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IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION: LAW

ELECTORS OF THE CITY OF YORK, : No. 2022-SU-000889
Petitioners :
vs. :
MICHAEL HELFRICH, Mayor of :
the City of York, : Petition to Fill
Respondent : Vacancy in Office

APPEARANCES:

for Petitioner: Justin A. Tomevi, Esq.
Christopher A. Naylor, Esq.
for Defendant: Glenn J. Smith, Esq.

OPINION

The matter comes before the Court by *Petition* to fill the vacancy in the office of the Mayor of the City of York, filed by certain self-styled Electors. Respondent is Michael Helfrich, Mayor of the City of York. Sixteen persons, describing themselves as Electors of the City of York, in this county, presented their petition to the Court against the Respondent, as mayor of the city, to inquire by what authority he holds and exercises that office, claiming his failure to take an oath of office before January 24, 2022, disqualifies him. Curiously enough, none of the self-named Electors saw fit to appear at the hearing, or at least none were so identified or introduced to the Court, so that they might have gained a greater understanding as to the basis by which the Mayor believes he is entitled to serve in the office

for which he was duly elected. The question we must decide is whether a vacancy exists in the office of mayor for the City of York that must be filled.

BACKGROUND

The Electors filed the pending petition on April 11, 2022. The petition avers that a vacancy exists in the office of mayor, by virtue of Mr. Helfrich having failed to take the oath of office within 14 days of council's reorganizational meeting and to file an affidavit with the city clerk that he has been a resident of York City for more than one year prior to the date of his election in November 2021, and since such vacancy was not filled by council within 30 days of the vacancy, the president judge of this court must fill the vacancy pursuant to Section 10801(b) of the Third Class City Code. *11 Pa.C.S. § 10801(b)*. Upon review, President Judge Maria Musti Cook assigned the matter preliminarily to the undersigned for the limited purpose of determining whether a vacancy exists. The following day, we issued a scheduling order setting the matter for hearing and argument on April 22, 2022. At the conclusion of the hearing, we deferred our ruling and afforded counsel until April 27, 2022, to provide us with proposed orders setting forth statutory and case law authority.

LEGAL ISSUES INVOLVED

Our scheduling order indicated that we expected the parties to address the following issues during their presentation of legal argument at the hearing:

1. The impact of the City of York having elected to be governed under the Optional Third Class City Charter Law of 1957 as it relates to what statutes govern whether Respondent has been duly qualified to hold the office of mayor.
2. Whether the proper statutory interpretation or enforcement of any applicable statute is mandatory or may be treated as merely directory.
3. Whether Respondent's purported failure to be duly qualified to hold the office of mayor should result in the forfeiture of office, recognizing that forfeitures are disfavored.
4. Whether the Court should consider Respondent's incumbency and the will of the electorate as factors in rendering a decision.

THE ELECTORS' POSITION

The Electors contend that there is a vacancy in the Office of Mayor of the City of York which must be filled by President Judge Maria Musti Cook appointing a successor after the City Council failed to fill the vacancy within 30 days. In support, they aver that: Michael Helfrich was reelected Mayor in the November 2021 General Election; as an elected official, he should have either attended and participated in an inauguration or swearing in ceremony at the York City Council's reorganization meeting of Tuesday January 4, 2022, or within fourteen (14) days thereafter; Mr. Helfrich did not take the oath of office until January 24, 2022, twenty (20) days after the reorganizational meeting; Mr. Helfrich did not present a signed affidavit to the City Clerk certifying that he was a resident

of York City for not less than one year prior to the date of his election; these failings disqualify Mr. Helfrich from holding the office of Mayor; and, as a result, the office is deemed to be vacant and the vacancy must be filled by appointing a successor. The Elector's cite to various sections of the Third Class City Code as setting forth the implicated statutory authority for their contentions. *11 Pa.C.S. § 10101, et seq.*

THE MAYOR'S POSITION

The Mayor contends that he was away, both on vacation and carrying out his duties as mayor at the U.S Conference of Mayors, and he took the oath of office immediately upon his return. He also prepared an affidavit of residency and filed it with the City Clerk. The Mayor further contends that the statutes of the Third Class City Code are only applicable to the City of York to the extent they are not inconsistent with the "organic law" of the Administration Code of the City of York, and since the Administration Code does not require the Mayor to be in attendance at the reorganizational meeting to demonstrate his qualifications for office and take the oath of office at that time, he subsequently met all requirements for taking the oath of office and is duly qualified to hold the office of mayor.

