

II. DISCUSSION AND ANALYSIS

A. Retrospective versus Prospective Application

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. The Board will answer as advisory opinions only those questions that are prospective in application. *See* Adv. Ops. No. 11 (September 24, 2008) *and* No. 12 (January 12, 2009). Here, the question at issue, whether or not a City Department may print its own checks and pay its own invoices, is one that presents a continuing issue, and if such conduct is a violation of the Charter, it would be continuing violation.

These are not single acts in the past on which the Board is now asked to apply the Charter under the technical process of an advisory opinion request,² rather, this request involves practices that are in place and continuing. *Compare* Adv. Op. No. 11 (all events transpired and were completed before the date of the request for advisory opinion) *and* Adv. Op. No. 12 (voting at issue occurred after request for advisory opinion but before time advisory opinion was rendered) *with* Adv. Op. No. 14 (May 12, 2009) (a board continued to conduct business where an advisory opinion sought to clarify the permitted membership on the board). On the question now before the Board, the Board will render an advisory opinion.

Finally, although Mr. Spencer asks specifically whether or not Community Development may print its own checks and pay its own invoices, the Board answers only

² Charter Board Ordinance § VI.

as to the broader question as applied to all City Departments,³ including Community Development.

B. Pertinent Charter and Administrative Code Provisions

Charter § 607 creates the Department of Finance and provides that the Director of Finance shall be responsible for, among other things, (1) the receipt, expenditure, accounting, investment, custody, and control of municipal funds and assets, including the budget (both operating and capital) and (2) all other financial matters that may arise.

Further, Charter § 503 provides that among the City Auditor's responsibilities, the auditor shall have financial oversight of City finances, independent of the Executive and Legislative branches and shall review all expenditures of the Mayor, City Council, and City Boards, Commissions and Agencies.

The Administrative Code §§ 1-185 and 1-186 clearly define the functions of the Department of Finance. In pertinent part, and without limitation, these sections provide:

Section 1-185 Department of Finance.

1. Function. The Department shall be responsible for the administration of activities pertaining to the receipt, accounting, expenditure, investment, custody, and control of the City funds except to the extent that such activities are expressly charged by law, the law, Charter, or ordinance to any other City unit. Furthermore, it shall be responsible for all City purchasing.

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4. Department Director Duties. The duties and responsibilities of the Director shall include, but not be limited to the below. He/She shall direct personally and through subordinates the performance of the below duties.

³ The Board's advisory opinion has the same application to the Mayor, City Council, and City Boards, Commissions and Agencies.

A. Collect and receive all taxes and other monies or receivables by the City of Reading or authorize other municipal units to do so under prescribed procedures.

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C. Maintain a uniform accounting system in accordance with generally accepted principles of governmental accounting.

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E. Disburse all payments for authorized expenditures including payroll.

F. Deposit monies in depositories authorized by ordinance.

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M. Administer the purchasing system according to the law, Charter and ordinances.

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Section 1-186 Fiscal Provisions

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3. Regulations Concerning Appropriations and Transfers.

A. The authorization and expenditure of all funds and preparation of department budgets shall be in accordance with a policy adopted by the Council and a procedures manual to be prepared and periodically reviewed and updated by the Department of Finance. Expenditures shall be executed in a uniform manner for every City Department.

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7. Signing Checks.

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B. Check Signatures.

(1) The Finance Director and the City Auditor shall sign all checks drawn against the City Treasury. Facsimile signatures may be used.

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Although the submission provided by Mr. Spencer to the Board references a “practice” that may be in place by Community Development, City Council, the Administration or others, no specific policy is before us and the Board has determined that it will not address any specific violation, as that is the purpose of filing a Charter Board complaint. *See Adv. Op. No. 11 at p. 2.*

B. Analysis

The above quoted sections of the Charter and Administrative Code preclude any possibility that any City Department could print its own checks and pay its own invoices from the City Treasury or with City funds. The statement in Section 1-185 that “the [Finance] Department shall be responsible for the administration of activities pertaining to the . . . expenditure . . . of City Funds . . .” makes clear that no other department may print its own checks and pay its own invoices with City funds. Further, the provision in Section 1-186(3)(A) that “[e]xpenditures shall be executed in a uniform manner for every City Department” prohibits payment procedures by one department which differ from those utilized by all other City Departments.

Taken together, the Charter and Administrative Code already account for every aspect of the invoice payment process. There is no provision for an individual City Department to issue its own checks and pay its own invoices, and any payment from the City Treasury or of City funds must have the oversight of the City Auditor and must be

processed through the Department of Finance. This applies equally to the Mayor, City Council, City Boards, Commissions, and Agencies.

III. OPINION OF THE BOARD

The Opinion of the Board is that no City Department, nor the Mayor, City Council, or City Boards, Commissions or Agencies, may print or issue its own checks and pay its own invoices.⁴

CITY OF READING CHARTER BOARD

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

Date: May 4, 2011

⁴ The Board qualifies this advisory opinion only to the extent that any check is issued or invoice is paid by an express charge of state or federal law to any City unit other than the Finance Department. Admin. Code § 1-185(1).