

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Purchasing Policy : Request Received October 16, 2012
: :
: :
: Advisory Opinion No. 30

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter received via email from the Office of the City Clerk on October 16, 2007,¹ City Councilors Donna Reed and Randy Corcoran (“Councilors”) request this advisory opinion from the Charter Board of the City of Reading (“Board”). The Councilors seek an advisory opinion on the following matters, as quoted directly from their request:

1. Can the Charter requirement for an RFP for contracts exceeding \$10,000 be waived by the Administrative Code, unless the need to purchase for emergency purposes arises?
2. Can the Mayor's Office waive the need for the RFP process when purchasing professional services without the Managing Director's knowledge?
3. The original contract for media services for \$24,500 to Fleck Consulting (attached), where Mick Dee was employed, expired on September 21, 2012. Is the issuance of a second contract on September 21, 2012 for \$4,000 per month for a three month term to Mick Dee a "piecemeal" contract?
4. If a Charter Complaint is currently under investigation, can new evidence be added that supports the complaint?

In connection with the four above issues, the Councilors specifically seek an advisory opinion in reference to Charter Sections 915(a) and (b) and Administrative Regulation – Purchasing of Professional Services 1.0 to 4.2.

¹ The letter is dated October 17, 2012.

II. DISCUSSION

A. Issue One

Charter Amendment I provides:

Section 1. Supremacy of Charter

a.) Governing law of the City. This Charter is the governing law of the City of Reading. No action or inaction by City Council, the Administration, or any other body created by this Charter shall be taken contrary to it, whether individually or collectively, by ordinance, resolution, practice, executive order or decision, or any other means.

The wording of the Charter, and acts pursuant to it, shall in all cases be strictly construed so as to effectuate its clear intent.

It is axiomatic that the Administrative Code may not supersede or conflict with the Charter. The Charter is supreme. Further, the Administrative Code § 1-111 states the following:

Role of the Charter.

The role of the Charter in interpreting this Administrative Code shall be as follows: In the event there is any inconsistency or conflict in the Charter and the provisions of this Administrative Code the provisions of the Charter shall take precedence.

In Advisory Opinion No. 10, the Board addressed this issue, in the context of a citizens' right to place an item on a City Council agenda as found in the Charter, and advised that a citizens' right, as embodied in the Charter, would prevail over a provision of the Administrative Code. *In re Citizens' Petition to Place Item on City Council Agenda* (Adv. Op. 10, Aug. 22, 2008) at 2-3. Succinctly, and to the heart of the question, the Administrative Code may not waive, supersede or modify Charter provisions. Charter Amd. I *and* Admin. Code § 1-111.

With that rule again firmly stated, the Board was not asked for, and does not offer, an advisory opinion on whether or not the \$10,000 limitation of Charter § 915 is applicable to Administrative Code 1.0 to 4.2,² which concerns contracts for professional services.

B. Issue Two

Section 4.1.1 of Administrative Regulation – Purchasing of Professional Services 1.0 to 4.2 provides that:

“Unless otherwise determined by the Managing Director, any purchase of professional service in amounts exceeding \$10,000 must be made by written contract and initiated by an RFP. Competitive proposals increase the ability to fully evaluate both the benefit and costs of the services being sought.”

Here, under section 4.2, the power and discretion to ‘otherwise determine’ if the RFP process must be utilized rests only with the Managing Director. Neither the Mayor’s Office, nor the Mayor, may waive the need to follow the RFP process; only the Managing Director may do so. Further, aside from the clear language of section 4.2, retention of professional services for the City is a matter that involves the day to day administration and operation of the City, all of which are the province of the Managing Director, not the Mayor’s Office. *See for example* Charter § 406.

C. Issue Three

As the Board has cautioned previously, it is constrained to not answer under the guise of an advisory opinion retrospective questions that apply to actual or perceived violations of the Charter or the Administrative Code. The Board will answer as advisory opinions only those questions that are prospective in application. *See* Adv. Ops. No. 11 (September 24, 2008), No. 12 (January 12, 2009) *and* No. 14 (May 12, 2009). Here, one of the referenced contracts expired

² Of course, this provision of the Administrative Code also has a limitation and special requirements for contracts for professional services over \$10,000.

on September 12, 2012 and the other is executed, being performed and is only one month from expiration. Clearly these two contracts pose only retrospective questions, and questions concerning their propriety are not advisory in nature. The Board declines to address the third issue of this advisory opinion request.

Of course, the Councilors, or other interested parties, could avail themselves of the Charter Board complaint process.

D. Issue Four

The Councilors ask if new evidence³ may be added that supports a Charter complaint while the complaint is currently being investigated. The Board does not investigate Charter Board complaints nor does it collect evidence in support of Charter Board complaints; rather, the Board's Investigative Officer does so and may be contacted as needed by the Councilors, or others.

Depending on the nature of the new evidence, and the timing of the discovery and turn-over of the new evidence, it may be that the prudent course for the Councilors is to file a new Charter Board complaint.

III. OPINION OF THE BOARD

The Opinion of the Board is as set forth above at part II(A), (B), (C) and (D).

CITY OF READING CHARTER BOARD

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

Date: November 14, 2012

³ It is unclear to the Board if this new evidence involves a matter currently pending before the Investigative Officer, or if the evidence involves a purchasing policy matter, or something else. The Board answers this portion of the advisory opinion request on the most generic of bases.