DISCUSSION

(1) Standing.

In Pennsylvania, the doctrine of standing is a prudential, judicially[-]created principle designed to winnow out litigants who have no direct interest in a judicial matter. For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been "aggrieved." **The core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not "aggrieved" thereby and has no standing**

to obtain a judicial resolution to his challenge. A party is aggrieved for purposes of establishing standing when the party has a substantial, direct and immediate interest in the outcome of litigation. A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative.

Rellick-Smith v. Rellick, 147 A.3d 897, 901 (Pa.Super. 2016) (quoting *Office of Governor v. Donahue*, 626 Pa. 437, 98 A.3d 1223, 1229 (2014) (emphasis added).

(1) Public Policy.

It is the function of this Court to interpret statutes, not rewrite them. If we were dealing with a rule promulgated in decisional law, we would be free to reexamine the reasoning underlying the rule, as well as the public policy considerations. However, we are here confronted with a statute enacted by the legislature, and we cannot and should not interpose our views on public policy for those of the legislature. The wisdom of a statutory provision is not for us to say. *Di Girolamo v. Apanavage*, 454 Pa. 557, 563, 312 A.2d 382, 385 (1973).

(2) Statutory Interpretation.

Our object in interpreting and construing a statute "is to ascertain and effectuate the intention of the General Assembly." *1 Pa.C.S. § 1921(a)*. The General Assembly has provided a non-exhaustive list of presumptions pertinent to ascertaining its intent, including the presumption that it "intends the entire statute to be effective and certain," that it "does not intend to violate the Constitution of the United States or of this Commonwealth," and that it "does not intend a result that is absurd, impossible of execution or unreasonable." *1 Pa.C.S. § 1922(1)-(3)*.

It is axiomatic that "when the words of a statute have a plain and unambiguous meaning, it is this meaning which is the paramount indicator of legislative intent."

McKelvey v. Pennsylvania Dep't of Health, 255 A.3d 385, 398 (Pa. 2021). In such instances where the words of a law are clear, "the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). In considering the plain meaning of our legislature's chosen words, "[w]e construe words and phrases according to their common and approved usage. ..." *Linkosky v. Dep't of Transp., Bureau of Driver Licensing*, 247 A.3d 1019, 1026 (Pa. 2021). "Words having a precise and well-settled legal meaning must be given that meaning when they appear in statutes unless there is a clear expression of legislative intent to the contrary." *Commonwealth v. Lee*, 260 A.3d 208, 212 (Pa.Super. 2021).

"[I]n determining whether language is clear and unambiguous, the court should assess it in the context of the overall statutory scheme, construing all sections with reference to each other, not simply examining language in isolation." *Linkosky*, supra at 1026. A statute is ambiguous "if a statutory term, when read in context with the overall statutory framework in which it appears, has at least two reasonable interpretations or where any reading of the statute's plain text raises non-trivial interpretive difficulties[.]" *McCloskey v. Pennsylvania Pub. Util. Comm'n*, 255 A.3d 416, 424 n.13 (Pa. 2021). See also *Commonwealth v. Sanchez-Frometa*, 256 A.3d 440, 446 (Pa.Super. 2021) ("A statute is ambiguous when there are at least two reasonable interpretations of the text.").

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In re Est. of Chennisi, 2022 Pa.Super. 31.

(2) Implicated Statutes.

