

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Investigation of Councilman : Complaint Filed: November 28, 2005
Angel F. Figueroa :
: Investigation No. 1

FINAL OPINION AND ORDER

I. FINDINGS OF FACT

1. On November 28, 2005, City of Reading ("City") Councilwoman, Donna Reed ("Reed"), filed a complaint ("Complaint") with the City of Reading Charter Board ("Board").
2. The Complaint set forth that Councilman Angel F. Figueroa ("Figueroa") represented the City's District no. 1 on City Council, but did not retain residency in District no. 1 throughout the term of his office.
3. The Complaint alleges that Figueroa resided outside of District no. 1, specifically at 2144 Queen's Court, Reading, Berks County, Pennsylvania, which is within District no. 2 of the City, since on or about October 15, 2005.
4. The Complaint is within the jurisdiction of the Board.
5. Figueroa has retained Kenneth I. Trujillo, Esquire as his counsel in this matter.
6. On December 1, 2005, Figueroa provided a signed and notarized statement to Investigative Officer, Jason B. Hopp, Esquire.
7. On January 7, 2002, Figueroa was inaugurated as Councilman for District no. 1 of the City, which term is four (4) years.
8. From 1999 through April 30, 2005, Figueroa, with his wife, resided exclusively at 436 Pine Street in District no. 1 of the City.
9. On April 30, 2005, Figueroa and his wife moved to his wife's grandmother's house at 351 South 3rd Street in the City of Reading, which is also in District no. 1.

10. Since May 2005, to the present, a family other than Figueroa and his wife have resided at 436 Pine Street, Reading, Berks County, Pennsylvania.

11. Since April 30, 2005, the only relationship Figueroa has had to the property at 436 Pine Street is that he and his wife are titled property owners for said property.

12. Figueroa and his wife had a new residence constructed at 2144 Queen's Court, Reading, Berks County, Pennsylvania, which is located within District no. 2.

13. Figueroa admits in his statement that from September 4, 2005, to the present, the exclusive residence for he and his wife has been in District no. 2 at 2144 Queen's Court, Reading, Pennsylvania.

14. Figueroa has not retained residency within District no. 1 of the City, for which he was elected to City Council, since September 4, 2005.

15. From September 4, 2005, to the present, Figueroa and his wife have resided exclusively within District no. 2.

16. From September 4, 2005, to the present, Figueroa has at no time retained a residence within District no. 1 of the City, which is the District he was elected to represent.

17. City Councilmembers and City officials state that the definitions in the Charter and subsequent ordinances have created a confusing definition of the term Residency, which is in need of clarification.

18. At no time did City Council initiate any proceedings to determine a forfeiture of Figueroa's office as Councilmember from District no. 1 or to declare a vacancy of that office.

19. By letter dated January 19, 2006, Jason B. Hopp, Esquire, the Investigative Officer assigned to this matter, submitted Findings of Fact, containing, as Exhibit "A," the December 1, 2005 statement of Figueroa.

20. Incorporated herein as part of the procedural record of this matter is the November 28, 2005 Complaint filed by Reed and the aforementioned Findings of Fact, with Exhibits.

II. CONCLUSIONS OF LAW

A. Question Presented

Is simply owning real estate in a voting district sufficient to maintain residency in that district so as to meet the eligibility requirements for City Council, as specified in the Charter of the City of Reading (“Charter”) Section 202, when the Councilmember actually resides outside of the voting district from which he was elected? The Board answers this question in the negative.

B. Legal Discussion

We note initially that the City, as a home rule municipality, is bound by the Pennsylvania Election Code, 25 P.S. § 2601, *et seq.*, and Title 65, Public Officers, both statutes being uniform and applicable in every part of the Commonwealth. 53 Pa.C.S. § 2962(e). Also, Pennsylvania law limits the power of home rule municipalities with respect to elections and public officers. 53 Pa.C.S. § 2962 (a)(5) and (c)(2). Sections 202 and 206 of the Charter are compatible with the limitations set forth in 53 Pa.C.S. § 2962 and do not enlarge, and are not contrary to, the Pennsylvania Election Code or Title 65, Public Officers.

The Courts of the Commonwealth of Pennsylvania have held that 25 P.S. § 2814, regarding rules for determining residence, may be used to determine residency requirements for voters, as the statute prescribes, as well as residency requirements for candidates. *In re: Nomination Petition of Driscoll*, 577 Pa. 501, 509-10, 847 A.2d 44, 49-50 (2004). We shall use the residency rules set forth in 25 P.S. § 2814 to determine whether or not an elected official,

here a City Councilman, maintains the appropriate residence as required by the qualifications of his office.

