

READING CITY COUNSEL,  
Petitioner

VS.

CITY OF READING CHARTER BOARD,  
Respondent

: IN THE COURT OF COMMON PLEAS  
: OF BERKS COUNTY, PENNSYLVANIA  
:  
: CIVIL ACTION - LAW  
:  
: No. 11-14382

**OPINION, JEFFREY K. SPRECHER, J.**

**FEBRUARY 17, 2012**

Petitioner, Reading City Council, appeals the Order dated December 9, 2011, that denied its appeal and sustained the Final Order of the Charter Board of the City of Reading. This Opinion is filed pursuant to Pa. R.A.P. 1925.

**FACTS**

On October 1, 2010, a resident of the City of Reading (Reading) filed a Charter Board Complaint which alleged that Reading City Council (Council) violated the Home Rule Charter (Charter) of Reading by amending Reading's Administrative Code by setting forth additional procedures for the initiative and referendum process in Bill No. 24-2007 (hereinafter, Ordinance), conflicting with the procedures provided in Charter Article XI. The complaint alleged that the Ordinance violated the Charter by amending the provisions concerning initiative and referendum by ordinance instead of by referendum as required by the Charter. The Ordinance also granted authority to the City Clerk (Clerk) to make more than a facial determination of the sufficiency of the initiative or referendum petitions.

Council did not request an evidentiary hearing. The Charter Board Ordinance provides that if an evidentiary hearing is not requested by the subject of the appeal, then the Charter Board (Board) determines by a majority vote of the members present

whether the Findings Report supports a determination that a violation of the Charter exists. Board determined that Council impermissibly attempted to amend Charter and that the limited role of the Clerk in the initiative and referendum process under the Charter impermissibly conflicted with the Ordinance which granted Clerk discretion in the initiative and referendum process.

Under the Charter the role of Clerk in the initiative and referendum process is ministerial; the Clerk accepts for filing the initiative or referendum affidavits, issues petition blanks, examines petitions and affidavits, and issues certificates of sufficiency. No personal judgment is exercised for these duties. For example, the Clerk determines if two thousand signatures appear on the petitions.

The Ordinance, however, granted Clerk the authority to examine petitions beyond making a facial determination of compliance. The Clerk was empowered to determine that petitions or affidavits were invalid solely because they were not on pre-printed forms; the Board found that this action was an infringement on the right of citizen participation guaranteed under the Charter because the Charter allows any form to be used for a complaint. Therefore, the Board found that the Ordinance did not ensure liberal and unrestricted access to the forms. The Charter also prohibits the Clerk from declaring a petition to be invalid merely from non-compliance.

The Ordinance further permitted the Clerk to complete a verification process to determine if the signatures on the petition were insufficient according to seven listed categories. The Ordinance stated that the Clerk *may* (emphasis added) complete a verification process. Thus, the Clerk had the discretion under the Ordinance not to

complete the verification process. Board found that this discretion was prohibited in the Charter.

Board further found that under the Charter the Clerk makes only a facial determination of the sufficiency of the petition. In violation of the Charter, the Ordinance granted the Clerk the power to examine the petition to determine if it was completed by a qualified person and, if not, the information was not to be counted. The Clerk was also to examine Berks County voter registration records to determine if the "signature and information" on the petition matched the records. Thus, the Board found that this provision empowered the Clerk to look beyond the face of the petition and to exercise discretion by examining another municipality's voter registration records.

The Ordinance further authorized the Clerk to make an affirmative determination of whether the signature belonged to a registered elector in Reading. The Board found that this discretion violated the Charter and created a conflict of interest because the Clerk is the chief agent of Council and had the power to accept and reject petitions under the Ordinance. The Charter prevents this conflict of interest from occurring.

Board concluded that since the Ordinance conflicted with the Charter, the Ordinance was null, void, and of no effect. The provisions of the Charter were not severable, so the Ordinance was completely void. The Board publicly censured Council because the Ordinance had been adopted even though the Clerk had sought two advisory opinions from the Board, and those opinions were ignored for the most part. The Board also ordered the Clerk to cease and desist from enforcing any aspect of the Ordinance or to refuse to accept or certify any documents in compliance with the Charter.