THIRD CLASS CITY CODE (Eff. January 25, 2016)

The following sections of the Third Class City Code were amended in 2015 and now provide as follows:

§ 10107. Applicability and ability.

(a) **Applicability.**--This part shall apply to:

* *

(5) All cities incorporated under the provisions of the former act of June 23, 1931 (P.L. 932, No. 317), known as The Third Class City Code.

(b) **Ability.**--This part shall not be construed as a limitation on the ability of a city to do any of the following:

(1) To continue operating under the form of government previously selected and exercising powers previously acquired by the city in accordance with the act of July 15, 1957 (P.L.901, No.399), known as the Optional Third Class City Charter Law.

(2) To adopt or continue utilizing a form of government and to acquire or continue exercising powers pursuant to an optional plan or a home rule charter which has been or may be adopted in accordance with the Home Rule Charter and Optional Plans Law.

§ 10701. Elected officers, term, reelection and vacancy.

(a) **Elected officer and term.**--

(1) Except as provided under subsection (c), the elected officers of a city shall be a mayor, four council members, a controller and a treasurer.

(2) Except as provided under section 10702 (relating to first elections in newly created cities) with respect to the first election of members of council, each elected officer shall serve for a term of four years from the first Monday of January next succeeding the officer's election.

(3) An officer shall be eligible for reelection.

(b) **Disqualification.**--An individual elected to a city office who fails to qualify in accordance with sections 10904 (relating to offices to be held until qualification of successors) and 10905 (relating to oath of office, violation of oath and penalty) and, as applicable, section 11101 (relating to executive departments), 11201 (relating to qualifications), 11401 (relating to qualifications) or 11701 (relating to qualifications, bond and compensation) shall be ineligible to qualify. A vacancy shall exist in the

office, and an individual shall be appointed to fill the vacancy in the manner provided under this part.

§ 10801. Council and office of mayor.

(a) Appointment.--Within 30 days of a vacancy in the office of mayor or other member of council or if an elected mayor or council member has failed to qualify under section 10701 (relating to elected officers, term, reelection and vacancy) prior to taking office, council must, by a majority of council's remaining members, appoint a qualified individual to fill the vacant office.

(b) President judge.--If a council does not fill a vacancy within 30 days under subsection (a) or if a vacancy exists in the offices of at least a majority of the members of council, including the position of mayor, the president judge of the court of common pleas having jurisdiction within the city, must fill each vacancy upon either the petition of at least 10 qualified electors of the city or the petition of a majority of the remaining members of council.

(c) Term.--A individual appointed under subsection (a) or (b) shall serve for the lesser of the following terms:

(1) The remainder of the unexpired term of the office to which the individual is appointed.

(2) Until the first Monday of January after the next municipal election occurring at least 30 days after the vacancy occurred.

(d) Unexpired term.--If necessary to fill the unexpired term of the individual originally elected to an office that has become vacant, an individual shall be elected at the municipal election referred to under subsection (c)(2) to serve from the first Monday of January after the election for the remainder of the unexpired term.

§ 10901. Appointment, removal and prohibition.

(b) Elective city office. — The following shall apply to an individual holding an elective city office:

(1) The individual must be removed from office in accordance with the Constitution of Pennsylvania as follows:

(i) by impeachment;

(ii) by the Governor for reasonable cause after due notice and full hearing on the advice of two-thirds of the Senate; or

(iii) upon conviction of misbehavior in office or of any infamous crime.

§ 10904. Offices to be held until qualification of successors.

(a) **Successor.**--An officer of a city, who has been elected or appointed and has qualified under this chapter, shall hold office until the officer's successor meets all of the following:

- (1) Is elected or appointed and takes the oath of office.
- (2) Provides the necessary bond.
- (3) Takes other necessary actions required by law to qualify to assume office.