Section 202 of the Charter provides that “[d]istrict council members must retain residence in the district of the City [of Reading] from which they were elected, during their term of office.”

Section 206 further provides that:

“A Member of Council shall forfeit office if the Member:

(a) Lacks at any time during the term of office any qualification for the office prescribed by this Charter or by the law.”

Compare with 65 P.S. § 91.

Section 2814 of the Election Code, 25 P.S. § 2814, provides a statutory framework for determining residence, which, as discussed herein, has been used to determine the residency of voters and candidates. We shall, by extension, apply Section 2814 to the residency requirements of officeholders. Section 2814 provides in pertinent part:

In determining the residence of a person desiring to register or vote, the following rules shall be followed so far as they may be applicable:

(a) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(b) A person shall not be considered to have lost his residence who leaves his home and goes into another state or another election district of this State for temporary purposes only, with the intention of returning.

(c) A person shall not be considered to have gained a residence in any election district of this State into which he comes for temporary purposes only, without the intention of making such election district his permanent place of abode.

(d) The place where the family of a married man or woman resides shall be considered and held to be his or her place of

residence, except where the husband and wife have actually separated and live apart, in which case the place where he or she has resided for two months or more shall be considered and held to be his or her place of residence.

* * *

25 P.S. § 2814(a)-(d).

A new domicile is acquired where (1) a person has physical presence at a new residence and (2) that person expresses the intent to make that new residence his or her principal home. *In re: Hanssens*, 821 A.2d 1247, 1251-52 (Pa. Commw. Ct. 2003). Thus, while a person may have several residences, only one of those residences may qualify as that person's residence or domicile for purposes of the Election Code. *Driscoll*, 577 Pa. at 510, 847 A.2d at 49-50. It is a question of fact as to where an individual's legal residence is located. *In re: Stabile*, 348 Pa. 587, 590, 36 A.2d 451, 452 (1944).

65 P.S. § 91 provides that “[w]henever, by the requirements of any law, a particular residence is a necessary qualification for the election or appointment of any officer, a removal from such residence shall operate as a forfeiture of the office.” This provision is similar to Section 206(a) of the Charter.

C. Conclusions of Law

1. Section 202 of the Charter requires that Council members must continue to reside in the district from which they were elected during their term of office.
2. Section 205 of the Charter provides that the office of Councilmember shall become vacant upon forfeiture of office.
3. Section 206 of the Charter further provides that in all cases of forfeiture, the councilmember shall be entitled to notice and a hearing before Council.

4. 25 P.S. § 2814 is applicable to the determination of residency for officeholders, and is applicable to the determination of residency for members of City Council.

5. 65 P.S. § 91 expresses the legislative intent of the Commonwealth of Pennsylvania that where a certain residency is required as a qualification for office, loss of that residency shall operate as a forfeiture of the office. *See also Stabile*, 348 Pa. at 590, 36 A.2d at 452.

6. The Charter is not in conflict with 25 P.S. § 2814 or 65 P.S. § 91, nor does it diminish or enlarge those provisions.

7. On or about September 4, 2005, Figueroa lost his domicile and legal residence located at 436 Pine Street, Reading, Pennsylvania.

8. 436 Pine Street, Reading, Pennsylvania, located in District no. 1, is not the domicile or legal residence of Figueroa, and has not been such since September 4, 2005.

9. On or about September 4, 2005, Figueroa became domiciled in the City's District no. 2, at the address of 2144 Queen's Court.

10. Although Figueroa and his wife continue to own 436 Pine Street, such co-ownership by itself fails to establish residency at that address pursuant to the factors of 25 P.S. § 2814.

11. Figueroa has failed to meet the residency requirement for the office of District no. 1 City Councilmember since September 4, 2005 and has not been qualified to hold that office since that date.

12. Figueroa's term as District no. 1 City Councilmember expired in January 2006.

13. The Complaint is not moot as a result of the expiration of Figueroa's term as a Councilmember, because 1) Figueroa received pay from the City by virtue of holding the office of Councilmember, despite no longer being qualified for office after September 4, 2005, 2) Figueroa participated in various votes in City Council by virtue of holding the office of Councilmember, despite no longer being qualified for office after September 4, 2005, 3) City Councilmembers and City officials have made statements indicating that the definition of residency and residency requirements under the Charter and other ordinances are confusing and in need of clarification, 4) the conduct set forth in the Complaint is capable of repetition and apt to evade review, and 5) the issue of qualification and forfeiture of office important to the public interest.

