

THE CHARTER BOARD OF THE CITY OF READING

IN RE:            Limitations on the Placement :            Request Filed August 1, 2007  
                     of Initiative and Referenda    :  
                     Placed on a Ballot by            :            Advisory Opinion No. 6  
                     City Council                            :

**ADVISORY OPINION**

**I.        PROCEDURAL HISTORY AND QUESTION PRESENTED**

By letter dated August 1, 2007 Linda A. Kelleher, Clerk of the City of Reading, (“City Clerk”) requested that an advisory opinion be issued by the City of Reading Charter Board (“Board”) regarding the following issue: “Does the limitation found in Article XI, Section 1109(3),<sup>1</sup> of the Charter of the City of Reading apply to citizens and the governing body or only to citizen generated initiative and referendum issues?” The Board notes that the City Clerk’s question arises in the context of Reading City Council (“City Council”) passing “two ordinances for Charter referendum questions” with the possibility of a third such ballot question.<sup>2</sup>

The Board takes the term “Charter referendum questions” to mean Charter amendments to be proposed by City Council through the referendum process. The Board also takes the term “governing body” to mean City Council. The Board answers the City Clerk’s request for an advisory opinion under those interpretations.

**II.        DISCUSSION**

A.        Applicable Charter Provisions

Section 1109(c) of the Charter of the City of Reading (“Charter”) provides:

**Limit on the Number of Initiative and Referendum.** No more than two initiative and two referendum measures may be placed on the ballot at any primary, municipal or general election. The

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<sup>1</sup> The City Clerk’s request for advisory opinion cites to Charter Section 1109(3), however, it appears to the Board that the City Clerk is referring to Section 1109(c), there not being a subsection “3” within Section 1109.

<sup>2</sup> See Letter of Linda A. Kelleher, City Clerk, dated August 1, 2007.

first two initiative and referendum measures which are filed with the City Clerk will be the only ones allowed on the ballot.

Article XI of the Charter does not apply to City Council. Rather, that Article applies only to the citizens of Reading. Thus Section 1109 of the Charter is inapplicable to any discussion regarding City Council's ability to place questions on a ballot. Specifically, the Charter's limitation of "no more than two initiative and two referendum measures" being placed on the ballot at a single election applies only to initiative and referendum measures advanced by the citizens of Reading.

Section 1204 of the Charter provides four mechanisms for the amendment of the Charter. Section 1204 states:

The Charter shall be amended by:

- A. The citizens of the City through the initiative process provided by this Charter.
- B. City Council through referendum.
- C. A Charter Review Commission by amendments being placed on the ballot in accordance with §1103 of this Charter.
- D. Proposed amendments by a Charter Review Commission being placed on the ballot in accordance with §1203 of this Charter.

Taking Sections 1109 and 1204 of the Charter into account, it is clear that when placing Charter amendment referenda on a ballot, City Council is not limited in the number of such referenda that it can propose.<sup>3</sup>

However, the Charter does not provide City Council with the power or right to place referenda on a ballot, other than as may arise in the course of amending the Charter. *Reading*

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<sup>3</sup> The Home Rule Charter and Optional Plans Law, 53 Pa.C.S. §§ 2941-2944, also contains no limitation on the number of Charter amendments which may be proposed.

*Private Trash Haulers v. City of Reading*, 42 Pa.D.&C.4<sup>th</sup> 23 (Berks Co. 1999) (Stallone, J.) controls this issue. In that case, City Council placed a pending and unadopted ordinance on the ballot for vote by citizens of Reading. Judge Stallone held that the only situation in which City Council has the authority to commence the referendum process is in the course of amending the Charter. The Court further held that City Council’s placement of non-Charter amendment legislation on the ballot for vote by the citizens of Reading was inconsistent with Article XI and XII of the Charter. *Id.*, *generally, and* at 36-37.

B. Conclusion

Section 1204(b) of the Charter provides no limitation on the number of Charter amendment referendum questions which may be placed on a ballot in any given election by City Council. The limitation of “no more than two initiative and two referendum measures” being placed on a ballot at any primary, municipal or general election applies only to the citizens of Reading and not in the context of Charter amendment. Finally, the Charter empowers City Council to place referenda on the ballot only in the course of amending the Charter and City Council may not place general legislation on the ballot through initiative or referendum.

**III. OPINION OF THE BOARD**

The Opinion of the Board is as follows:

- A. Section 1109 of Article XI of the Charter does not apply to City Council.
- B. The limitation that “no more than two initiative and two referendum measures may be placed on the ballot at any primary, municipal or general election” found in Charter Section 1109(c) is not applicable to Charter amendments proposed by City Council pursuant to Charter Article XII, Section 1204(b).

C. There is no limitation on the number of Charter amendment referenda which City Council may propose in any given election under Section 1204(b) of the Charter.

D. City Council may not place general legislation on the ballot through the initiative or referendum process and such ballot measures would violate the Charter.

CITY OF READING CHARTER BOARD

By: Susan J. Gibson  
Susan Gibson, Chair

Date: August 27, 2007