(b) **Failure to appear.**--If an elected official fails to appear at the organizational meeting of council to demonstrate the official's qualifications for office and to take the oath of office either:

- (1) the official must fully qualify for office and take the oath of office within 14 days of the date of the organizational meeting of council; or
- (2) the office of that elected official shall be deemed to be vacant and the vacancy shall be filled in the manner provided by this chapter.

§ 11201. Qualifications.

The qualifications for office of mayor shall be as follows:

- (1) An individual must be at least 18 years of age.
- (2) An individual must be elected at large by the qualified electors of the city.
- (3) An individual must be a resident of the city where the individual was elected for not less than one year before the date of the individual's election.
- (4) Before being sworn into the office of mayor, an individual elected to mayor must present a signed affidavit to the city clerk certifying that the individual is in accordance with the requirement under paragraph (3).
- (5) An individual elected to the office of mayor must reside in the city for the duration of the individual's term of service.

§ 11202. Inauguration.

The mayor shall be the chief executive of the city. The mayor shall be inaugurated and take the oath of office in accordance with sections 10904 (relating to offices to be held until qualification of successors) and 10905 (relating to oath of office, violation of oath and penalty) on the first Monday of January after the regular municipal election. If the first Monday is a legal holiday, the mayor shall be inaugurated and take the oath the first day after that day or as soon after that day as possible.

(3) Charter Law.

The Optional Third Class City Charter Law (Charter Law), Act of July 15, 1957, P.L. 901, *as amended*, 53 P.S. §§ 41101-41625, was passed to give third class cities

“the right and power to adopt one of several plans of optional charters and to exercise the powers and authority of local self-government subject to certain restrictions and limitations.” 53 P.S. § 41101. The Charter Law also provides that each city that elects to operate under it has the full power to “organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their term, tenure and compensation.” 53 P.S. § 41303(1). This grant of “full power” as provided by the Charter Law is realized through the promulgation of one of the “optional plans,” such as the “Mayor-Council Plan A.” adopted by the City of [York].

City of Erie (Council) v. Dep’t of Env’tl. Prot., 844 A.2d 586, 589 (Pa.Cmwlth. 2004).

MAYOR-COUNCIL PLAN A

As noted above under the applicability section of the amended Third Class City Code, the Optional Third Class City Charter Law of 1957, which the City of York elected to be governed by beginning on January 1, 1962, has not been amended and continues to provide as follows:

Section 301. Upon the adoption by the qualified voters of any city of any of the optional plans of government set forth in this act, the city shall thereafter be governed by the plan adopted and by the provisions of this act common to optional plans and by all applicable provisions of general law, subject to the transitional provisions of Article VI. of this act, unless and until the city should adopt another form of government as provided by law. The plan adopted and the provisions of this act common to optional plans shall become the organic law of the city at the time fixed by this act. So far as they are consistent with the grant of powers and the limitations, restrictions and regulations hereinafter prescribed, they shall supersede any existing charter, and all acts and parts of acts, local, special or general, affecting the organization, government and powers of such city to the extent that they are inconsistent or in conflict therein. All existing acts or part of acts and ordinances affecting the organization, government and powers of the city not inconsistent or in conflict with the organic law so adopted shall remain in full force until modified or repealed as provided by law.

Section 303. Each city governed by an optional form of government pursuant to this act shall, subject to the provisions of and limitations prescribed by this act, have full power to:

- (1) Organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their term, tenure and compensation;
- (2) Adopt and enforce local ordinances.

Section 304. **The general grant of municipal power contained in this article is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of municipal powers contained in this act or in any other law shall not be construed in any way to limit the general description of power contained in this article, and any such specifically enumerated municipal powers shall be construed as in addition and supplementary to the powers conferred in general terms by this article. All grants of municipal power to cities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the city.** (Empahsis added).

Section 403. The mayor, the treasurer and the controller shall be elected by the voters of the city at a regular municipal election, and shall serve for a term of four years beginning on the first Monday of January next following his election.

Section 406.

