

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Application of Charter : Request Received: November 3, 2009
 Section 702(a)(4) to :
 City Auditor : Advisory Opinion No. 19

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

By letter of October 29, 2009 the Auditor of the City of Reading, David M. Cituk, (“City Auditor”) requested that the City of Reading Charter Board (“Board”) issue an advisory opinion. The question presented by the City Auditor is whether or not Section 702(A)(4) of the Charter requires that the one clerk or secretary be budgeted for, staffed and funded for his use as City Auditor?

The Board answers in the negative.

II. DISCUSSION AND ANALYSIS

A. Pertinent Charter Provisions

Article V of the Charter addresses the Office of City Auditor. Specifically, Charter § 501 provides that the City Auditor is an elected official.¹ Charter § 503 provides for the responsibilities of the City Auditor. Those responsibilities include “K. Prepare an annual budget for the office of City Auditor and operate the office of City Auditor within approved budget limitations.”

The City Auditor asks the Board, correctly, to consider Charter § 702.

Charter § 702 provides, in part, the following:

§702. Personnel System and Personnel Code.

Each elected official, officer and employee of the City shall be a member of either the career or exempt service.

¹ Although not set forth explicitly in the Charter, it is the Board’s opinion that the position of City Auditor is a “full time” position.

A. The exempt service shall consist of:

- (1) All elected officials.
- (2) The Managing Director and the City Solicitor.
- (3) The heads of departments, offices, and agencies immediately under the direction and supervision of the Managing Director.
- (4) One clerk or secretary for each of the full-time elected City officials and the heads of each City Department.
- (5) The City Clerk.
- (6) The members of authorities, boards, and commissions.
- (7) Temporary, part-time, or seasonal employees.

* * *

B. Analysis

The City Auditor's request for advisory opinion correctly asserts that he is a full time elected official of the City of Reading. However, the City Auditor also asserts, and asks the Charter Board to adopt, his position that Charter § 702(A)(4) requires the budgeting for, staffing and funding of "one clerk or secretary" for his use as City Auditor. The Board cannot agree that Charter § 702(A)(4) requires that City Auditor have one clerk or secretary.

Rather, Section 702(A) merely defines which City personnel are part of the exempt service. Section 702(A) does not require that those personnel or positions exist. Other sections of the Charter mandate the existence of certain positions. For instance, Charter § 606(a) requires the Mayor to appoint a head of the Department of Public Works/City Engineer, Section 607 requires the Mayor to appoint a Director of Finance, Section 705 requires the Mayor to appoint a director of the Department of Human Resources, and Section 801 requires the appointment of a City Solicitor. *See also* Advisory Opinion No. 18 (November 5, 2009) (advising that no Charter

mandated director of a Charter mandated department may be eliminated). Charter § 702(A) does not create or mandate the creation of positions within the City.

In other words, if the persons identified in Charter § 702(A) exist, then they are required to be considered part of the exempt service.² Section 702(A), however, does not of itself require that any position or personnel of the exempt service actually be budgeted for, staffed or funded, including any clerk or secretary for the City Auditor. See Charter § 702(A)(4).

III. OPINION OF THE BOARD

The Opinion of the Board is that Charter § 702(A)(4) does not require the budgeting for, staffing, or funding of one clerk or secretary for use by the City Auditor.

CITY OF READING CHARTER BOARD

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

Date: *November 20, 2009*

² Indeed, to follow the City Auditor's position to its fullest application, the City would be required to retain "[t]emporary, part-time, or seasonal employees." Charter § 702(A)(7).