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March 7, 2016

Via Email: linda.kelleher@readingpa.org

Linda A. Kelleher CMC, City Clerk
815 Washington Street
Reading PA 19601

Re: Advisory Opinion No. 39

Dear Ms. Kelleher:

Enclosed please find Advisory Opinion No. 39, relating to the application of Charter § 209(d) to the Office of the City Clerk. This is in response to your request received February 5, 2016. The Board voted and announced its opinion at a regularly scheduled meeting held March 1, 2016.

Very truly yours,


Eric B. Smith

EBS/mrb
Enclosure

cc: Mr. James Fegley, Chair, City of Reading Charter Board (via email w/ enc.)
Elizabeth Magovern, Esquire, Investigative Officer (via email w/ enc.)
Charles D. Younger, Esquire, City Solicitor (via email w/ enc.)

Section 225. City Clerk.

Within thirty (30) days of taking office, City Council shall appoint an officer of the City who shall have the title of City Clerk. The City Clerk shall give notice of Council meetings to its members and the public, take the minutes of all City Council meetings, keep the journal of its proceedings, shall have the power of a notary public, shall serve as secretary to the Council and perform such other duties as are assigned by the administrative code, the Council, or state law. The term of City Clerk shall be two (2) years with option to be re-appointed for successive terms. The City Clerk shall serve at the pleasure of Council.

The Administrative Code also assigns duties to the City Clerk. Admin. Code, Part 6, § 5-601, Duties. Notably, the Clerk's duties include serving as the Director of the legislative branch, performing general oversight and coordinating City Council legislative action, making recommendations to City Council on policy and issues affecting the City, serving as liaison between City Council and other officials and acting as a representative of City Council.

B. Analysis

1. The City Clerk

The City Clerk is an officer of the City whose duties are ministerial and non-discretionary.² The Clerk is not a member of City Council and is not part of the body of Council, however she is appointed by Council and serves at the pleasure of Council. It is abundantly clear to the Board, that despite the strong connection between the City Clerk and the Council, the Clerk is not merely an agent of Council. The Clerk's responsibilities, although ministerial in nature, are *her responsibilities*, given by the Charter, and are not the

² Three times the Board passed upon the nature of the role of the City Clerk. On re-visitation again, the Board affirms that the role of the City Clerk is strictly ministerial, and non-discretionary. See *In re Investigation of Reading City Council* (Inv. No. 31, Apr. 25, 2011) at 12-14, *aff'd by Reading City Council v. City of Reading Charter Board*, No. 11-14382 (Berks Ct. Com. Pl. Feb. 17, 2012), *aff'd by Reading City Council v. City of Reading Charter Board*, No. 29 C.D. 2012 (Pa. Commw. Ct. Oct. 23, 2012); *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 3; *In re Proposed Ordinance for Initiative and Referendum Process* (Adv. Op. 5, March 6, 2007) at 4.

responsibilities of City Council assigned to her by that body. True, she is assigned *duties* by Council, which the Clerk must independently fulfill. As an officer of the City,³ the Clerk is separate from, and not a part of, City Council.

2. *The prohibition of Charter § 209(d)*

The prohibition of Charter § 209(d) prevents City employees from being caught in the political, personal, or policy cross-fire between the Mayor and City Council, or between various agendas of individual City Council members. The Mayor-Council form of government created by the Charter places these two bodies in direct competition, at times as a full-on check and balance. The involvement of six (6) City Council members, or the President of City Council, in the day to day operations of the City, or in correspondence or directives to City departments or employees, would cause confusion, delay and waste. From the Board's perspective, the prohibition of Section 209(d) is intended to dovetail with the vesting of the executive, administrative and law enforcement powers of the City in the Mayor, and that the Mayor shall "control and be accountable for the executive branch of City government." Charter § 301.

Nevertheless, the prohibition of Section 209(d) is limited. First, the prohibition expressly is placed on only City Council, not on the City Clerk. The Board has already opined that the City Clerk is not part of City Council. However, the non-application of this section to the City Clerk is not license for the Clerk to go beyond the ministerial limits of her office as stated in Charter § 225, or the prior holdings of the Charter Board. *See* footnote 2, *supra*. Second, Section 209(d) allows City Council to, "for the purpose of inquiry," "deal with the all [sic] departmental and bureau employees."