(b) If a vacancy occurs in the office of mayor, city treasurer or city controller, the city council shall fill such vacancy, within thirty days thereafter, by choosing a mayor, a city treasurer or a city controller, as the case may be, to serve until his successor is elected by the qualified electors at the next municipal election, occurring at least two hundred days after such vacancy occurs, and is duly sworn into office. The person so elected shall serve from the first Monday of January next succeeding his election for the remainder of the term of the person originally elected to such office.

If, by reason of a tie vote or otherwise, a vacancy in the office of mayor, treasurer or controller shall not have been filled by council within the time as limited herein, the court of common pleas, upon petition of ten or more qualified electors, shall fill such vacancy by the appointment of a qualified person for the portion of the unexpired term as herein provided.

Section 408. On the first Monday of January following the regular municipal election, the members of council shall assemble at the usual place of meeting and

organize and elect a president of the council from among its members, who shall preside at its meetings and perform such other duties as council may prescribe. If the first Monday is a legal holiday, the meeting shall be held on the first day following. In the absence of the president, the council shall elect a temporary presiding officer.

YORK CITY CHARTER OF 1962

121.01 LEGISLATIVE FINDINGS.

The General Assembly of the Commonwealth of Pennsylvania, by the Act of July 15, 1957, P.L. 901, has granted to the City of York and other third class cities of the Commonwealth of Pennsylvania, the right to adopt a home rule charter and a new form of government and to exercise broadly the power of local self-government. The residents of the City of York having elected to be governed under the Mayor-Council Charter Plan beginning January 1, 1962, this Administrative Code is hereby adopted to effectuate such adoption and to provide for the residents of the City of York, a progressive, efficient and government. It is the purpose of this Code, in keeping with the "Optional Third Class City Charter Law" of 1957, to permit the broadest power of local self-government consistent with the Constitutions of the United States and of the Commonwealth of Pennsylvania and with Charter Law itself, and its provisions shall be read and interpreted in the light of such purpose.

(Ord. 2-1962 §1.)

123.02 ELECTION, TERM AND QUALIFICATIONS.

The Mayor shall be elected by the voters of the City at a regular municipal election. His term of office shall begin on the first Monday of January next following his election and shall be for four years and until his successor qualifies. He shall be at least twenty-one years of age, shall have been a resident of the City throughout one year immediately preceding his election and shall reside in the City throughout his term of service.

(Ord. 1-1975 §1. Passed 1-21-75.)

STIPULATION OF FACTS

At the commencement of the hearing, the parties presented the Court with the following stipulation of facts:

1. Respondent, Michael Helfrich ("Respondent"), was elected Mayor of the City of York in the November 2021 General Election.

2. Respondent was the incumbent in the November 2021 General Election.
3. York City Council held a reorganization meeting on Tuesday, January 4, 2022.
4. Respondent was not present at the York City Council's reorganization meeting held on Tuesday January 4, 2022.
5. Respondent did not hold or otherwise participate in any inauguration or swearing-in ceremony on Tuesday January 4, 2022.
6. Respondent did not take the oath of office on Tuesday January 4, 2022.
7. On January 24, 2022, Respondent took an oath of office.
8. Between Respondent's November 2021 election and January 18, 2022. Respondent did not present a signed affidavit to the City Clerk certifying that he was a resident of York City for not less than one (1) year prior to the date of his election.
9. Respondent was elected Mayor of the City of York in November 2017 and took an oath of office on January 2, 2018.
10. At all times relevant to this litigation, Respondent has been and continues to be a resident of the city of York, residing at 430 Cookes House Lane, York, Pennsylvania 17401.
11. On January 24, 2022, Respondent read an oath of office administered by Judge Joel N. Toluba.

12. York City Council did not take action to fill the alleged vacancy in the Office of Mayor within thirty (30) days of January 18, 2022.

During the hearing, the parties also stipulated that Dianna L. Thompson-Mitchell, the City Clerk, never received an affidavit of residency for filing previously from a newly elected mayor during her 25-year tenure as clerk.

