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Board of Ethics, City of Reading

Re: Authority of Mayor to Unilaterally Dismiss Members at the Expiration of Terms

Dear Members:

You have requested that we offer an opinion on what legal authority, if any, is vested in the Mayor of the City of Reading to unilaterally dismiss lawfully appointed members of the Board of Ethics at the expiration of their terms.

In the course of our research, we reviewed the City of Reading Home Rule Charter ("Charter"), the Code of Ethics ("Code"), the Administrative Code of the City of Reading ("Administrative Code"), the Public Official and Employee Ethics Act, 65 Pa.C.S.A. § 1101 et seq., and the Third Class City Code, 53 P.S. § 35101, et seq.

Section 1-199.01 of the Administrative Code provides for the governance of boards within the City and authorizes the removal of a board member by the appointing authority where there is cause for removal. Section 1201(c) of the Charter vests appointment authority in the Mayor, subject to the approval of City Council. Therefore, the appointing authority is not the Mayor alone, but the Mayor, subject to the approval of City Council. Further, because cause is required and conspicuously absent from the present case, Section 1-199.01 gives the Mayor no authority to remove members of the Board.

Although the Administrative Code otherwise sets forth the powers and duties of the Mayor generally, it simply incorporates similar sections of the Charter. Among them are sections 309 and 310, which mandate that the Mayor appoint all members of boards over which he has the power to appoint and empowers him to remove anyone so appointed "unless otherwise provided by law." As you are aware, the Charter contains provisions specifically dealing with the appointment and removal of members of the Board of Ethics. Section 1201(c) provides that "Members of the Board of Ethics may be removed by the Mayor with the consent of City Council." Therefore, the removal of members of the Board of Ethics is "otherwise provided by law," and thus, excluded from sections 309 and 310 of the Charter and the parallel provisions of the Administrative Code.

Unfortunately, the Charter, the Code, and the Administrative Code are silent on the issue of how the expiration of a board members term may effect their power to act and the Mayor's authority to remove them.

Section 1106(b) of the Public Official and Employee Ethics Act sets the term of members of the State Ethics Commission to a "term of three years, except that members shall continue to serve until their successors are appointed and qualified." 65 Pa.C.S.A. 1106(b). Similarly, the Third Class City Code establishes civil service boards and provides that the members "shall be elected for terms of four years or until their successors are elected and qualified." 53 P.S. § 39402. Although these statutes do not provide binding authority for our case, they assist us in forming a reasonable interpretation of the above-referenced City ordinances where they are silent on the issue.

In conclusion, there is clearly nowhere in the Charter, Code or Administrative Code, express authority given to the Mayor to unilaterally remove members of the Board of Ethics without cause, either in the midst of their term of service or at its expiration. The only reasonable interpretation of the Charter, Code and Administrative Code, is that the Mayor may remove members of the Board of Ethics only with the consent of City Council absent cause, even where the member's term has expired. Such an interpretation is not inconsistent with Pennsylvania law.

As always, please do not hesitate to contact us if you would like further clarification on any of the issues set forth in this letter.

Very truly yours,



Edwin L. Stock

ELS:cyn/68445