14. Each branch of City government – Executive and Legislative – has the duty and responsibility to enforce those sections of the Charter which are placed under its care.

15. Council failed to exercise its powers granted under Section 206 of the Charter, regarding forfeiture of office, and, therefore, Council tacitly permitted Figueroa's violation of Section 202 by its failure to enforce its provisions after September 4, 2005.

16. Council's failure to enforce the Charter in an expeditious manner in this case has caused considerable taxpayer expense, as well as uncertainty and confusion as to the validity of Council's acts from September 4, 2005 through January 2, 2006.

17. Council has an affirmative duty to commence forfeiture proceedings against any Councilmember who fails to maintain his or her eligibility for office, or who otherwise forfeits his or her office as provided by Section 202 and 206 of the Charter.

18. The Charter Board Ordinance at Section V(B)(2)(b)(vi) provides that the Board may recommend to Council that an office be forfeited in accordance with Sections 206,

305 and 504 of the Charter; however, in this proceeding, no such recommendation is made solely because Figueroa's term expired and he is out of office.

19. The Board may, on its own initiative, initiate a preliminary investigation as to the qualifications of office of any Councilmember and City Council's failure to enforce those portions of the Charter entrusted to it. Charter Board Ordinance, Section III(A)(3).

III. DETERMINATION OF THE BOARD

We hold that Figueroa did not maintain residence in District no. 1 after September 4, 2005 in violation of Section 202 of the Charter, relating to eligibility for City Council.

IV. PENALTIES IMPOSED

As a consequence of Figueroa's violation, and his failure to resign from Council after no longer meeting the eligibility requirements of Section 202 of the Charter, the Board imposes the following penalties:

A. Public Censure – The Board will, not earlier than thirty-one days from the date of this Final Order, notify the news media of this decision and provide the news media with a copy of the original of this Final Order.

B. Administrative Fine – The maximum administrative fine of \$1,000 is hereby imposed upon Figueroa. The purpose of the administrative fine is to defray a fraction of the actual cost and expense incurred by the City in investigating, considering and deciding this violation.

C. Fine - A fine of \$500 is hereby imposed upon Figueroa for this violation as a result of his violation of the public trust of the citizens of district no. 1 and the City at large.

D. Considerations of the Board

In determining the penalties assessed against Figueroa, the Board considered each of the factors set forth in Section V(B)(2)(a)(i) of the Charter Board Ordinance. Although the offense is serious, the harm is not continuing since Figueroa's term of office expired. The offense has a serious substantive effect on the Charter, its application and purpose in that Figueroa's conduct is directly contrary to the express provisions of the Charter. Furthermore, due to the express provisions of the Charter, and the clear language of Section 202, the Board views Figueroa's conduct as willful or intentional. Further consequences of Figueroa's conduct include his continued payment for holding the office of Councilmember and the expenditure of taxpayer funds to investigate, consider and decide the Complaint.

V. ORDER

The Charter Board enters the Order attached hereto as Exhibit "A."

CITY OF READING CHARTER BOARD

By: 
Susan Gibson, Chair

Date: 2/25/2006

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Investigation of Councilman : Complaint Filed: November 28, 2005
Angel F. Figueroa :
: Investigation No. 1

ORDER

AND NOW, this 25th day of February, 2006, there being no request for an evidentiary hearing made by Angel F. Figueroa, and after considering the Findings Report issued by Investigative Officer Jason B. Hopp, Esquire, by letter dated January 19, 2006, the Board finds that Angel F. Figueroa did not maintain residence in District no. 1 after September 4, 2005 and that at all times thereafter through January 2, 2006, Mr. Figueroa stood in violation of Section 202 of the Charter, relating to eligibility for City Council. In accordance with the Final Order, the following is **ORDERED**:

- A. Mr. Figueroa shall be publicly censured as provided by Section V of the Charter Board Ordinance;
- B. An administrative fine of \$1,000 is hereby imposed upon Mr. Figueroa;
- C. A fine of \$500 is hereby imposed upon Mr. Figueroa;
- D. Copies of this Final Order shall be transmitted to the following:
 1. Mr. Angel F. Figueroa
 2. Kenneth I. Trujillo, Esquire
 3. Jason B. Hopp, Esquire, Investigative Officer
 4. Complainant, Hon. Donna Reed, Councilwoman
 5. Eric B. Smith, Solicitor, Charter Board

CITY OF READING CHARTER BOARD

By: Susan I. Gibson
Susan Gibson, Chair

EXHIBIT "A"