

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Charter Sections 905, 906 and 908 : Request Filed: December 16, 2008  
: :  
: Advisory Opinion No. 12

**ADVISORY OPINION**

**I. PROCEDURAL HISTORY AND QUESTION PRESENTED**

By letter dated December 16, 2008 City Council President Vaughn D. Spencer (“Mr. Spencer”) requested that the City of Reading Charter Board (“Board”) issue an advisory opinion. The cover letter requesting the advisory opinion references several matters that, at the time of the advisory opinion request, were prospective, having not yet occurred, and hypothetical. The advisory opinion request also asked that the Board render its advisory opinion in an expedited fashion by December 29, 2008. The Charter Board Ordinance provides that “[a]dvisory opinions shall be issued as expeditiously as possible, and in no case later than 30 days following the receipt of the written request” for an advisory opinion. *See* Charter Board Ordinance, § VI. By letter from its Solicitor dated December 19, 2008, the Board declined to issue an expedited advisory opinion. The Board is responding to the advisory opinion request within the time frame provided by the Charter Board Ordinance, VI.

Mr. Spencer’s questions, paraphrased here, are as follows:

1. Given the budget adoption deadline of December 15 as mandated by Charter Section 905, could ordinances to increase taxes<sup>1</sup> put forward in relationship to the adoption of the City’s budget, which could not be voted upon until December 29, be adopted without amending the Budget Ordinance?

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<sup>1</sup> Mr. Spencer’s December 16, 2008 letter explains that certain ordinances to increase the City’s property tax and earned income tax were introduced after adoption of the City’s Budget Ordinance by City Council members between December 12 and 15, 2008. City Council’s legislative procedure did not permit a vote on these ordinances until December 29, 2008. The Charter requires that the City’s budget be adopted by December 15 of each year. Charter, § 905.

a. If adopted as amendments, would such ordinances violate Charter Section 908, which permits amendments to the budget only to make supplemental and emergency appropriations and transfers?

b. Also, would such amendments to the Budget Ordinance be Charter compliant given the December 15 Charter mandated budget adoption deadline found in Charter Section 905?

2. If such ordinances are enacted, not as an amendment to the Budget Ordinance, would such ordinances effectively create a revised budget, which is allowed only the year after a municipal election in accordance with Charter Section 906?

On December 29, 2008 the various votes occurred on the ordinances referenced in Mr. Spencer's December 16 request for advisory opinion. The request for advisory opinion sought by Mr. Spencer is moot, because the conduct has now occurred, that is, the ordinances which Mr. Spencer questioned as not being Charter compliant were voted upon. City Council enacted one of the ordinances and rejected the other.<sup>2</sup>

## II. DISCUSSION

The Charter Board 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." Charter Board Ordinance, § VI. Black's Law Dictionary defines the term *advisory opinion* as "one that 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

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<sup>2</sup> It is the Board's understanding that the ordinance increasing the City's property tax was enacted and the ordinance to increase the earned income tax was rejected.

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 now moot as a result of the December 29, 2008 votes referenced above in Section I. Mr. Spencer's question is no longer "will such conduct violate the Charter," but rather, now, is "has such conduct violated the Charter." The questions posed by Mr. Spencer are now retrospective rather than prospective. At this time the proper course for Mr. Spencer or other aggrieved parties is to file a Charter Board complaint if it is believed that Charter violations occurred regarding the now past votes of City Council and the propriety of the procedural route employed for budget adoption and revenue appropriation by the Mayor and City Council. The Board will decline to render an advisory opinion on moot and retrospective questions. The time for issuing an advisory opinion on the questions posed by Mr. Spencer passed at the time the December 29 votes occurred. The Board advises that Section V(A)(i) of the Charter Board Ordinance, which pertains to the filing of complaints, is here applicable, and not Section VI, relating to advisory opinions.<sup>3</sup>

The procedural course of budget adoption and revenue appropriation, as a matter of Charter compliance, is a very important issue – this is the appropriation and expenditure of the citizens' funds. Nonetheless, the Board will not pass upon the merits of the underlying, now past, events. Rather, the Board acknowledges that because the events in question have transpired, the appropriate course for Mr. Spencer or other aggrieved parties, is the filing of a Charter Board complaint. Charter Board Ordinance, § V(A)(i). 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. Charter Board Ordinance, § VI.

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<sup>3</sup> If the Board were to issue an advisory opinion now, it would be addressing retrospective questions asking "did this past conduct violate the Charter." The Board declines to do so. *See* Advisory Opinion No. 11 (September 24, 2008).

**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 T. Gibson  
Susan Gibson, Chair

Date: 1/12/09