

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Application of Charter Section : Request Filed March 13, 2008
 706 to the Heads of City :
 Authorities : Advisory Opinion No. 9

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

By letter dated March 13, 2008¹ Linda A. Kelleher, Clerk of the City of Reading, (“Clerk”) requested that an advisory opinion be issued by the City of Reading Charter Board (“Board”) pertaining to the following question presented: Does the residency requirement² of the Charter of the City of Reading (“Charter”) apply to the heads of City authorities?³

The Board has already issued an advisory opinion as it pertains to authorities created pursuant to the Municipality Authorities Act, 53 Pa.C.S. § 5601, *et seq.* See Advisory Opinion No. 4 (December 4, 2006).⁴ The Clerk points out in her March 13, 2008 letter to the Board that the Authority to which her request for an advisory opinion applies is not one created by the Municipality Authorities Act. The Charter Board believes that the Clerk is referencing the Reading Redevelopment Authority (“RRA”) and will address this advisory opinion to answer the Clerk’s question as applied to the RRA.

II. DISCUSSION

¹ The Clerk’s March 13, 2008 letter also included a request for an advisory opinion asking the question: To which specific “heads of offices, departments and agencies” does the Charter’s Section 706 residency requirement apply? That request for an advisory opinion is addressed in Advisory Opinion No. 8.

² See Charter, Section 706.

³ The Clerk provides two sub-issues to this request for an advisory opinion and asks: “Although an authority is a separate legal entity, would it be a City agency and would it’s executive director or head need to comply with the Charter’s residency requirement?”

⁴ Advisory Opinion No. 4 did not address the issue of residency. That advisory opinion addressed, in part, whether City authorities are subject to the same purchasing requirements as the City as provided by the Charter. The Charter Board concluded that an authority created pursuant to the Municipality Authorities Act is not subject to the requirements of the Charter in as much as such authorities are instrumentalities of the Commonwealth of Pennsylvania and not of the local municipality (in this case, the City). See Advisory Opinion No. 4 at p. 2.

A. Applicable Charter and Statutory Provisions

The relevant portion of Section 706 of the Charter, regarding residency, provides:

The compensation of all heads of departments, offices and agencies under the direction of the Mayor shall be proposed by the Mayor and approved by ordinance.

* * * *

All such heads of departments, offices and agencies need not be residents of the City at the time of appointment, but after appointment shall reside in the City. City residency shall be required within twelve (12) months of being appointed.

The RRA is created pursuant to the Urban Redevelopment Law, 35 P.S. § 1701, *et seq.*

The Urban Redevelopment Law advances the declared policy of the Commonwealth of Pennsylvania:

“to promote the health, safety and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as Redevelopment Authorities, which shall exist and operate for the public purposes of the elimination of blighted areas through economically and socially sound redevelopment of such areas, as provided by this act, in conformity with the comprehensive general plan of their respective municipalities for residential, recreational, commercial, industrial or other purposes, and otherwise encouraging the provision of healthful homes, a decent living environment and adequate places of employment of the people of this Commonwealth.”

35 P.S. § 1702. Section 1704(a) of the Urban Redevelopment Law provides for the creation of “separate and distinct bodies corporate and politic, one for each city and one for each county of the Commonwealth.” Section 1704(a) further provides that:

“Each such body shall be known as the Redevelopment Authority of the city or the county, as the case may be, but shall in no way be deemed to be an instrumentality of such city or county, or engaged in the performance of a municipal function.”

Section 1709 of the Urban Redevelopment Law provides that an “[a]n authority shall constitute a public body, corporate and politic, exercising public powers of the Commonwealth as an agency thereof.”

B. Analysis

The Urban Redevelopment Law is clear that authorities created pursuant to its terms, including the RRA, “shall in no way be deemed an instrumentality” of the city the authority serves. Such authorities exercise the “public powers of the Commonwealth as an agency thereof.” *See* 35 P.S. §§ 1704, 1709. The Supreme Court of Pennsylvania has answered this question as well.

In *Herriman v. Carducci*, 475 Pa. 359, 380 A.2d 761 (1977), the mayor appointed a person to the Redevelopment Authority of the City of Williamsport to replace a person whose term had expired. The mayor did so without consulting city council. Williamsport passed an ordinance requiring that the mayor’s appointments to authorities be with the advice and consent of city council. *Id.* at 362, 380 A.2d at 763. The ordinance directly conflicted with Section 1705 of the Urban Redevelopment Law, 35 P.S. § 1705. That section provides that a city’s mayor shall appoint the members of the authority. The Supreme Court determined that Williamsport’s local ordinance did not supersede the requirements of the Urban Redevelopment Law. *Id.* at 362, 380 A.2d 763.

Also, it was argued to the Supreme Court that certain provisions of the Optional Third Class City Charter Law, which was applicable to Williamsport, allowed Williamsport to nullify Section 1705 of the Urban Redevelopment Law on the basis that Williamsport had full authority to “organize and regulate its internal affairs.” *Id.* at 362-63, 380 A.2d 763-64. The Supreme Court rejected that argument, stating that:

“we have no doubt that the appointment of a member to the Redevelopment Authority does not concern “the internal affairs” of

the city of Williamsport. The Urban Redevelopment Law s 4, explicitly states that an authority, once created, “shall in no way be deemed to be an instrumentality of such city,” and is in no way “engaged in the performance of a municipal function.” 35 P.S. § 1704. An authority under the Urban Redevelopment Law is an agent of the Commonwealth and not of the local government body. *Id.* § 1709. As can be seen, the legislature in no uncertain terms has made it clear that a redevelopment authority is a completely separate entity from the city. The fact that the mayor of the city is authorized to make the appointment of its members does not make an appointment a matter concerning the internal affairs of the city.”

Herriman, 475 Pa. at 363, 380 A.2d at 763-64. *See generally, Schwartz v. Urban Redevelopment Authority of Pittsburgh*, 411 Pa. 530, 536, 192 A.2d 371, 374 (1963) (authority is public body exercising powers of the Commonwealth as an agency thereof); *Rouse Philadelphia, Inc. v. Ad Hoc '78*, 19 Pa.D.&C.3d 627, 663-64 (Phila. Co. 1979) (Redevelopment Authority of the City of Philadelphia is an agency of the Commonwealth).

C. Conclusion

The Charter has no application to the RRA and it is not a City department, office or agency. If the RRA’s executive director is a true employee of the RRA and not merely the employee, agent or liaison of the City, then the residency requirement of Charter Section 706 would have no application to the executive director. If the RRA’s executive director was an employee, agent or liaison of the City, and not a true employee of the RRA, then a separate analysis must occur to determine whether the executive director was a head of a department, office or agency of the City such that residency under Charter Section 706 would apply. This advisory opinion does not answer that question.

III. OPINION OF THE BOARD

The Opinion of the Board is as follows:

- A. Authorities created by the Urban Redevelopment Law are agencies or instrumentalities of the Commonwealth and not of the municipality which the authority serves;
- B. The RRA is not a department, office or agency of the City of Reading;
- C. The executive director of the RRA, if truly an employee of the RRA, and not an employee, agent or liaison of the City, need not comply with the residency requirement of Section 706 of the Charter.

CITY OF READING CHARTER BOARD

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

Date: *April 3, 2008*