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Private and Confidential

Sent via E-mail

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File: 95201.0001

Mike Salisbury
86 - 30 Imperial Rd South
Guelph, ON
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Dear Mike:

Re: Municipal Conflict of Interest Issue

Further to your instructions, we are writing this letter as an opinion on whether there is a potential for a conflict of interest in your role as a member of the Ad Hoc Transportation Committee (the "Committee") given that your wife is employed as a municipal transit driver.

In giving this opinion, we have examined the following:

1. the *Municipal Conflict of Interest Act* (the "Act");
2. the mandate of the Committee which you provided to our firm; and,
3. relevant case law.

Essential Background Information

You are considering participating as a member of the Committee, which will report and make recommendations to another committee, which will in turn report and make recommendations to council on transit-related issues, including allocation of budget. Your wife is employed by the city as a transit driver. Transit workers are part of a collective bargaining unit.

Obligations under the Act

The Act governs the duty of a member of municipal council to disclose conflicts of interest and to abstain from participating in decision-making when such a conflict exists. In order to be considered an interest triggering these obligations, it must be of a pecuniary nature, but can be either direct or indirect. Generally speaking, in order to trigger these obligations, the pecuniary interest must be distinct from the interest that a general class of persons can expect to have in the particular decision. In circumstances where a pecuniary interest is found, the next question is whether the interest is sufficiently remote to exempt the councillor from the obligations. The obligations apply equally to councillors when they sit on council and when they sit on a committee or board with a connection to council.

Analysis

In examining the mandate of the Committee, while it is impossible to say with certainty that all decisions will, it is clear that some of its decisions will give rise to an indirect pecuniary interest which imposes an obligation upon you to disclose and abstain from the decision-making process. An evaluation will have to be made on a case-by-case basis.

One case found an indirect pecuniary interest where members of a school board participated in discussions of the school board regarding a collective agreement with school teachers when those members had spouses who were school teachers. On the other hand, a member of a board of education whose husband was a teacher employed by the board was able to vote on a budget where she did not also take part in negotiations with the teachers and the fact that her husband was a teacher was well-known. In this latter case, the court found that the vote on the budget did not have an effect on her indirect pecuniary interest in the teachers' contract.

The Committee may make certain decisions which can lead to a direct benefit accruing to your wife in her position as a transit worker. For example, the Committee may decide upon whether to recommend to the committee which reports to council to increase or decrease the number of buses in the system. Such a decision would affect the job security for your wife. Similarly, the Committee may decide upon whether to recommend an increase in the amount of the transit budget, which could lead to an increase in the amount available for wages for the transit drivers. Both are examples of a direct benefit to your wife which constitute an indirect pecuniary interest for you. Nevertheless, given the aforementioned case law, it is our opinion that a recommendation related to a general budget would not be considered an indirect pecuniary interest, while allocation of a portion of the budget to wages for transit workers would. Similarly, any involvement in the negotiation of the collective agreement with transit workers would constitute an indirect pecuniary interest.

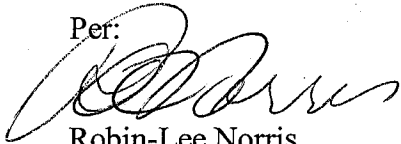
The question is whether the benefit is sufficiently remote to exempt you from the obligations under the Act. The test is whether the interest can reasonably be regarded as likely to influence the councillor. Note here that public perception is key. The courts have interpreted this exemption very narrowly. It is our opinion that the exemption would not apply to involvement in the negotiation of the collective agreement nor in allocation of budget to wages. However, it is our opinion that a decision that leads to a recommendation to the committee which reports to

council to increase the number of transit workers is sufficiently remote, since a reasonable person would not be influenced by the mere fact that his or her spouse is employed as a transit worker. Your wife's employ would not be affected by such a decision. However, a decision on whether or not to decrease the number of transit workers would not be so exempt.

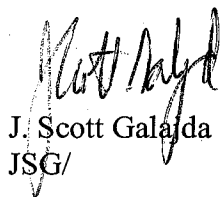
Yours truly,

MILLER THOMSON LLP

Per:



Robin-Lee Norris
RAN/



J. Scott Galafda
JSG/