

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Filling the Vacancy : Request Received December 13, 2011
of the Office of :
City Council President : Advisory Opinions No. 26 & 27

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED

On January 1, 1996 the Charter of the City of Reading (“Charter”) became effective. The Charter created, among other offices, the office of President of City Council. Charter §§ 201, 1303(a)(ii). Since that time, there has not been a vacancy in the office of the President of City Council. During the election held November 8, 2011 City Council President Vaughn D. Spencer was elected the next Mayor of the City of Reading. Mr. Spencer will resign as City Council President on January 2, 2012. His resignation will cause there to be a vacancy in the office of City Council President (“Vacancy”) for the first time under the Charter.

By letter dated December 13, 2011 Linda Kelleher, the City Clerk, (“Kelleher”) wrote a letter to the Charter Board (“Board”) requesting an advisory opinion¹ regarding the filling of the Vacancy. On that same date, Paul T. Essig, Esquire, on behalf of his client, Dr. Gary Wegman, (“Wegman”) a citizen of the City of Reading sitting on the Act 47 Advisory Board, also sought an advisory opinion² with respect to filling the Vacancy. Both Advisory Opinions No. 26 and No. 27 will be addressed together.

Kelleher asks the Board the following three questions, verbatim:

1. Under Section 202, must the person appointed reside in Reading one year prior to the date of the primary election when seat was last filled (May 14, 2008) or must the person reside in Reading one year prior to when the seat became vacant?

¹ Kelleher’s request for advisory opinion has been administratively designated Advisory Opinion No. 26.

² Wegman’s request for advisory opinion has been administratively designated Advisory Opinion No. 27.

2. Under Section 202, please define “qualified voter.”
3. If a member(s) of Council apply for the Council President position can they a) select the applicants to be interviewed, b) sit in on the applicants’ interviews, c) participate in the selection of the person to be recommended, and d) vote on the recommendation?

Paraphrased, Wegman asks whether the Charter leaves the filling of the Vacancy to the existing members of Council to allow only the appointment of one of its current members, or if the selection process to fill the Vacancy should include applications from the public, with the ultimate selection made by Council?

The Board answers these four inquiries as set out below.

II. DISCUSSION AND ANALYSIS

A. Governing Law and Pertinent Charter Provisions

The Charter provides at Section 202 that “[o]nly qualified voters of the City who have resided continuously in the City one year prior to the date of the primary election for that office shall be eligible to hold the office of president of council.” Charter § 207, regarding the filling of vacancies, provides:

A vacancy in the Council shall be filled by a majority vote of the remaining members of Council. If the Council fails to act within thirty (30) days following the occurrence of the vacancy the Court of Common Pleas of Berks County shall, upon petition of three (3) members of Council or ten (10) qualified voters of the City, fill the vacancy in such office by the appointment of a qualified resident of the City. In the case of a vacated district seat the person appointed to fill that seat either by Council itself or the Court of Common Pleas must be a resident of the district. The individual appointed will remain in office until the first Monday in January following the next municipal election. At such municipal election a qualified person shall be elected to serve from the first Monday of January following the election for the remainder of the term of the person originally elected to such office or, if such term would otherwise expire on the first Monday following, for a new full term.

The Charter provides nothing further respecting the filling of vacancies.

However, the general rules of statutory construction are applicable in interpreting provisions of a home rule charter. *Williams v. City of Pittsburgh*, 109 Pa. Commw. 168, 173, 531 A.2d 42, 44 (1987) (citing *Cottone v. Kulis*, 74 Pa. Commw. 522, 460 A.2d 880 (1983)), *petition for allowance of appeal denied*, 518 Pa. 622, 541 A.2d 748 (1988). Statutes, and of course, home rule charters, must be interpreted to ascertain and effectuate the intent of the legislature and, if possible, give effect to all of its provisions. 1 Pa.C.S. § 1921(a). Further, if the words of a statute are clear and unambiguous, a court may not ignore the letter of the law under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b); *Ramich v. Workers' Compensation Appeal Board (Schatz Electric Inc.)*, 564 Pa. 656, 770 A.2d 318 (2001). The Board does not find the Charter to be ambiguous regarding the filling the Vacancy.

It is also important to recognize the longstanding law in Pennsylvania that words, phrases or clauses omitted from a statute may not be added by an interpreting court.

The authority for this rule of law is clear: Courts may not add provisions that the legislature has omitted unless the phrase is necessary to the construction of the statute. *Commonwealth v. Lewis*, 2005 PA Super. 341, ¶ 16, 885 A.2d 51, 57 (2005), *appeal denied*, 588 Pa. 777, 906 A.2d 540. Although one is admonished to listen attentively to what a statute says, one must also listen attentively to what it does not say. *Kmonk-Sullivan v. State Farm Mut. Auto. Ins. Co.*, 567 Pa. 514, 525, 788 A.2d 955, 962 (2001). A court is without authority to insert words into a statutory provision where the legislature failed to supply them. *Key Sav. & Loan Ass'n v. Louis John, Inc.*, 379 Pa. Super. 226, 232, 549 A.2d 988, 991 (1988); *Worley v. Augustine*, 310 Pa. Super. 178, 183, 456 A.2d 558, 561 (1983); *In re Upper Chichester Township*, 52 Pa. Commw. 121, 125, 415 A.2d 1250, 1252 (1980). A court cannot supply an apparent omission in a statute even though it appears that the omission resulted from the

legislature's mere inadvertence or failure to foresee or contemplate a case in question. *Latella v. Unemployment Comp. Bd. of Review*, 74 Pa. Commw. 14, 30, 459 A.2d 464, 473 (1983). It is not for the court to add, by interpretation, to a statute, a requirement which the legislature did not see fit to include. *Commonwealth v. Rieck Inv. Corp.*, 419 Pa. 52, 59-60, 213 A.2d 277, 282 (1965); *Altieri v. Allentown Officers' & Employees' Ret. Bd.*, 368 Pa. 176, 181, 81 A.2d 884, 886 (1951). The court cannot, under its powers of construction, supply omissions in a statute, particularly where it appears that the matter may have been intentionally omitted. *Appeal of Infants Welfare League Camp, Inc.*, 169 Pa. Super. 81, 84, 82 A.2d 296, 298 (1951).

