b) gives City Council the power to amend the Charter by referendum.⁹ Although the citizens have the power to amend the Charter under § 1204(a), it would be an absurd result to hold the general populace of Reading to be in violation of the Charter for not commencing a citizens’ initiative, nor are the citizen’s charged with placing the proposed amendments on the ballot under § 1203.¹⁰ Rather, the Board construes § 1203’s reference to City Council and the Mayor as a directive that a referendum ordinance¹¹ be enacted so that the proposed amendments “shall be placed on the ballot no later than the next municipal election.”

This language of Charter § 1203 is mandatory. None of the methods for the amendment of the Charter under § 1204 can guarantee the placement of all of the Commission’s proposed amendments onto the ballot except for § 1204(d). Indeed, § 1204(c), which allows the Commission to proceed under the initiative process of § 1103, does not guarantee that the Commission’s proposed amendments “shall be placed on the ballot.” Only a referendum by a

⁹ See footnote 7.

¹⁰ The citizens’ power to amend the Charter under § 1204(a) does not derive itself from the Charter review process.

¹¹ See footnote 7.

timely and proper ordinance under § 1204(d) can ensure that the proposed amendments are on the ballot as required. The term “shall” makes it mandatory that the Commission’s proposed amendments be placed on the ballot no later than the next municipal election. Any other interpretation would render this central provision of § 1203 meaningless, for there is no other possible manner of amending the Charter, other than a referendum ordinance, which can ensure that the Commission’s proposed amendments actually make it onto the ballot.¹² The power, authority and requirement for the adoption of such an ordinance clearly exists. Charter §§ 1203, 1204(b), (d); 53 Pa.C.S. §§ 2941(a), 2942 and 2943(a).

The Charter requires that at least every ten (10) years City Council and the Mayor shall appoint a Charter Review Commission. Charter § 1203. The Charter further requires that the proposed amendments to the Charter, if any, recommended by the Commission “shall be placed on the ballot no later than the next municipal election.” City Council must adopt, and the Mayor must sign, a referendum by ordinance in such form and in such time so that the Berks County Board of Elections will place the Commission’s proposed amendments on the ballot. To opine otherwise would render amendment of the Charter through the Charter review process speculative, meaningless and perhaps futile. The law will not require a futile, absurd or impossible act.

¹² For example, *see Bolus v. Saunders*, 833 A.2d 266 (Pa. Commw. Ct. 2003) (refusing referendum petition for defective affidavit) and *In re: Referendum Petition to Amend the City of Pittsburgh Home Rule Charter*, 694 A.2d 1128 (Pa. Commw. Ct. 1997) (striking signatures for various reasons, including circulators’ errors, however, not striking the petition). *See also* Charter §§ 1102-1109, *and requirements stated therein*.

III. OPINION OF THE BOARD

It is the opinion of the Board that under §§ 1203 and 1204(d) of the Charter, City Council must adopt an Ordinance setting forth the Charter amendments proposed by the Commission, and the Mayor must sign the ordinance, such that the proposed amendments “shall be placed on the ballot no later than the next municipal election.”¹³

CITY OF READING CHARTER BOARD

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

Date: December 4, 2013

¹³ This would of course require a timely ordinance in appropriate form and with appropriate content so as to be acceptable to the Berks County Board of Elections and so as to cause the Commission’s proposed amendments to be placed on the “ballot no later than the next municipal election.”