

SUMMARY OF INVESTIGATION

RURAL MUNICIPALITY OF BEAVER RIVER No. 622

COMPLAINTS

A ratepayer complained to us that three council members of the RM of Beaver River were in a conflict of interest because they participated in the council's decisions to check for gravel on a parcel of Crown land leased by one of the council members, and another parcel leased by the brother and father of two other council members.

FACTS

CROWN LAND LEASED BY COUNCIL MEMBER #1

At its December 18, 2015 regular meeting, the council passed a resolution to check for gravel on parcels of Crown land, including land leased by council member #1. The meeting minutes indicate that council member #1 was present and did not declare a conflict of interest in this matter or otherwise take steps to recuse himself when the matter was raised and voted on.

At its February 11, 2016 regular meeting, the council passed a resolution to release several quarters of land for sale, including the land leased by council member #1. The minutes indicate council member #1 was absent from this meeting. According to the minutes of the subsequent meetings of council, council member #1 was in attendance but the minutes do not indicate he declared a conflict of interest in the council's decision on February 11, 2016.

CROWN LAND LEASED BY CLOSE RELATIVE OF COUNCIL MEMBERS #2 AND #3

At its March 18, 2016 regular meeting, the council carried a motion to check for gravel on several parcels of land, including land leased by a person who is the father of council member #2 and the brother of council member #3. The meeting minutes do not indicate that council members #2 or #3 declared a conflict of interest or otherwise recused themselves when the matter was raised and voted on.

ISSUES AND FINDINGS

DID COUNCIL MEMBER #1 HAVE A CONFLICT OF INTEREST IN THE DECISION TO CHECK FOR GRAVEL ON LAND THAT HE LEASED, AND IN THE DECISION TO RELEASE THE LAND FOR SALE? IF SO, DID HE TAKE THE STEPS REQUIRED TO DEAL WITH IT?

- Council member #1 was at the December 18, 2015 meeting when the council decided to check for gravel on land he leased from the Government of Saskatchewan.
- If gravel was found, the land would not likely be released for sale to him. If gravel was not found, it would likely be released for sale, allowing council member #1 to purchase it.
- Under *The Municipalities Act*, a council member has a conflict of interest if the council member knows or ought reasonably to know that in the making of a decision on a matter, there is an opportunity to further his or her private interests. Having a financial interest in a matter before council always constitutes a conflict of interest.
- *The Municipalities Act* requires council members with a conflict of interest in a matter before the council to, if present at the meeting, declare the conflict of interest, disclose its general nature and any material details, abstain from voting on the matter, refrain from participating in any discussion on it, and leave the room until the discussion and voting are concluded. The general nature and material details of the disclosure and any abstention or withdrawal must be recorded in the meeting minutes.
- Beaver River's *Council Procedures Bylaw* defines a pecuniary interest as "...a potential financial conflict of interest and applies if the interest is beneficial or harmful." The Bylaw states that council members have a personal duty to identify any pecuniary interest they may have.
- Beaver River's *Gravel Testing Policy – Lease Lands*, says when gravel testing is carried out on Crown land leased by a RM councillor or by a member of a councillor's immediate family, the councillor must declare a pecuniary interest and be excused from discussions and voting on any resolutions pertaining to the matter. The gravel testing is then carried out under the supervision of another appropriate person.
- We found that council member #1 had a conflict of interest in a matter before the council because he had a private interest in the council's decision to check for gravel on land he leased from the Government of Saskatchewan, and that he did not take the steps required by *The Municipalities Act* to properly disclose and deal with the conflict at the December 18, 2015 meeting. He also did not comply with the procedures set out in the RM's *Council Procedures Bylaw* or *Gravel Testing Policy*.
- Council member #1 did not attend the February 11, 2016 council meeting when council decided to release the land leased by council member #1 for sale. However, *The Municipalities Act* required him to declare his conflict of interest at the next council meeting he attended, which he did not do.

DID COUNCIL MEMBERS #2 AND #3 HAVE CONFLICTS OF INTEREST IN THE DECISION TO CHECK FOR GRAVEL ON LAND THAT WAS LEASED BY THEIR FATHER/BROTHER? IF SO, DID THEY TAKE THE STEPS REQUIRED TO DEAL WITH IT?