Therefore, the Board will honor the Charter as written.

B. Analysis

1. Only Qualified Residents may fill the Vacancy.

Charter § 202, entitled Eligibility, defines the criteria for any person seeking to hold the office of City Council President, including a person seeking to fill a vacancy of that office. Specifically, section 202 provides that such a person must be a “qualified voter” who has “resided continuously in the City one year prior to the date of the primary election” for the office of City Council President. *See* Charter § 202.

Further, Charter § 207, entitled Filling of Vacancies, states that a vacancy in the Council, including for the office of President of Council, shall be filled “by the appointment of a qualified resident of the City.” *See* Charter § 207. In filling a vacancy in the office of Council President, it is clear from the eligibility requirements of section 202 that a “qualified resident” must be “a qualified voter” who has “resided continuously in the City one year prior to the date of the primary election” for the office of City Council President.

Thus, in order to fill a vacancy in the office of Council President, one must 1) be a “qualified voter” and 2) maintain continuous residency within the City during the required period of “one year prior to the date of the primary election” for the office of City Council President. Therefore, all qualified voters who have resided continuously within the City for a period of one year prior to May 14, 2009³ are eligible to fill the upcoming vacancy in the office of City Council President.⁴

2. The Qualified Voter Defined.

As cited by the Board in its Advisory Opinion No. 5 (March 6, 2007), the Pennsylvania Constitution defines a “qualified voter” as follows:

Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

1. He or she shall have been a citizen of the United States at least one month.

2. He or she shall have resided in the State ninety (90) days immediately preceding the election.

3. He or she shall have resided in the election district where he or she shall offer to vote at least sixty (60) days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within sixty (60) days preceding the election.

³ This date is the last primary election for the office of City Council President.

⁴ The Board notes that this interpretation of Charter §§ 202 and 207 creates the anomaly that, regardless of whether Mr. Spencer resigned in 2010, 2011, 2012 or 2013, the residency requirements for his appointed replacement would be the same. That is, in all the above scenarios, the replacement would have had to maintain continuous residency from May 14, 2008 to the time of his/her appointment. The time of mandated residency could be as little as 19½ + months to as much as 67½+ months.

However, as noted above in the discussion on statutory construction, when the words of a statute, or Charter, are clear and unambiguous, a court may not ignore the letter of the law under the pretext of pursuing its spirit. Nor may it insert a phrase where it appears the authors of the Charter failed to foresee or contemplate a certain scenario. The words of Charter §§ 202 and 207 are clear and unambiguous, and the Board cannot ignore them in its interpretation.

PA Const. Art. 7, § 1.⁵ A qualified voter can be nothing more or less than this constitutional mandate.

3. The Role of the Councilors in Filling the Vacancy.

In questions 3 a), b) and c) above, Kelleher seeks the Board's Opinion as to the permitted role of members of Council during the application process who may also be seeking the appointment to fill the Vacancy. Neither the Charter, nor the Administrative Code addresses this set of circumstances. It appears to the Board that the internal rules and procedures of City Council⁶ will govern in the absence of applicable Charter and Administrative Code sections.

As to question 3 d) above, Charter Section 207 clearly states that "a vacancy in the Council shall be filled by a majority vote of the remaining members of Council." There is no limitation placed on the phrase "remaining members of Council," and without such limitation, it clearly means all remaining members of Council. Thus, in the instant case, there is no limitation on the remaining Council members voting in a Charter compliant selection process.

4. The Selection Process is Open to all Qualified Residents.

In filling a vacancy for the office of Council President, Section 207 does not limit eligibility to the remaining Councilors. Rather, all persons who are qualified residents⁷ of the City are eligible to apply for such a vacancy.

⁵ United States Constitution, Amendment XXVI, § 1, provides for a national voting age of eighteen (18) years old. *See also* 28 P.S. § 2811 (codifying both PA Const. Art. 7, § 1 and the voting age of eighteen (18) as mandated by Const. Amnd. XXVI).

⁶ As for the internal rules and procedures of City Council, they too must be Charter compliant.

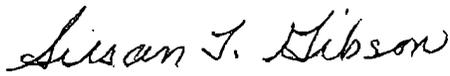
⁷ That is, the successful appointee must meet both the requirements of a qualified voter and the residency requirement of Charter § 202.

III. OPINION OF THE BOARD

It is the opinion of the Board that:

- A. As to question 1, the person ultimately appointed to fill the Vacancy must be a qualified resident, that is, a qualified voter who also meets the residency requirement of residing within the City continuously for a period of one year prior to May 14, 2009;
- B. As to question 2, “qualified voter” is defined as provided in section II(B)(2), above;
- C. As to question 3 a), b) and c), the internal rules and procedure of Council govern these aspects of the application and recommendation process. As to question 3 d), the Charter does not limit a Council member from voting on filling a vacancy in the office of Council President, so long as such a vote occurs in a Charter compliant manner.
- D. As to question 4, posed by Wegman, all qualified residents⁸ may be considered to fill the Vacancy.

CITY OF READING CHARTER BOARD

By: 
Susan Gibson, Chair

Date: December 29, 2011

⁸ *Id.*