Council filed an appeal to this court. It contended that the Board committed an error of law by concluding that the Clerk has merely ministerial duties under the Charter, that the Board abused its discretion by ignoring the Investigative Officer's Findings Report, and that the Board committed an error of law by not declaring the relevant provisions in the Charter illegal, null, and void. This court denied the appeal. Council filed the instant appeal to the Commonwealth Court.

### **ISSUES**

Council raises the following issues in its Concise Statement of Errors

Complained of on Appeal:

1. Did this court err by not declaring the Board's Final Opinion and Order dated April 25, 2011, invalid?
2. Did this court err by not finding the Board erred by concluding that the Clerk merely has ministerial duties under the Charter's initiative and referendum provisions?
3. Did this court err by not finding the Board abused its discretion by ignoring the Investigative Officer's Findings Report?
4. Did this court err by not finding the Board erred by not declaring Charter Article XI, Sections 1102 through and including 1109 illegal and null and void?

### **DISCUSSION**

This court relied on the record and held argument on the instant appeal. Where the local agency developed a full and complete record and the trial court took no additional evidence, the scope of review is limited to whether the local agency violated constitutional rights or committed an error of law or whether the necessary findings of

fact are supported by substantial evidence. *Siteman v. City of Allentown*, 695 A.2d 888 (Pa. Cmwlth.), *appeal denied*, 550 Pa. 674, 703 A.2d 469 (1997).

Section I of Charter Amendment I provides:

- a. **Governing law of the City.** This Charter is the governing law of the City of Reading. No action or inaction by City Council, the Administration, or any other body created by this Charter shall be taken contrary to it, whether individually or collectively, by ordinance, resolution, practice, executive order or decision, or any other means.

Thus, any action Council takes cannot violate any provisions of the Charter, the governing law of the City. The Charter provides for initiative and referendum and the processes by which they are obtained. The Clerk's duties under the initiative and referendum process are to accept for filing the affidavits, to issue petition blanks, to examine the petitions and affidavits, and to issue certificates of sufficiency. The Clerk checks the four corners of the documents and does not undertake an independent investigation of the signatures.

The disputed Ordinance enhances the duties given to Clerk under the Charter, the supreme governing instrument. The Ordinance permitted the Clerk to check voter registration lists, including those held by the Berks County Board of Elections. The Ordinance further enhanced the Clerk's duties by giving the Clerk the discretion to conduct a search or not to conduct a search of the signatures. Therefore, the Clerk could engage in the inequitable and uneven application of the verification process. Thus, the Ordinance clearly expanded the scope of the duties under the initiative and referendum procedure, and this court did not err in concluding, as the Board did, that under the Charter the Clerk has ministerial duties only.

Council contends that this court erred by not finding that the Board abused its discretion by ignoring the Investigative Officer's Findings Report. This contention is without merit.

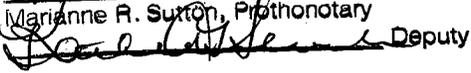
The Charter Board Ordinance created the position of Investigative Officer whose function is to conduct investigations, prepare Findings Reports, and present cases before Board on Charter violations. Nothing requires the Board to accept the Officer's conclusions of law. Charter Amendment I vests the Board with exclusive jurisdiction to hear and determine questions pertaining to the Charter and Administrative Code. Thus, it is the Board, not the Officer, which has the jurisdiction to determine questions of violations.

Council's last complaint is that this court erred by not finding that the Board erred by not declaring the Charter, Article XI, § 1102 through and including § 1109 illegal, null, and void. This objection is without merit. The Board was never requested to determine the legality of the aforesaid provisions. The first time that this issue was raised was in Council's appeal to this court. Assuming *arguendo* that the issue was properly before the Board, this court finds that the provisions were valid. The procedures under attack concern how issues are put on ballots, not the conduct of the election itself, which is not controlled by the Charter.

In accordance with the foregoing Opinion, this court submits that Council's appeal should be denied.

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COPIES IS HEREBY GIVEN OF THE ENTRY OF THIS ORDER OR DECREE PURSUANT TO RULE P.C.P. 236 YOU ARE NOTIFIED THAT THIS ORDER/DOCUMENT HAS BEEN FILED IN THE PROTHONOTARY'S OFFICE OF BERKS COUNTY AND THIS IS AN EXTRACT FROM THE RECORD OF SAID COURT CERTIFIED THIS 21st DAY OF Feb 2012  
Marianne R. Sutton, Prothonotary  
 Deputy