



Summary of Investigation

An Investigation into a Complaint About the Sale of Land by the Village of Manor and Allegations of Conflict of Interest Against the Former Mayor

January 2017

THE COMPLAINT

A group of citizens from the Village of Manor and surrounding area contacted the Ombudsman with a complaint about the Village's decision to sell municipal land, which had been used as a picnic and campground site.

The land had been gifted to the village by one of the early pioneer families in 1963. A cairn erected on it was dedicated to the pioneers of Manor and the surrounding district.

SUMMARY OF FACTS

The campground's facilities fell into disrepair, so in the summer of 2014, the council decided to post a "Closed" sign at the site.

In April 2015, the council decided to sell the land to the Mayor's son. The Mayor signed the agreement for sale.

When a group of citizens became aware of the sale, they made representations to the council, asking it to rescind the sale.

Despite the council acknowledging that a mistake had been made with respect to the sale of the land, and getting legal advice that it should follow its public notice bylaw, the sale went ahead and title transferred into the purchaser's name in November 2015.

ISSUES

1. Did the Village of Manor sell the campground site in accordance with *The Municipalities Act*, other relevant laws and the Village's bylaws?
2. Did the Mayor have a conflict of interest in the council's decision to sell the land? If so, did the Mayor comply with *The Municipalities Act*? Or with the common law respecting conflicts of interest?

SUMMARY OF FINDINGS

THE COUNCIL AUTHORIZED THE SALE OF THE LAND WITHOUT GIVING PUBLIC NOTICE OR OFFERING IT FOR SALE PUBLICLY

Although the campground site was not a heritage property under *The Heritage Property Act*, it had been used for as rest stop, picnic area, and campground for over 30 years.

If municipal land is "used for park purposes," subsection 48(2) of *The Municipalities Act* requires a council to give public notice of its intention to dispose of it before authorizing it to be sold. Although "used for park purposes" is not defined in the Act, in our view, the use of this land as a rest stop, picnic area, and campground meant it was "used for park purposes," so public notice was required before the land could be sold.

Even if it was not "used for park purposes," the village's *Public Notice Bylaw* still required the council to give at least 7 days' public notice of its intention to dispose of any municipal lands.

We find that the village contravened its own bylaw by not giving public notice of its intention to sell the campground site.

THE MAYOR WAS IN A CONFLICT OF INTEREST AND DID NOT FULLY COMPLY WITH *THE MUNICIPALITIES ACT*

The mayor had a conflict of interest in the council's decision to sell the campground site to her son.

She did not fully comply with the pecuniary interest provisions of *The Municipalities Act* at the April 15, 2015 meeting. Although she left the meeting while he made his presentation, she did not disclose her pecuniary interest or stay out of the room while the rest of the council deliberated and made its decision.

At the August 19, 2015 and the August 31, 2015 meetings, the mayor again did not comply with pecuniary interest provisions of *The Municipalities Act* in relation to the decision to seek legal advice about the sale, and the decision to ask the mayor's son to sell the lot back to the Village.

On February 18, 2016, the mayor failed to comply with *The Municipalities Act* with respect to the council's motion to make a statement in response to the residents who opposed the sale of the campground site. She had a personal interest in this statement. Therefore, she ought to have declared and disclosed her personal interest and left the room while the council discussed and voted on the motion.

The mayor did, however, comply with the spirit of the new provisions of *The Municipalities Act* and the common law by declaring her conflict of interest and leaving the room while the council decided, at the February 18, 2016 meeting, to extend the time for the mayor's son to construct his shop and at the April 16, 2016 meeting that it would not direct him to do anything with the lot since the title was in his name.

CONCLUSION AND RECOMMENDATION

The village transferred the land to the mayor's son before our investigation started. Even though we found that the council did not follow its own bylaw, we cannot order the land to be returned or sold back to the village.

As well, even though we found that the mayor was in a conflict of interest, she was not re-elected during the last election. Therefore, we are not making any recommendation related to her, because it is no longer necessary.

Under *The Municipalities Act*, all municipalities are required to adopt a code of ethics, which must include the model code of ethics prescribed in *The Municipalities Regulations* and a process for dealing with contraventions of the code. In our view, adopting a clear process for council members, the administrator and members of the public to raise issues of real or perceived conflicts of interest will improve the village's ability to address these issues appropriately at the local level.

We recommend that the council of the Village of Manor pass a bylaw adopting procedures:

(a) Requiring the procedures in section 144 of *The Municipalities Act* to be followed whenever a council member has any conflict of interest – whether under *The Municipalities Act* or otherwise under the common law.

(b) Allowing any person – including another council member, village staff, and members of the public – who honestly believes a council member may have a conflict of interest or may have contravened the code of ethics to:
(i) address the matter directly with the council member and encourage him or her to stop or otherwise avoid the conflict of interest or contravention of the code of ethics; or (ii) make a written request to the council to address the matter.

(c) Making it a contravention of its code of ethics for a council member to threaten to take or take any reprisal against a person because the person initiated the procedures in clause (b).

(d) Ensuring any request made to the council to address the matter is brought to the attention of and addressed by the council at its next regular council meeting.