

Town of Carbonear
December 13, 2017

Difficult Decision to Vacate Seat of Mayor

At the Council Meeting held on December 13, 2017 Council had to make a very difficult decision – to declare the seat of Mayor Butt vacant.

Every Councillor is made aware of the legislation pertaining to Conflict of Interest due to the implications for Councillors. Municipal Affairs and Municipalities Newfoundland and Labrador provide training to councillors and provide circulars and information to municipalities on this and how councils shall address allegations.

Section 207 (1) (b) of the Municipalities Act, 1999 states:

A councillor shall not vote on or speak to a matter before the council or a committee of the council where

(b) the councillor has a monetary interest directly or indirectly in the matter;

Section **206**. (1) states: The office of a councillor becomes vacant where

(2) A council shall, by resolution, declare vacant the office of an elected councillor where that councillor

(a) fails to disclose that he or she has a conflict of interest in a matter being discussed by the council; or

(b) discusses or votes on a matter on which he or she has a conflict of interest.

Council received a copy of correspondence sent to the Minister of Municipal Affairs on September 11, 2017, alleging that Mayor Butt was in a conflict of interest as he voted on the demolition of the building at 234 Water Street and he would benefit monetarily from this property being demolished as it is in the vicinity of property he owns. Municipal Affairs and Environment provided the Council with advice on the procedure that Council is required to follow when allegations of conflict of interest are made. Investigation into the allegation confirmed that in a meeting on May 20, 2014, Councillor Frank Butt did make a motion to demolish the building at 234 Water Street and due to the vicinity of his property to Water Street; there was a potential monetary interest. It has been referenced that the letter received is unsigned, however, the fact remains that Councillor Frank Butt made and voted on the motion. The Council did follow up on the letter being unsigned, the time frame from when this occurred and when the letter was received; however, we were informed by legal counsel that the legislation does not provide for

any time limits or degrees of monetary interest, therefore, that could not be considered in investigating and making a decision on the allegation.

Council agrees that the building was an eyesore and had to be removed. In situations where councillors are in conflict they are required to declare the conflict and vacate the meeting. The remaining councillors will make the motion and vote on that motion but the councillor that is in conflict cannot participate. Council did continue to pursue options for removal of the building and the building was removed 2015 at no expense to the taxpayers.

The previous council did request a legal opinion but it took time for the lawyer to research court cases to provide an opinion. The legal opinion was not received until October 2, 2017 which was after the election. Our lawyer's opinion was that it would be reasonable to infer/conclude that Councillor Butt did have a monetary interest in the matter and council is obliged under the Act to declare Councillor Butt's seat vacant. Frank was included in this discussion and provided with copies of the lawyer's letters.

The Department of Municipal Affairs presented us with a circular entitled "Procedure for a Municipal Council to Declare a Councillor's Seat Vacant in Accordance with the Municipalities Act, 1999". Based on the rules of natural justice set out in the circular, council provided Mr. Butt with a written document setting out the details of the allegation of conflict of interest. A hearing before council was scheduled and attended by Mr. Butt and his lawyer on Nov 22. Further discussions were held with the Department and our lawyer and a subsequent hearing was held with Mr. Butt and his lawyer on Dec 6.

We feel this is an unfortunate situation. Frank has the option to appeal council's decision to an Appeals Court and we respect his right to do so and wish him all the best.

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