

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Application of Charter Section : Request Filed December 17, 2007
 1002(c) to the Police and Fire :
 Diversity Boards : Advisory Opinion No. 7

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

By letter dated December 17, 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”) pertaining to the following question presented: Must members of the Police and Fire Diversity Boards be residents of the City of Reading (“City”) as required by the City’s Charter, Section 1002(c)?

The Police Diversity Board arose from the settlement of a federal law suit captioned *Pennsylvania Statewide Latino Coalition v. City of Reading*, United States District Court for the Eastern District of Pennsylvania, No. 03-CV-5640. The parties, in settling that litigation, agreed to the formation of the Police Diversity Board. Further, the City enacted an Ordinance, Bill No. 27-2006, approving and adopting the terms of the settlement agreement, including creation of the Police Diversity Board. By Executive Order 2006-3301, the Mayor formally created the Police Diversity Board.

The Fire Diversity Board had a similar conception. Its creation arose from a federal law suit captioned *Reading Branch, National Association for the Advancement of Colored People, et al., v. City of Reading*, United States District Court for the Eastern District of Pennsylvania, No. 05-6334-JS. The parties, in settling that litigation, agreed to the formation of the Fire Diversity Board. The City enacted an Ordinance, Bill No. 15-2007, approving and adopting the terms of the consent decree entered in that litigation, including the creation of the Fire Diversity Board. It

is unclear from the documents provided by the City Clerk whether or not the Fire Diversity Board was also formally created by a mayoral executive order. In any event, that question does not impact our analysis.

The Clerk advises that it has been difficult for the City to identify a sufficient number of candidates with the needed skill sets or licenses who reside in the City to fill vacancies on the Police and Fire Diversity Boards.

II. DISCUSSION

A. Applicable Charter Provisions

Section 1002(c) of the Charter of the City of Reading (“Charter”) provides:

(c) Qualifications. As a general rule, members of boards and commissions shall be residents of the City. At the discretion of Council, persons not residents of the City, but who have significant property or business interest in the City, may be selected to serve. No person may concurrently serve on more than one authority, board or commission.

B. Analysis

Charter Section 1002(c) on its face, requires little interpretation. Generally, members of boards and commission shall be residents of the City. City Council, in the exercise of its discretion,¹ may select non-City residents who have “significant property or business interest in the City.” Therefore, under appropriate circumstances, non-City residents may be appointed to boards and commissions. However, those appointees must have “significant” property or business interest in the City.

The Board notes that Charter Section 1002(a) provides for “[b]road citizen participation” encouraged by recruiting appointees and making appointments. The Charter’s call for broad citizen participation indicates to the Board that the supply of qualified citizens of the City should

¹ Ultimately, the Board determines if City Council abuses this grant of discretion. However, at this time, there is no indication that this occurring, nor is that question before the Board at this time.

be exhausted or fully engaged before non-City residents are appointed. Of course, there may be situations where a true special knowledge or skill are necessary, and there are no qualified City residents interested in being appointed. Likewise, the Board recognizes that there may be situations where significant property or business interests of non-City residents are affected by the decisions or actions of City boards or commissions. In those circumstances prudence and fairness dictate that some non-City resident representation be had. City Council should be mindful that these are some of the exceptions to the general rule stated in Charter Section 1002(c). Absent a legitimate reason, in limited circumstances, City Council should not deviate from the general rule of appointing City residents to boards and commissions.

Reviewing the settlement agreement and consent decree in the police and fire department suits, respectively, reveals that the boards themselves were intended to be created in accordance with governing law, here the Charter. The settlement agreement in the *Pennsylvania Statewide Latino Coalition* and the consent decree in the *Reading Branch, National Association for the Advancement of Colored People, et al.*, both require that the respective boards be created “by executive order, municipal ordinance, or other valid means.” There is no indication that these boards were intended to be outside the reach of the Charter.²

C. Conclusion

Charter Section 1002(c) requires that members of boards and commissions be residents of the City. City Council may exercise its discretion to appoint non-residents, but only where those non-residents have “significant property or business interest in the City.” Therefore, the Police and Fire Diversity Boards, as boards of the City, must meet those same requirements.

² Also, Executive Order 2006-3301, creating the Police Diversity Board, specifically references the Charter as providing the authority by which the Mayor is permitted to create the board.

Any non-City resident appointed to serve on those boards must have “significant property or business interest in the City.”

III. OPINION OF THE BOARD

The Opinion of the Board is as follows:

A. Section 1102 of Article X of the Charter does apply to appointments to the Police and Fire Diversity Boards.

B. The general rule of Section 1102(c) is that members of City boards and commission shall be residents of the City.

C. At the discretion of City Council, Non-City residents may only be appointed to City boards, including the Police and Fire Diversity Boards, where those appointees have “significant property or business interest in the City.”

D. The discretion of City Council to appoint non-City residents to City boards and commissions is qualified by the “broad citizen participation” requirement of Section 1002(a) and the general rule of Section 1002(c).

CITY OF READING CHARTER BOARD

By: Susan I. Gibson
Susan Gibson, Chair

Date: January 16, 2008