



SUMMARY OF INVESTIGATION

RURAL MUNICIPALITY OF REDBERRY NO. 435

COMPLAINTS

We received complaints about the RM of Redberry No. 435 closing and selling a road without legal authority or using a public tendering process. We also received complaints about an RM council member using his public office to promote his private interest, and about participating in decisions of the council about his employer, an excavation company, and failing to declare or disclose his conflict of interest.

COMPLAINT 1: DID THE RM COUNCIL FOLLOW THE PROPER LEGAL PROCESS TO PERMANENTLY CLOSE AN RM ROAD?

FACTS

Landowners agreed to sell gravel on three quarter sections of their land to an excavation company. A Crown-owned road allowance ran through the southern border of one of the quarter sections and the northern border of the two other quarter sections. There was an unmaintained RM road in the road allowance. After the excavation company started digging, a survey revealed that it was digging in the RM road allowance.

To address the issue, on November 10, 2015, the council first passed a motion to temporarily close the road allowance. Then, on August 9, 2016, it gave first and second readings to a bylaw to permanently close the road. It adopted the bylaw on September 6, 2016. There was a perception in the community that the RM had sold the road without a public tender.

ANALYSIS AND FINDINGS

- Under *The Municipalities Act*, a council may, by resolution, temporarily close a road at any time for any purpose the council considers necessary. A council may pass a bylaw to permanently close a road if it is not needed for use by the public and is not being maintained.
- However, the Act requires the council to give public notice before it initially considers any report on a proposed bylaw to close a road. In this case, the RM did not give this public notice.
- We found this was not procedurally fair. Providing proper public notice would have given residents an opportunity to voice their concerns to the council, and it would have also given the council an opportunity to correct the misperception that it was selling the road allowance without a public tender.

COMPLAINT 2: DID THE COUNCIL MEMBER USE HIS PUBLIC OFFICE TO PROMOTE HIS PRIVATE INTERESTS? DID HE HAVE CONFLICTS OF INTEREST IN MATTERS BEFORE THE COUNCIL? IF SO, DID HE TAKE THE PROPER STEPS TO DEAL WITH THEM?

FACTS

On July 27, 2015, the council resolved to hire an excavation company for two Provincial Disaster Assistance Program projects. The company was looking for rock to use for one of the projects. They found a rock pile in a field close by. Because the land was seeded, the landowner said he would only agree to let the company use the rock if he was compensated for damage to his crop, or if it delayed the project until his crop was off in the fall.

The council member told us the RM foreman and the excavation company told him that rock piles on his and his neighbour's land would be suitable. He and his neighbour agreed that the RM could use the rock on their land. They were not paid for it.

The council member told us that the council decided to use rock from his land, but no meeting minutes recorded that council passed a resolution to approve the excavation company taking rock from his land. At this time, the council member was not employed by the excavation company. He was hired on September 16, 2015.

At its November 10, 2015 meeting, the council resolved to enter into an agreement to sell the gravel from the road allowance to the excavation company at a certain price. The meeting minutes do not indicate that the council member declared or disclosed a conflict of interest, abstained from voting or left the room. Some council members told us that he left the room and the minutes were not accurate. Others told us the minutes were accurate and that he did not declare a conflict or leave the room. We were also told that he actively participated in the discussion and promoted the deal with the excavation company.

In December 2015, a ratepayer raised a concern that the council member benefited by having the excavation company remove the rock from his land.

On January 12, 2016, the council gave all three readings and passed a bylaw to approve a 6½ year gravel agreement with the excavation company. The council member was present. He told us that he did not leave the room when the bylaw was passed because he did not think it was required since they were not deciding about money – the price for the gravel had already been determined at the November meeting. He told us, however, that he abstained from voting. Another person told us the council member was in the room but did not vote. Two others told us that he did vote. The meeting minutes do not indicate that he declared or disclosed a conflict of interest or abstained from voting. In fact, the minutes state that the motion to have the bylaw read a third time and passed was carried unanimously. A completed motion form was signed by all the council members. The administrator told us this was proof that the council member voted and did not leave the room while the council dealt with the matter.

Regarding the decision to have the excavation company use rock from the council member's and his neighbour's land, the minutes of the January 12, 2016 meeting included this note:

Note: Reeve ... asked council if there is any perceived conflict of interest on rock haul to Sec 27-45-9-W3, with reply of council in general was "No" as it was preauthorized by council. Cst. [RCMP] commented that he thought this was not a councillor conflict.

