



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

September 10, 2013

Mayor Randall McLaren
Township of Bonfield
365 Highway 531
Bonfield, ON, P0H 1E0

Dear Mayor McLaren,

Re: Closed Meeting Complaints of August 3, August 7, 2013

I am writing further to our conversation of September 10, 2013, regarding the outcome of our review of five complaints that three members of Council met on August 3 and August 7, 2013 at the Township of Bonfield's landfill site, in contravention of the *Municipal Act, 2001* (the "Act").

As you know, the Act requires that all meetings of Council, Local Boards and their committees be open to the public, with limited exceptions. The Ombudsman is the closed meeting investigator for the Township of Bonfield.

In reviewing this Complaint, our Office spoke with you, Councillor Tamela Price-Fry, and Councillor Jane Lagassie, obtained and reviewed the notice of Council and Committee meeting cancellations, posted August 5, 2013, reviewed the relevant sections of the Act and the Procedure By-Law.

Background

Municipal employees of the Township of Bonfield went on strike August 1, 2013. We were advised that the Township has no management level municipal employees, and that its five-member Council was attempting to provide essential services to the community during the strike. Accordingly, in the absence of a municipal workforce, Mayor Randall McLaren, Deputy Mayor Tamela Price-Fry and Councilor Jane Legassie have operated the Township landfill site at its scheduled opening times on two occasions since the strike commenced.

The Councilors first operated the town landfill site on Saturday August 3, 2013, and again on Wednesday August 7, 2013. A public notice, cancelling a series of municipal meetings, was posted on the Township's Facebook wall and its office door on August 5, 2013, by Councilor Jane Legassie.

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The August 3 and August 7 Landfill Attendance

On each of August 3 and August 7, 2013, the Mayor, Deputy Mayor and Councilor Legassie separately arrived at the landfill. At the landfill site, each of the three Council members undertook separate tasks relating to the landfill sites operation:

- i. the Mayor assisted in removing garbage from residents' cars and transferring the goods to receptacles, while also answering residents' questions about the labor dispute and other local matters;
- ii. the Deputy Mayor greeted residents upon entry and ensured their presentation of the required landfill access cards; and
- iii. Councilor Legassie assisted at the recycling depot.

We were advised that no group discussions of town business took place at any time, and the Council members left the landfill site separately.

The August 5, 2013 Notice of Meeting Cancellation

On August 5, Councilor Legassie phoned the Mayor to relay her need to cancel a Planning Advisory Committee meeting, which she Vice-Chaired (temporarily replacing the Chair, on vacation), scheduled for August 6, 2013. This was required as she had not been briefed on the relevant issues by striking municipal staff, and because there was no staff to administratively support the Committee.

In the course of the August 5 telephone conversation, Councilor Legassie and the Mayor also discussed the need to cancel the Public Works Committee meeting the Mayor chaired, also scheduled for August 6, in the absence of administrative support for the Committee from striking employees. The Mayor instructed Councilor Legassie to provide public notice of the Committee meetings cancellations, which she did, both posting the Notice on the Township Facebook page and on the door of the Township municipal office. Councilor Legassie included in the Notice the cancellation of the Personnel Committee meeting scheduled for August 6, and the regular Council meeting, scheduled for August 13, based on her understanding that these meetings could not be held without municipal staff support. The Mayor subsequently duly exercised his authority to cancel the Personnel Committee and regular Council meeting.

Analysis

For the purposes of the open meeting requirements, a meeting is defined as any "regular, special or other meeting of a council, of a local board or of a committee of either them."

As discussed, based on a review of court decisions and the principles that inform the open meeting requirements, the Ombudsman developed the following definition to determine whether a Council gathering is subject to the open meeting requirements of the Act:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

Based on the information received, the 3 members of council who attended at the Township Landfill site on August 3 and 7 did not engage in any decision-making or exercise of council authority during that time. Rather, they attended at the landfill site to assist with activities in order to maintain the operations of the landfill. Consequently, we have not found that any violation of the open meetings provisions of the *Municipal Act* occurred.

Additionally, the decision to cancel the Council and Committee meetings was not arrived at *in camera* during the Councilors' presence at the landfill site. Instead, the decisions to cancel the meetings were administrative decisions made within the mayor and councilors individual authority and we are satisfied that the conversations that took place to inform each other of these decisions did not constitute violations of the open meeting requirements of the Act.

As per our discussion, this letter will be shared with the public, by making it available on your Township website, and with Council, at the first public meeting of Council. If you could please advise us when letter is posted to the website, that would be appreciated.

Thank you for your assistance with our review.

Sincerely,

Sara Gottlieb
Legal Advisor
Open Meeting Law Enforcement Team