FINDINGS OF FACT¹

1. Petitioners are 18 qualified electors of the City of York.

2. The actual results of all the votes cast during the November 2021 General Election² are:

Michael HELFRICH (Dem)	2,235	78.75% ³
Shareef HAMEED (Ind)	560	19.73%
Write-In (Total)	<u>43</u>	
TOTAL Votes Cast	2,838	

3. Mr. Helfrich was out-of-state on vacation at Key West, Florida when the reorganizational meeting was conducted on January 4, 2022 and through mid-January. While away, he also spent time visiting his daughter in the Carolinas. Mr. Helfrich then

¹ The Court makes the following findings of fact as were proven at the hearing.

² The Court takes judicial notice of the York County Election Results website. See <https://yorkcountypa.gov/963/Election-Results>. This court may take judicial notice of information provided on a website. See e.g., *York County Tax Claim Bureau Donalynn Props. v. York Cty. Tax Claim (In re Appeal of Luciani)*, 3 A.3d 765 n. 10 (Pa.Cmwlth. 2010), citing *Figueroa v. Pennsylvania Board of Probation and Parole*, 900 A.2d 949, 950 n.1 (Pa.Cmwlth. 2006); see also *Pa.R.E. 201* (providing that a court may take judicial notice on its own at any stage of the proceeding).

³ Andrew Jackson, who received 76% of the electoral vote in the presidential election of 1832, considered such victory to be the “people’s mandate” of his authority to govern.

traveled to Washington, DC, in his role as Mayor, to attend the United States Conference of Mayors, which took place from January 18 through 21, 2022.⁴ He returned to York late Friday, January 21, 2022.

4. Upon his return, Mr. Helfrich took the oath of office on the next business day, that being Monday, January 24, 2022. *See Respondent Exhibit No. 1.*

5. Prior to leaving the state, Mr. Helfrich sought legal advice concerning the requirement that he take the oath of office with the City Solicitor, Jason R. Sabol, Esquire, and based upon such advice believes he took the oath timely.

6. He also prepared and filed an affidavit of residency with the City Clerk upon his return, never being aware previously that he might be required to file such an affidavit. Ms. Thompson-Mitchell notarized the affidavit. *See Respondent Exhibit No. 2.*

CONCLUSIONS OF LAW

1. The Pennsylvania Supreme Court wrote in *In Re: Recount of Ballots*, 457 Pa. 279, 287, 325 A.2d 303, 308 (1974):

At the outset it is important to be reminded that the right of suffrage is the most treasured prerogative of citizenship in this nation and this Commonwealth. It is the right that made the American dream distinctive, where men were to be governed not by the state but by themselves. Unreasonable impairment or unnecessary restrictions upon this right cannot be tolerated whether the contest be for the selection of the President of the United States or the district committeeman.

⁴ See United States Conference of Mayors webpage at <https://www.usmayors.org/meetings/90th-winter-meeting/>.

Barbieri v. Thornburgh, 42 Pa.Cmwlth. 1, 400 A.2d 653 (1979), citing *In Re: Recount of Ballots*, supra.

2. Petitioners have standing. Both the Third Class City Code and the Mayor-Council Plan A make provision for the eventuality that if a vacancy exists and council does not fill the vacancy within 30 days, the president judge of the court of common pleas having jurisdiction within the city, must fill the vacancy upon petition of at least 10 qualified electors of the city. These 18 petitioner/electors are aggrieved for purposes of establishing standing. They have a substantial, direct, and immediate interest in the outcome of litigation as they believe a vacancy exists for the office of mayor which must be filled. Their interest is substantial as it implicates the proper governance by the executive branch of the City of York and surpasses the interest of all citizens, generally, in procuring obedience to the law. The violation asserted is direct as it shares a causal connection with the alleged harm, that being lack of proper governance. Certainly, the City of York cannot function properly and effectively without having a Mayor at the helm. Their interest is also immediate as the causal connection with the alleged harm is neither remote nor speculative. If Mr. Helfrich is disqualified from serving in office, a new mayor needs to be appointed forthwith. See *Rellick-Smith*, supra at 904.