As of December 23, 2016, the council member was no longer employed by the excavation company.

ANALYSIS AND FINDINGS

What is a conflict of interest under *The Municipalities Act*?

Subsection 141.1(1) of *The Municipalities Act* states that a council member has a conflict of interest if:

... the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows or ought reasonably to know that in the making of the decision there is the opportunity to further his or her private interests or the private interests of a closely connected person

[emphasis added.]

Under section 141, a "closely connected person" includes the employer of a council member. In addition, subsection 144(2) states:

No member of a council shall attempt in any way, whether before, during or after the meeting, to influence the discussion or voting on any question, decision, recommendation or other action to be taken involving a matter in which the member of council has a conflict of interest.

What should a council member do if he or she has a conflict of interest?

Under subsection 144(1) of *The Municipalities Act*, at every meeting when a matter in which a council member has a conflict of interest, no matter how many times it has come up before, and even if everyone on the council already knows about it, the council member, if at the meeting, must:

Declare the conflict of interest before any discussion occurs,

Disclose the general nature of the conflict of interest,

Abstain from voting on it,

Refrain from participating in any discussion about it, and

Leave the room until all discussion and voting is over.

Importantly, council members and administrative staff responsible for preparing meeting minutes must ensure that all meeting minutes accurately and fully record every time a council member declares, discloses and abstains due to a conflict of interest. Council members are to review and approve council meeting minutes at the next regular council meeting.

It is important for council members to follow the conflict of interest rules as set out in *The Municipalities Act*, because if they do not, the consequences can be serious.

According to the Act, a council member with a conflict of interest who fails to comply with the rules is disqualified from the council, must resign immediately, and is not eligible to be nominated or elected in any municipality for 12 years. If a council member does not resign immediately, and the council or a ratepayer wants to enforce the disqualification, they may apply to the Court of Queen's Bench for an order declaring the council member to be disqualified.

Did the council member have a conflict of interest in the council's decision to hire the excavation company for PDAP projects? If so, did he take the steps required to deal with it?

- The council decided to hire the excavation company for the two PDAP projects in July 2015. At that time, the council member was not employed by the excavation company.
- Therefore, we find the council member did not have a conflict of interest when he participated in the decision.

Did the council member use his position as a council member to benefit his private interests by arranging for the removal of rock from his property by the excavation company for one of the PDAP projects?

- The question is whether the council member knew, or reasonably ought to have known, that his participation in the decision to have the excavation company use the rock from his land gave him the opportunity to benefit personally.
- The council member told us that when he offered the rock on his land, he thought he was acting in the RM's interest since the landowner closest to the project site wanted compensation or to delay the project until after harvest. He told us there was no real benefit to him from the rock – which was already in a pile - being removed from his land.
- We found that a reasonable person with a full understanding of the situation would know that clearing a rock pile from his field would benefit him as a landowner. However, we found, on the balance of probabilities, that he was trying to help get the project done on time for less money, and not to benefit himself.

Did the council member have a conflict of interest in the council's decision to sell gravel from a road allowance to the excavation company? If so, did he take the steps required to deal with it?

- By the time this matter was discussed in council, the council member was employed by the excavation company. Because the excavation company was a "closely connected person" to him, the council member had a conflict of interest when this matter came before the council on November 10, 2015 and January 12, 2016. He should have taken steps to deal with it each time it was before the council.
- Given the conflicting information we received, we cannot state conclusively whether he did or did not take the necessary steps at the November 10, 2015 meeting to declare the conflict, recuse himself from the meeting and not discuss or vote on the issue. However, the meeting minutes do not indicate that he declared or disclosed a conflict of interest, abstained from voting or left the room.

- At the January 12, 2016 meeting, when the bylaw to enter into the 6 ½-year agreement with the excavation company was passed, the council member ought to have known that, by remaining in the room during the vote - even if he did not vote, there was an opportunity for him to further his employer's interest in obtaining a secure source of gravel.
- We also note that all three readings of the bylaw were made at the January 12, 2016 meeting without first making a separate motion to unanimously agree to three readings at the same meeting as required by subsection 103(4) of *The Municipalities Act*.

