

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Citizens' Petition to Place Item : Request Filed: August 25, 2008
on City Council Agenda (II) :
: Advisory Opinion No. 11

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

By letter dated August 25, 2008 City Council President Vaughn D. Spencer ("Mr. Spencer") requested that an advisory opinion be issued by the City of Reading Charter Board ("Board"). The cover letter requesting the advisory opinion references several matters that occurred before the date of the advisory opinion request. All of the questions presented are retrospective, rather than prospective, that is, Mr. Spencer seeks the Board's advisory opinion for conduct that has already come to pass. Further, the request for advisory opinion references an enclosed citizens' petition, which is not enclosed. Mr. Spencer's questions, paraphrased here, are as follows:

1) Did the City Solicitor violate the Charter and Administrative Code by assisting a citizens' group in drafting a citizens' petition to place an item on the City Council Agenda which was received by the City on August 18, 2008, or must such a citizens' group retain independent counsel?

2) May a citizens' petition require the reconsideration of a resolution tabled at the July 28, 2008 regular meeting of City Council, and removed from the agenda of City Council's August 11, 2008 meeting, and if so, must the reconsideration occur at the next legislative session?¹

¹ The "next legislative session" has since passed.

3) Should the language of the citizens' petition referenced in question "2," above, request only that the resolution that was tabled on July 28, 2008 and removed from the agenda on August 11, 2008 be placed back on the agenda?²

II. DISCUSSION

The Charter Board Ordinance ("Ordinance") provides that the Board may issue an advisory opinion "upon written request of any public official or city employee" or "should a majority of the Board deem it in the public interest." Ordinance at § VI. Black's Law Dictionary defines the term *advisory opinion* as "[s]uch may be rendered by a court at the request of the government or an interested party indicating how the court would rule on a matter should adversary litigation develop." An advisory opinion is akin to a hypothetical question, that arises on the basis of a request for advice, rather than a request to cast judgment or to rule on past conduct. An advisory opinion stands in contrast to a real case or controversy. *See for example Mazur v. Washington County Redevelopment Authority*, 954 A.2d 50 (Pa. Commw. Ct. 2008); *Wolf v. Cline*, 12 Pa. D.&C.3d 346, 350 (Adams Co. CCP 1979).

The subject request for advisory opinion is in reality a request upon the Board to pass judgment or to rule upon the past conduct of the City Solicitor and of the propriety of the language of an existing, utilized, citizens' petition. The Board will not render advisory opinions which are clearly sought to apply retrospectively. The time for an advisory opinion on those matters has passed. The Board advises that Section V(A)(i) of the Ordinance, which pertains to the filing of complaints, is here applicable, and not Section VI, relating to advisory opinions.³

² Asked more broadly, the question appears to be "may a citizens' petition under Section 1111 of the Charter require more of City Council than merely placing an item on the agenda of City Council?"

³ The Board does not pass upon the merits of the underlying events. Rather, the Board acknowledges that because the events in question have transpired, the better course is the filing of a Charter Board complaint.

The Board considers the issue of citizens' rights to be of the utmost importance and is well aware of the competing interpretations of Charter Section 1111. The Board also notes its authority to issue advisory opinions on its own motion where it deems the issuance of such an advisory opinion in the public interest. Ordinance at § VI.

III. OPINION OF THE BOARD

The Board declines to render an advisory opinion in this matter for the reasons stated in Section II, above.

CITY OF READING CHARTER BOARD

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

Date: 9/24/2008