³ Although an officer of the City, the Board is not in any way placing the City Clerk on par with City Council, the City's legislative branch. The office of City Clerk is one of service to City Council in assisting its legislative function.

The power of a legislature to inquire into the operations of government are well known and need no repeating. However, the term “inquiry” should be examined, to give it context here:⁴

Inquiry:

1. examination into facts or principles: research
2. a request for information
3. a systematic investigation often of a matter of public interest

City Council, and, if so directed to do so pursuant to Charter § 225, the City Clerk,⁵ are permitted to research, request information and undertake a “systematic investigation” of City government which may well result in dealing with “departmental and bureau employees” directly and not through the Mayor or Managing Director. That is an inherent prerogative of virtually every legislature in a representative democracy.

The Charter Board Ordinance requires that certain standards of interpretation be employed in construing Charter provisions. Ordinance No. 46-2005, *as amended*, at § IV(A). The Board is bound by the plain language of the Charter, and may not interject or interpret a provision unless an ambiguity exists. The object of all interpretation and construction of Charter provisions is to ascertain and effectuate the intent of the authors of the Charter. When the words of a Charter provision are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. *Id.* Further, it is not for the Board, or the courts, to add, by interpretation, to a statute, a requirement which the legislature did not see fit to include. *Summit School, Inc. v. Commw., Dept. of Educ.*, 108 A.3d 192, 199 (Pa. Commw. Ct. 2015).

⁴ "Inquiry." Merriam-Webster.com. Accessed February 22, 2016. <http://www.merriam-webster.com/dictionary/inquiry>.

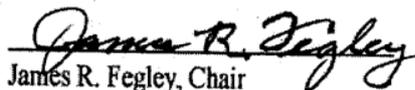
⁵ It is also conceivable that the City Clerk in undertaking the *responsibilities of her office* may, from time to time, deal with “departmental and bureau employees” directly and not through the Mayor or Managing Director.

The Charter has no prohibition on the City Clerk dealing directly with “departmental and bureau employees” of the City. If the City Clerk, within the duties of her office, must undertake such dealings, she may do so directly and not be required to do so only through the Mayor and Managing Director. However, where the City Clerk is acting at the express direction of City Council, the prohibition stated in Charter § 209(d) clearly applies to the Clerk and her staff, for City Council cannot undertake indirectly through the City Clerk what it cannot undertake directly itself.⁶

III. OPINION OF THE BOARD

It is the Opinion of the Board that Charter § 209(d), prohibiting City Council from dealing with “departmental and bureau employees” only “through the Mayor or the Managing Director,” does not apply to the City Clerk, or her staff, except in the circumstance where City Council expressly directs the Clerk’s conduct, in which case the City Clerk and her staff are limited by the prohibitions of that section.

CITY OF READING CHARTER BOARD

By: 
James R. Fegley, Chair

Date: March 7, 2016

NOTICE

THE “OPINION OF THE BOARD” SECTION OF AN ADVISORY OPINION MAY BE USED ONLY BY THE REQUESTOR OF THE ADVISORY OPINION AS A DEFENSE IN ANY SUBSEQUENT INVESTIGATION OR PROSECUTION ONLY TO THE EXTENT THAT THE QUESTIONS PRESENTED TO THE BOARD ARE IDENTICAL TO THE FACTUAL ISSUES FACED IN THE UNDERLYING MATTER IN WHICH THE DEFENSE IS RAISED. FURTHER, NO OTHER PORTION OF AN ADVISORY OPINION MAY BE USED IN ANY WAY AS A DEFENSE AND SHALL NOT BE A DEFENSE. *See* Bill No. 46-2005, *as amended*, Charter Board Ordinance *and* Charter Board Resolution 2-2015.

⁶ Charter, Amd. I, § 1(a); *In re Position of Community Development Director* (Adv. Op. 1, April 12, 2006) at 5.