- At the March 18, 2016 regular meeting, the council decided to check for gravel on land leased by X, who is council member #2's father and council member #3's brother.
- Even though council member #2 and council member #3 did not have a conflict of interest as defined in *The Municipalities Act* – because the definition of “closely connected person” does not include a council member's father or brother – they still had a conflict of interest under the common law and under Beaver River's *Gravel Testing Policy*.
- A council member must always act in the best interests of the community when participating in making decisions as a council member. There may be some situations where a council member may still have an obligation to declare that he or she has a conflict of interest in a matter before council, even if it does not fall strictly under the definition of conflict of interest in *The Municipalities Act*. Council members still have to follow the common law rules about avoiding conflicts of interest.
- We found that a reasonably informed person would think, in all the circumstances, there was a real likelihood that council member #2 – X's son, and council member #3 – X's brother, would not be able to take part in the council's decision about how to deal with the potential for gravel on land leased by X, in an unbiased manner. Both council members ought to have known that there was an opportunity to further X's private interests by each of them taking part in the council's decision. Therefore, they were each in a conflict of interest and should have taken steps to deal with the conflict.

CONCLUSIONS AND RECOMMENDATIONS

- While the council members had conflicts of interest in the matters before council, and did not take the steps required to deal with the conflicts, we did not find any evidence that they did so maliciously or with any intent to deceive ratepayers.
- We found that these council members were not fully aware that the conflicts of interest rules set out in *The Municipalities Act* applied to situations like these. Nor did they fully understand the RM's own *Procedures Bylaw*, or the requirements that they not participate in these types of decisions, as set out in the RM's *Gravel Testing Policy*. Their response to our draft report confirmed this.
- It is important that council members make sure that they fully understand and comply with the conflict of interest rules, because, even if a specific conflict of interest is not seen as serious, the consequences of not following the rules are serious.
- *The Municipalities Act* states that a council member who has a conflict of interest in a matter before the council and does not properly deal with it, is disqualified from the council, must resign immediately, and is ineligible to be nominated to run for office in any municipality for 12 years. If a council member does not resign, the council or a voter may apply to the courts

for an order declaring the person to be disqualified from council. Based on the evidence presented, a judge may declare the person disqualified from council. However, the judge must dismiss the application if the judge is of the opinion that the disqualification arose through inadvertence or because of an honest mistake.

- Given these consequences, it is important and necessary that council members learn the conflict of interest rules and then ensure they follow them.
- *The Municipalities Act* requires all municipalities to adopt a code of ethics and a process for dealing with contraventions of the code. In our opinion, it is also important for municipalities to have fair and reasonable processes in place for dealing with allegations of conflict of interest at the local level.
- This case highlights the importance of council members following the conflict of interest rules in *The Municipalities Act*, and of recording the steps taken in the minutes of meetings.
- To assist the council so that in the future it will be able to ensure that its council members are in full compliance with the specific requirements and the spirit and intent of the conflict of interest rules in both *The Municipalities Act* and the common law, we recommended that:
 1. **The council of the Rural Municipality of Beaver River No. 622 arrange for each council member and all staff of the municipality to take education and training on conflicts of interest and how to deal with conflicts of interest when they arise while carrying out their duties.**
 2. **The council of the Rural Municipality of Beaver River No. 622 pass a bylaw to adopt procedures:**
 - a. **Requiring the procedures in section 144 and section 144.1 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, staff of the municipality, 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); and**
 - 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.**

RESPONSE FROM RM OF BEAVER RIVER

- We gave the RM and the council members the opportunity to review a draft of our investigation report and make any representations they wished to make before we finalized the report. No representations were made.
- The reeve told us that the council had discussed the report, but felt neither the council nor the council members had done anything wrong by participating in these matters before the council. Given this, the RM has not accepted our recommendations – which were aimed at helping the RM and its council understand what a conflict of interest is, and to improve its processes for addressing conflicts of interest.
- We continue to believe implementing our recommendations will help ensure that decisions are made, and seen to be made, in the best interests of the community.
- When providing the final report to the RM and the council members, we strongly urged them to implement the recommendations.

Our investigation is now concluded.