

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Charter § 907 : Advisory Opinion on the  
: Motion of the Board  
:  
: Advisory Opinion No. 20

**ADVISORY OPINION**

**I. PROCEDURAL HISTORY AND QUESTION PRESENTED**

The Charter Board Ordinance, Section VI, provides that:

“[u]pon written request of any public official or city employee, or without such request should a majority of the Board deem it in the public interest, the Board may render advisory opinions concerning matters of home rule or enforcement of the City Charter.”

The Charter Board has not previously issued an advisory opinion on it’s own motion. On March 16, 2010, by a unanimous vote, the Charter Board voted to issue an Advisory Opinion regarding Section 907 of the Charter of the City of Reading (“Charter”). Rather than address a question presented, as is typical of the Advisory Opinions sought of the Charter Board, the Board here addresses Section 907 of the Charter for the purpose of considering whether or not certain portions of Section 907 are invalid and superseded by state law.

**II. DISCUSSION AND ANALYSIS**

A. Pertinent Charter Provision

Charter Section 907, relating to appropriations and revenue ordinances, provides the following:

**§907. Appropriation and Revenue Ordinance.**

For 1996, this Charter shall provide for collection of income from real estate taxes which, in total amount, does not exceed 105% of the real estate tax income actually collected by the City during 1995. For those years following 1996, it shall provide for collection of income from real estate taxes which, in total amount, does not exceed 105% of the real

estate tax income actually collected in the previous year. Any collection of income from the real estate tax by the City in excess of the amounts allowed by this section shall not be expended but shall be retained for use in the subsequent year and be used in the next year subsequent to reduce the amount of income needed by the City in said subsequent year. With the approval of the Court of Common Pleas, upon good cause shown, or by referendum or Charter review, the City may increase the amount of income collected, notwithstanding the provisions of this Section.

Section 907 has generally been viewed as limiting annual real estate tax increases to not more than five per cent. *See for Example* "About Act 47," *Reading Eagle*, A3 (March 6, 2010). Moreover, this five per cent limitation on annual real estate tax increases is often characterized as an impediment to the City's successful emergence from Act 47 administration as it confronts its present financial difficulties. *See Id.*

B. Analysis

The Board determines that it is in the public's interest to clarify Section 907 and its effectiveness. *See* Ordinance, § VI<sup>1</sup>. It does not appear to the Board that the present confusion, misunderstanding and misapplication of Section 907's five percent limitation furthers any interest beneficial to the public or the City.

Although in Pennsylvania municipalities are clothed with broad powers to adopt tailor-made home rule charters, those broad powers are not limitless. Pa. Const. Art. 9, § 2; 53 Pa.C.S. § 2961 (Home Rule and Optional Plans Law, relating to scope and power of home rule). In particular, Home Rule Law states that a home rule municipality "may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter." 53 Pa.C.S. § 2961 (emphasis added). One of the specific limitations on the powers of home rule municipalities is

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<sup>1</sup> Charter Board Ordinance, Section VI provides in part: "Upon written request of any public official or city employee, or without such request should a majority of the Board deem it in the public interest, the Board may render advisory opinions concerning matters of home rule or the enforcement of the City Charter."

found in 53 Pa. C.S. § 2962(b), which provides in part: “The governing body [i.e., City Council] shall not be subject to any limitation on the rates of taxation imposed upon residents.” Reading Charter Section 907’s restriction to “105% of the real estate tax income actually collected in the previous year” is such a limitation on the rates of taxation imposed on residents by City Council. This is prohibited by 53 Pa. C.S. § 2962(b). Although Section 2962(i)<sup>2</sup> authorizes home rule municipalities to establish their “own rates of taxation,” Section 2962(b) specifically prevents a municipality’s governing body from having its “hands tied” by limitations on the tax rates that it may impose upon residents. Charter Section 907’s five per cent limitation is therefore superseded by 53 Pa.C.S. § 2962(b).

The City of Reading is not the first municipality to encounter a conflict between its home rule charter and the prohibition on limitations on the rates of taxation set out in 53 Pa.C.S. § 2962(b). *Musewicz v. Cordaro*, 925 A.2d 172 (Pa. Commw. Ct. 2007), is virtually indistinguishable from the issues presented here. In *Musewicz* the Lackawanna County Home Rule Charter provided the following limitation on taxation for its Board of Commissioners:

(c) to levy taxes, assessments and service charges. The maximum millage allowable under existing procedure shall be 25 mills. Upon imposition of such a tax rate, any millage rate which exceeds 5% of the preceding years [sic] rate of millage shall be effective only if approved by a referendum of the qualified electors of the county [.]

*Id.* at 173. Ultimately, in 2005 the Commissioners increased the tax rate by approximately 48.4% from the 2004 rate and a declaratory judgment action was filed against the County alleging a charter violation. *Id.* The trial court dismissed the action

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<sup>2</sup> 53 Pa.C.S. § 2962(i) provides in part: “No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).”

and the Commonwealth Court affirmed. The Commonwealth Court held that 53 Pa.C.S. § 2962(b) prohibited such restrictions as the five per cent limitation found in the Lackawanna County Home Rule Charter. As this provision of the Lackawanna County Home Rule Charter conflicted with state law, state law superseded it. *Id.* at 175.

It is clear that the same result would be reached should the Berks County Court of Common Pleas or any Pennsylvania appellate court consider whether or not the five per cent limitation in Charter Section 907 is valid or superseded by 53 Pa.C.S. § 2962(b).<sup>3</sup>

### **III. OPINION OF THE BOARD**

The Opinion of the Board is that Charter Section 907 is invalid and is superseded by 53 Pa.C.S. § 2962(b) to the extent that it purportedly limits City Council's ability to impose a real estate tax rate above "105% of the real estate tax income actually collected in the previous year."

CITY OF READING CHARTER BOARD

By: Susan J. Gibson  
Susan Gibson, Chair

Date: April 28, 2010

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<sup>3</sup> This is not the only situation where a section of the Reading Charter would be superseded by state law should it be challenged in court. For example, Charter Section 1110, pertaining to recall of elected officials, would clearly be found in violation of the Pennsylvania Constitution. *See In re: Petition to Recall Reese*, 665 A.2d 1162 (Pa. 1995) (invalidating the recall provision in the City of Kingston's home rule charter and stating that Article VI, Section 77 of the Pennsylvania Constitution provides the only method for the removal of elected officials).