3. In 1962, the City of York elected to be governed under the Optional Third Class City Charter Law of 1957 instead of being governed by the Third Class City Code. More specifically, upon electing to be governed by the Mayor-Council Plan A, the city has

been and continues to be governed by that plan and by the provisions of the act common to optional plans, and shall continue to do so unless and until the city should adopt another form of government as provided by law. *Act 399 of 1957, Section 301.*

4. Although local city governance is to be largely conducted in accordance with the Optional Third Class City Charter Law of 1957 that does not abrogate those terms of the Third Class City Code that are not specifically addressed in the Mayor-Council Plan A provisions. The Optional Third Class City Charter Law states that all existing acts not inconsistent or in conflict with the organic law so adopted shall remain in full force until modified or repealed as provided by law. Therefore, the Court concludes that the Mayor is subject to the applicable statutes enumerated in the amendments to the Third Class City Code of 2015, including the new qualification provisions, as modified.

5. Accordingly, Mr. Helfrich was obligated to take the oath of office within 14 days of the date of the organizational meeting of council, since he did not to take the oath of office on the first Monday of January 2022.

6. Since Council held the reorganization meeting on Tuesday, January 4, 2022, the last day for taking the oath of office was, arguably, Tuesday, January 18, 2022, if Mr. Helfrich had been available. Mr. Helfrich was unavailable, out-of-state, and as of Tuesday, January 18, 2022, performing the duties of the office of mayor while he was traveling to and participating at the United States Conference of Mayors from January 18-21, 2022, during which time he was unable to be sworn, not returning to York until late Friday, January 21,

2022. The Court finds that while Mr. Helfrich was out of state, he was unavailable to take the oath of office, thus tolling the statute. He did so at the advice of his solicitor that he did not need to take the oath. Certainly, his travel to and participation at Conference of Mayors and performing his duties and responsibilities as Mayor on behalf of the citizens of the City of York, who had elected him by a landslide, tolled the running of the 14-day statutory provision until Monday, January 24, 2022, the next business day when Mr. Helfrich took the oath of office “as soon as possible.”⁵

7. There was certainly no refusal to take the oath of office, nor did he ever intend to ignore his duty to take the oath of office.

8. Even if we did not toll the running of the statutory provision, we would not disenfranchise him for what is so trifling as possibly being three days late. The Court finds the three-day difference to be *de minimis* and disregards it as a minor error or defect of procedure which does not affect the substantial rights of the Mayor to serve. To remove the Mr. Helfrich from office would ignore the clear determination of the electorate and result in the election being an empty ritual. We do not believe that the Election Code, and the rule that its provisions must be meticulously observed, would abrogate our decision. *See In Re: Election of Supervisor in Springfield Township, Mercer County*, 399 Pa. 37, 159 A.2d 901

⁵ When any period of time is referred to in any statute, such period in all cases, ... shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation. *1 Pa.C.S. § 1908.*


(1960) (which case addresses the sanctity of the ballot box and involved a misplaced write-in or sticker, not a swearing in).⁶

9. The Mayor is not subject to removal based upon any claim of reasonable cause, abuse of office, infamous crime or otherwise. *11 Pa.C.S. § 10901(b)*.

10. If the Electors persist in wanting to remove Mr. Helfrich from office, they will need to do it the old-fashioned way, that is, at the ballot box.

The Prothonotary shall serve copies of this Opinion upon counsel of record for dissemination to their clients.

BY THE COURT:



CLYDE W. VEDDER, JUDGE

Dated: June 21, 2022

⁶ In fact, the Pennsylvania Supreme Court has stated that ballot counting must be liberally construed, and if there are several interpretations of a mark on the ballot, a court should hesitate to invalidate a vote: *Norwood Election Contest Case*, 382 Pa. 547, 116 A.2d 552 (1955).