

SUMMARY OF INVESTIGATION

RURAL MUNICIPALITY OF ORKNEY No. 244

COMPLAINT

We received a complaint that a council member of the RM of Orkney was in violation of the conflict of interest provisions of *The Municipalities Act*, because he acts as a waterworks operator for Orkney.

FACTS

The council member has been on the Orkney council since 1997.

In 2008, when the Village of Willowbrook was absorbed into Orkney, it became responsible for operating the village's water treatment plant. The council passed a resolution to advertise for the position of waterworks operator, stating that, until the position was filled, the council member would carry out the waterworks operator's duties and be reimbursed for doing so. The council also authorized the council member to complete the required course to become certified at its cost.

Orkney advertised and tried to fill the position, but no one was interested in taking the certification training or undertaking the responsibility of testing the water each day. The council member has continued to act as the waterworks operator ever since. The council approves payment of his invoices each month.

The council member did not initially disclose his interest in the waterworks operator contract in his 2016 public disclosure statement, but later amended his statement to include it.

ISSUES AND FINDINGS

By acting as the waterworks operator, is the council member violating the rule in *The Municipalities Act* about council members not being municipal employees?

- Section 112 of *The Municipalities Act* states that council members are ineligible to be appointed as employees of their municipality.
- We found that there was no employer-employee relationship between Orkney and the council member. The council member carried out the work of waterworks operator as an independent contractor.
- Therefore, in our opinion, the council member did not contravene section 112.

Did the council member have a conflict of interest in the council's decision to appoint and pay the council member to act as waterworks operator? And, if so, did the council member take the steps required to deal with it?

- The council member was at the 2008 council meeting when the council decided to appoint and pay the council member to act as the waterworks operator.

- At the time, *The Municipalities Act* required council members with a “pecuniary interest” in a matter before council to, if present at the meeting, declare the pecuniary interest, abstain from discussing and voting on the matter, and leave the room until the discussion and voting had concluded. The declaration and abstention was to be recorded in the meeting minutes.
- A council member has a pecuniary interest in a matter, if the council member could make a financial profit from or be adversely affected financially by a decision of council.
- We found that the council member had a pecuniary interest in the council’s decision to authorize and pay the council member to act as waterworks operator, and that the council member did not comply with the steps required by *The Municipalities Act* to properly disclose and deal with the pecuniary interest.

Does the council member have to declare a conflict of interest in the council’s decisions to pay his invoices for acting as the waterworks operator? If so, did the council member do so?

- Every month, the council decides whether to authorize payment of the council member’s invoices for acting as waterworks operator.
- *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 are to be recorded in the meeting minutes.
- Under the 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.
- Also, if the matter with respect to which a council member has a conflict of interest is the payment of an account for which funds have previously been committed and the payment is the amount previously approved, the council member must declare the conflict of interest, disclose its general nature and any material details, abstain from voting, and refrain from any discussion, but does not have to leave the room.
- We found that the council member had a conflict of interest in the council’s decisions to authorize payment of the council member’s invoices and that the council member did not comply with the steps required by *The Municipalities Act*, to disclose and deal with the conflict of interest until recently.

Does the council member have to disclose the waterworks operator contract in the council member’s public disclosure statement? If so, did the council member do so?

- Section 142 of *The Municipalities Act* requires council members to file public disclosure statements identifying financial interests, or other matters that may be reasonably be seen to affect the council member’s impartiality in making municipal decisions.

- The council member initially failed to disclose the contract, however, he did include it in an amended public disclosure statement.
- We found that the council member's initial failure to disclose the contract in his statement was an oversight and not intentional. The council member's role as the waterworks operator is public knowledge, and the payments that the council member received are recorded in publicly-available minutes of the council's meetings.

CONCLUSIONS AND RECOMMENDATIONS

- In our opinion, the council member's failure to comply with the pecuniary interest rules in *The Municipalities Act* in 2008 and the conflict of interest rules in the current version of the Act, was through honest mistake or inadvertence.
- We found no evidence the council member intended to use the council member's position on the council to further the council member's private interests. The arrangements between the council member and the municipality were done with the intention of benefiting the community. We found no evidence that the council member was or is motivated by personal self-interest, despite accepting some compensation for the work.
- 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.
- Therefore, with a view to ensuring the municipality, the council and the council member have an opportunity to move forward in full compliance with the conflict of interest rules in *The Municipalities Act*, we make the following recommendations:
 1. **The Rural Municipality of Orkney No. 244, at its next regular council meeting discuss and vote on whether to continue the waterworks operator contract with the council member, and that the council member fully comply with subsection 144(1) of *The Municipalities Act* with respect to the discussion and vote on the matter.**
 2. **The Rural Municipality of Orkney No. 244 take steps to ensure all declarations of a conflict of interest in a matter before council are properly recorded in the minutes of meetings.**

Under *The Ombudsman Act, 2012*, if there are sufficient grounds for making a report that may adversely affect any entity or person, we must give the entity or person an opportunity to respond before we finalize the report. On March 29, 2017, we provided the council member with a copy of our draft report and advised him that he could make representations to us through legal counsel about our findings and conclusions and our tentative recommendations. We also provided the draft report to the Reeve of Orkney, as our findings involved the activities and decisions of Orkney's council and administration.

In a June 8, 2017 letter, the Reeve advised us that the council accepted our recommendations. At its May 4, 2017 meeting, the council dealt with the matter concerning the waterworks operator contract, and the council member fully complied with subsection 144(1) of *The Municipalities Act*, which was properly recorded in the minutes of the meeting.

Our investigation is now concluded.