CONCLUSION AND RECOMMENDATIONS

- Though the council had the legal authority to permanently close the road allowance, it failed to comply with the public notice requirements of *The Municipalities Act*. This was contrary to the law and unfair to any ratepayers who wanted to voice their concerns about the closure. Municipalities need to understand and uphold the public notice requirements set out in the Act so residents can see that these important council decisions are made in an open and transparent manner.
- The council member did not have a conflict of interest in the council's decision to hire the excavation company for PDAP projects, because he was not an employee at the time.
- The council member ought to have known that the removal of rock from his property benefited his private interests. However, he did not benefit significantly and he was motivated by a desire to get the project started immediately without incurring the additional cost of using rock on the seeded field closer to the site.
- The council member was in a conflict of interest at both the November 10, 2015 and the January 12, 2016 meetings when the council decided that the RM would enter into a multi-year gravel contract with his employer. He did not take all the steps to deal with the conflict of interest as required of council members under *The Municipalities Act*. However, we found no evidence to indicate that he was motivated by personal self-interest and that his failure to comply with the conflict of interest rules was through inadvertence or honest mistakes.
- This case highlights the importance of following *The Municipalities Act*. Under clause 92(a), council members have a duty "to represent the public and to consider the well-being and interests of the municipality." All council members must keep their municipality's interests in the forefront when discussing and voting on motions that may be seen to be in their private interest or the interest of those connected to them. This helps maintain the integrity of those decisions.
- Declaring real or perceived conflicts protects council members from the perception that they are not acting in the best interest of their municipality.

With a view to ensuring the RM of Redberry's council can move forward in full compliance with the conflict of interest rules in *The Municipalities Act*, we recommended that:

1. **The council for the Rural Municipality of Redberry No. 435 arrange for each council member and all its staff to take education and training so they understand what conflicts of interest are and how to deal with them when they arise while carrying out their duties.**

2. Each council member for the Rural Municipality of Redberry No. 435 ensures he or she fully complies with all the conflicts of interest rules in Part VII of *The Municipalities Act*.
3. The council for the Rural Municipality of Redberry No. 435 ensure that its meeting minutes are accurate and meet the requirements of subsection 144(5) of *The Municipalities Act* so that every declaration of a conflict of interest and disclosure of the general nature and material details of the conflict of interest, as well as when a council member leaves the room, and, if he or she does not leave the room, any abstention he or she makes, are fully and accurately recorded in the minutes.

RESPONSE TO DRAFT INVESTIGATION REPORT

On May 23, 2018, we provided a draft of our investigation report to the RM and the council member whose conduct was in question, to give the council and the council member an opportunity to review it and provide us with any representations before it was finalized. We received written representations and further information that was directly relevant to the issues under investigation. The new information was considered and incorporated into a revised draft investigation report which we provided to the RM and the council member. We specifically asked the RM council to advise us in writing whether it accepted or rejected our recommendations.

The council member responded that he had no further representations to make to us. Then the council advised us that it passed this resolution about our report and recommendations:

That the Rural Municipality of Redberry No. 435 acknowledge the draft report from Ombudsman Saskatchewan and the Rural Municipality of Redberry No. 435 not pursue anything further in regards to the ombudsman report dated, December 4, 2018. Carried.

We took this as the council not accepting our recommendations or intending to implement them. As always, our recommendations were made with the view of ensuring the council understands when it is necessary to take steps to deal with a conflict of interest, and that their meeting minutes accurately record when a conflict of interest is declared and disclosed.

We then received more correspondence from three council members, which made it clear there is discord amongst the council and that some council members do not approve of this council member's conduct and behaviour in general. We did not, however, investigate the general character or conduct of this council member. We only investigated the specific instances where it was alleged he had a conflict of interest. If the RM council feels that this council member's conduct is inappropriate and does not meet the standards and values expected of a council member as described in its code of ethics, it can choose to deal with him in accordance with its code and the relevant provisions of *The Municipalities Act*.

It also appears that some Redberry council members expected that the Ombudsman would, after investigation, remove the council member from council. The Ombudsman does not have the power to remove a council member from office. *The Municipalities Act* gives the courts the authority to enforce a council member's disqualification from the council. The Ombudsman's role is to investigate matters and make recommendations aimed at improving how provincial and municipal entities carry out their responsibilities. We made our recommendations to this council with this goal in mind.

We strongly urge the RM of Redberry to accept and implement our recommendations.