

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Certain Appointments : Request Received April 1, 2011
to Boards and Commissions :
:
:
: Advisory Opinion No. 24

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

By letter dated March 29, 2011 the Solicitor of the City of Reading, Charles D. Younger, Esquire, (“Solicitor”) requested that the City of Reading Charter Board (“Board”) issue an advisory opinion regarding certain appointments to boards and commissions. The Solicitor presents three questions to the Board:

1. May a paid part-time City employee be appointed to a City Board/Commission?
2. May the Mayor’s chief of staff serve on the Reading School Board?
3. May the Mayor appoint his chief of staff’s spouse to the Stadium Commission?

The Board answers these questions as set out below.

II. DISCUSSION AND ANALYSIS

A. Pertinent Charter Provisions

The focus of this advisory opinion is Article X of the Charter, entitled “Boards and Commissions,” and specifically, Section 1002, relating to membership qualifications of Charter created boards and commissions. Through advisory opinions, the Board has distinguished in the past the difference between a board or commission which must be Charter compliant, and one which is governed by other law, such as the Urban Redevelopment Law,¹ 35 P.S. §§ 1701, *et seq.*, Municipality Authorities Act,² 53 Pa.C.S.

¹ Advisory Opinion No. 9 (April 3 2008) at p. 4.

§ 5061, *et seq.*, and the Defense Base Closure and Realignment Act,³ 10 U.S.C. § 2687, *et seq.* Simply stated, if a board or commission is established as a Charter Article X Board or Commission, then the Charter generally, and Charter §1002 specifically, applies to that Board or Commission. *See* Advisory Opinion No. 14 (May 12, 2009) (announcing analysis regarding Article X Boards and Commissions).

Therefore, in analyzing the Solicitor’s three questions, the Board first must answer whether or not the board or commission is an Article X Board or Commission. If so, the Board must then answer whether or not the suggested appointment complies with Charter § 1002.

B. Analysis

1. May a paid part-time City employee be appointed to a City Board/Commission?

On the presumption that the City board or commission referred to by the Solicitor is a Charter Article X Board or Commission, the Board answers in the negative. A part-time, paid City employee may not be appointed to a Charter Article X Board or Commission. Charter § 1002(a) unequivocally mandates that “[n]o appointee of any board or commission shall hold any other elected public office or any compensated position for the City.” Such an appointment is clearly barred by the Charter.

The Board does not have enough information before it to answer with blanket approval that such an appointment to a non-Article X Board or Commission would be Charter compliant under all circumstances. Nevertheless, the Board states again, as it did in Advisory Opinion No. 14, that the membership restrictions of Charter § 1002(a), (b)

² Advisory Opinion No. 4 (December 4, 2006) at pp. 2-3.

³ Advisory Opinion No. 14 (May 12, 2009) at pp. 5-9.

and (c) apply only to boards and commissions created pursuant to Charter Article X. Adv. Op. 14 at p. 6, 7-8.

2. May the Mayor's chief of staff serve on the Reading School Board?

The Board answers this question in the affirmative. The Reading School Board is a board created outside of the Charter and is a creature of Article III of Pennsylvania's Public School Code, *see* 24 P.S. § 3-301, *et seq.*, and it is not a Charter Article X Board or Commission. Therefore there is no Charter or Administrative Code prohibition regarding service by the Mayor's chief of staff on the Reading School Board.⁴

3. May the Mayor appoint his chief of staff's spouse to the Stadium Commission?

It appears to the Board that the Stadium Commission is a board or commission created under Charter Article X. Therefore, Section 1002 of the Charter, relating to qualifications, applies. It is not within the Board's function under the Charter to accept or confirm any particular appointee by way of an advisory opinion request. However, the Board will examine this particular issue in the generic, that is, the Board will not consider whether the spouse of the Mayor's current, sitting chief of staff may be appointed to the Stadium Commission. Rather, the Board will answer whether there is a prohibition generally on the appointment by the Mayor of his chief of staff's spouse to an Article X Board or Commission. The Board determines that there is no prohibition, generally, so long as all of the qualifications stated in Charter § 1002 are met.

⁴ It is unknown to the Board whether there is some other prohibition to such service, such as within the Personal Code and/or applicable law regarding school board director eligibility. That is beyond the scope of the Board's jurisdiction.

III. OPINION OF THE BOARD

The Opinion of the Board is that:

- a. A paid part-time City employee may not be appointed to a board or commission created under Charter Article X and such appointment is barred by the Charter;
- b. The Mayor's chief of staff serving on the Reading School Board is not prohibited by the Charter or Administrative Code;
- c. The Mayor's appointment of his chief of staff's spouse to the Stadium Commission, or any other Article X Board or Commission, does not violate the Charter so long as all other qualifications stated under Charter § 1002 are met.

CITY OF READING CHARTER BOARD

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

Date: April 13, 2011