

that is in place and its future enforcement.¹ *Compare* Adv. Op. No. 11 (all events transpired and were completed before the date of the request for advisory opinion) *and* Adv. Op. No. 12 (voting at issue occurred after request for advisory opinion but before time advisory opinion was rendered) *with* Adv. Op. No. 14 (May 12, 2009) (a board continued to conduct business where an advisory opinion sought to clarify the permitted membership on the board). On the question now before the Board, the Board will render an advisory opinion.

B. Pertinent Provisions of Charter and Administrative Code

Charter § 904, pertaining to the budget of the City of Reading, requires that the budget shall show “all proposed expenditures, including debt service, for the ensuing fiscal year,” “the number of proposed employees in every job classification,” and “proposed expenditures during the ensuing fiscal year, detailed by offices, departments and agencies, in terms of their respective work programs and the methods of financing such expenditures.” Clearly, the Charter requires that every City department and every position within the City must be accounted for in the budget for the year.

The Administrative Code also governs on this issue. Administrative Code § 1-186 (9)(c)(2)(d) provides that the City’s budget shall “include the position ordinance, defined in § 1-122, which shows the number of all proposed employees in every job classification, as defined in § 1-221, highlighting changes and the proposed salaries of all exempt employees beginning in 2009.” Section 1-221 of the Administrative Code requires that each City employee be classified as follows:

For the purpose of this Code, City employees shall be classified according to the following categories.

¹ Indeed, the retrospective aspects of this advisory opinion request, i.e. the alleged creation of a Communications Director outside of the provisions mandated by the Charter and Administrative Code, are properly addressed by way of Charter Board complaint and not by advisory opinion.

- A. **Full-time Employees.** Those employees filling positions authorized in the annual Position Ordinance, defined in §1-122, who work a minimum of 35 hours weekly.
- B. **Part-time Employees.** Those employees filling positions authorized in the annual Position Ordinance, defined in §1-122, who work a maximum of 28 hours weekly.
- C. **Temporary Employees.** Those employees filling positions authorized in the annual Position Ordinance, defined in §1-122, who are hired to work for a specified period of time.
- D. **Seasonal Employees.** Those employees filling positions authorized in the annual Position Ordinance, defined in §1-122, who are hired to work for a specified season.

Finally, Administrative Code §1-122(1)(L) requires that City Council by ordinance “[a]dopt the annual position ordinance, the official listing of all authorized City employment positions, which authorizes the Administration to hire and compensate all employees, defined in § 1-121, ‘Categories of Employment.’”²

C. Analysis

1. The Position of Communications Director

First, the Board notes from an earlier ruling that no position in City government can be created without Council approval via inclusion in the Annual Position Ordinance. In Investigation No. 26, involving the attempted appointment of a full time budget analyst without the position being listed on the Annual Position Ordinance, the Board held:

- a. “[P]ersonnel is a budgeted item that must accurately be accounted for under Charter §§ 406, 903 and 904 and the Administrative Code §§ 1-222(1)(J)³ and 1-186(9)(c)(2)(d).”
- b. “Also inherent within the Charter is the transparent accountability of the City’s executive branch regarding personnel structure and expenditures. The executive branch, including the Managing

² The correct current citation is to the Administrative Code § 1-221, relating to Categories of Employment, and not to § 1-121, relating to the Official Actions of Council. It appears to the Board that this internal citation within the Administrative Code is incorrect.

³ The correct current citation is to the Administrative Code § 1-122(1)(L).

Director, is accountable to City Council in as much as they are not at liberty to create positions outside of the approved personnel plan.”

- c. “All positions in City government must be listed on the Annual Position Ordinance. The Administration may not create any employment position without Council approval via inclusion in the Annual Position Ordinance.”

Final Opinion and Order, Investigation No. 26 (June 18, 2010) at p. 5 (emphasis added) (footnote not in original).

The Charter and Administrative Code preclude any City employment position, including the position of Communications Director, from existing unless it is listed on the Annual Position Ordinance. If any position is not listed on the Annual Position Ordinance, including the position of Communications Director, it simply does not exist.

2. The Media Policy

Next, the Board considers whether the Media Policy could be implemented or enforced without a Communications Director. From a reading of the Media Policy, it is clear that the Communications Director is absolutely integral and essential to the performance, implementation and enforcement of the Media Policy. All significant actions, practices and responsibilities detailed within the Media Policy require the presence of a Communications Director. For example, the Media Policy provides:

- a. Ultimately, it is the responsibility of the Communications Director to oversee communications between the City departments, the media and the public. All news releases will be issued by the Communications Director to the area media list and the City’s website. . . . All media personnel seeking information, interviews and photographs are to contact the Communications Director and not department employees.”
- b. “Any employee that is contacted directly by the media for interviews shall immediately notify the Communications Director.”

- c. “Department Directors or designated Media Liaisons shall send all news releases and news advisories to the Communications Director for final edits and for release to the public media.”

Media Policy at pp. 1, 2, 4, and 5. *See also* Media Policy at p. 2 (detailing daily, weekly and monthly responsibilities of Communications Director).

It is clear to the Board that the Media Policy cannot be implemented or enforced without the position of the Communications Director. It is the Opinion of the Board that because the Communications Director is not a Charter compliant nor ordinance approved position and that because the actions delineated in the Media Policy require the presence of a Communications Director, the Media Policy is unenforceable.

3. Further Discussion:

The Board strongly cautions that any structure created to carry out the Media Policy must be Charter compliant and must be under the supervision of the Managing Director. As highlighted by Charter § 308(i), all administrative policies are to be implemented by the Managing Director. Likewise, Charter § 406(2) details the Managing Director’s responsibility to direct and supervise the administration of all departments, offices, and agencies of the city, except as otherwise provided by the Charter or by law. It is a violation of the Charter to attempt to create a new bureaucratic layer outside the supervisory authority of the Managing Director, as such conduct erodes the professional management structure envisioned and mandated by the Charter.

III. OPINION OF THE BOARD

It is the Opinion of the Board that:

- A. A position in City government does not exist if it is not listed on the Annual Position Ordinance and any such position, including the position of Communications Director,

created contrary to the Charter and Administrative Code sections cited herein would be null, void and of no effect;

B. Any policy created which must be enforced by a person holding a City employment position that is not Charter or Administrative Code compliant, nor approved by ordinance, such policies, including the Media Policy, would be unenforceable.

CITY OF READING CHARTER BOARD

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

Date: February 22, 2012