

Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE FILE NUMBER 2013-0250

RURAL MUNICIPALITY OF DE SALABERRY

REPORT ISSUED ON MAY 28, 2014

CASE SUMMARY

A complaint was made to our office alleging a council member of the Rural Municipality of De Salaberry authorized a road repair expenditure of \$5,025 without the statutory authority to do so.

The complainant raised the matter with the RM but was not satisfied with the responses she received from the deputy reeve and the municipality.

After review of the evidence, Manitoba Ombudsman has concluded that the council member did not act in violation of *The Municipal Act* with respect to the approval of a cheque for road repairs. However, Manitoba Ombudsman concluded that the complainant was not treated appropriately by a council member when responding to an email inquiry.

OMBUDSMAN ROLE AND RESPONSIBILITIES

Manitoba Ombudsman is an independent office of the Legislative Assembly of Manitoba, reporting to the assembly through the Office of the Speaker. The responsibilities and authority of the ombudsman are set out in *The Ombudsman Act*, *The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act*, and *The Public Interest Disclosure (Whistleblower Protection) Act*.

Under *The Ombudsman Act*, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

This complaint involves matters that are of an administrative nature arising from the actions and decisions by a municipality pursuant to the provisions of a provincial statute, *The Municipal Act*.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to a legislative purpose. In cases concerning an impact on individual rights or benefits, we also examine the fairness of the action or decision. A complaint can raise questions of procedural fairness, substantive fairness or relational fairness. Procedural fairness relates to how decisions are reached; the steps followed before, during and after decisions are made. Substantive fairness relates to the fairness of the decision itself and relational fairness relates to how people are treated during the decision-making process.

While our office has a mandate to investigate complaints, the investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker, and any witnesses we determine to be relevant to the case. Administrative investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. If a complaint is supported by a finding of maladministration, the ombudsman may make recommendations pursuant to section 36 of *The Ombudsman Act*.

Administrative investigations can also identify areas where improvements may be suggested to a government body without a finding of maladministration. Such suggestions are made to support and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can improve the relationship between government and the public, and reduce administrative complaints.

The actions complained about in this matter are of an administrative nature arising from the process by which approval was made for expenditures for road repairs in the Rural Municipality of De Salaberry.

THE COMPLAINT

The complainant alleges that a councillor authorized municipal road repair work at a cost of \$5,025 without the statutory authority to do so. She also claims that she was treated unfairly by the RM and deputy reeve when she raised questions about the expenditure.

KEY ISSUES/QUESTIONS

- 1. Did the councillor have statutory authority pursuant to *The Municipal Act* to authorize the \$5,025 expenditure for road work?**

2. Did the RM respond to the complainant's concerns in an appropriate manner?

BACKGROUND INFORMATION

Municipal government is required to adhere to *The Municipal Act* with respect to the approval of financial plans and the expenditure of tax dollars. The act provides for penalties if a councillor approves expenditures without the proper authorization. The relevant sections of the act regarding these matters are as follows:

Methods by which a council may act

140(1) A council may act only by resolution or by by-law

Council must adopt financial plan for each fiscal year

162(1) Every council must adopt a financial plan for each fiscal year in a form approved by the minister and consisting of

(a) an operating budget

Certain use of municipal money an offence

171 (1) A member of council is guilty of an offence under this Act who

(a) spends or invests or authorizes the expenditure or investment of money of the municipality without authorization or contrary to the authorization given under a by-law or resolution of this or any other Act; or

Civil liability of the member

171(2) In addition to any penalty imposed under subsection (1), a member of a council who is guilty of an offence under subsection (1) is liable to the municipality for the amount spent, invested or paid.

In addition, *The Municipal Act* outlines the standards of conduct expected from council members in carrying out their duties and the consequences for failing to act appropriately. Section 84.1 of the act states the following with respect to these matters:

Content of code

84.1(2) The code of conduct is to set guidelines that define the standards and values that the council expects members to meet in their dealings with each other, employees of the municipality and the public.

Censure

84.1(3) A council may censure a member if it determines that the member has breached the code of conduct.

Approval of resolution

84.1(4) To be approved, the number of members who must affirm the resolution to censure is the majority of all the members, plus one.

POSITION OF COMPLAINANT

The complainant, on behalf of the Otterburne Ratepayers Association (ORPA), advised that she was in attendance at a council meeting on June 25, 2013 and there was discussion about who had authorized road repair work at a cost of \$5,025. She alleged that the chair of the Finance Committee of council asked who authorized the payment, as he was unaware of the expenditure. Additionally, the chair of the Road and Gravel Committee reportedly indicated that he was also unaware of this expenditure. It was during this discussion of council that a councillor commented that he had authorized the work.

The complainant's position is that it is inappropriate for an individual member of council to authorize such expenditures as council can only act by resolution or by-law as per subsection 140(1) of *The Municipal Act*. She believes that the councillor should reimburse the RM for the cost of the road repair work.

POSITION OF RM of DE SALABERRY

The RM responded to the complainant by letter dated July 27, 2013 and advised that the expenditure was within budget parameters and was approved by council with Resolution No. 293-13. The RM budgeted \$1,015,000 in operating expenses to the transportation budget and the amount of \$9,700 was set aside for road patching. The RM advised that the seal coating of Golf Course Road (Cure Road) that branches off Rat River Road was listed in the Financial Plan of 2013 and that the expenditures were in accordance with *The Municipal Act* guidelines.

Further, the RM responded :

that each committee of council meets early in the year to discuss their wish list for the year, then each Committee meets as needed and out of discussions, recommendations are made. These recommendations are presented at Council Meetings. Motions are made and resolutions passed. The Road and Gravel Committee meets, discusses projects, road repairs, graveling, and all items that deal with road construction. This report is presented to Council and accepted. All pre-determined road works are included in the Financial Plan.

The Public Works Foreman then carries out the plan. Sometimes for unforeseen reasons, such as emergency flooding or excessive erosion, other projects need to be addressed on a as needed basis. These situations are brought to committee for discussion, then if recommended, approved at council by resolution.

The Plan is carried through by administration as per section 169(1) of The Municipal Act. If expenditures are brought forward to Council that are not listed on the Financial Plan, they are paid by resolution as per section 169(5) of The Municipal Act.

The RM indicated that some language used in the council meeting may have been misinterpreted and that Councillor [name] may have meant he “was ‘approving’ because he took a drive down the road, reporting that it was done and he was happy with the quality.”

The RM also responded to our inquiries about relational fairness regarding the email sent to the complainant. Council considered the email against their code of conduct and concluded, “Council does feel the email is in compliance regarding what he was responding to.”

SCOPE OF INVESTIGATION

During the course of our investigation we undertook the following:

- Contacted the RM of De Salaberry to obtain information and clarify their understanding of this situation
- Interviewed the complainant and staff of the RM
- Reviewed *The Municipal Act*, the *Municipal Act Procedures Manual*, and *Council Members Guide Once Elected... What is Expected? 2010-2014*; RM of De Salaberry Purchasing and Tendering Policies; RM of De Salaberry Council Members' Code of Conduct
- Consultation with the Finance and Advisory Branch of Manitoba Municipal Government
- Review the meeting minutes of the council meeting held on June 25, 2013

ANALYSIS OF ISSUES AND EVIDENCE

1. Did the councillor have statutory authority pursuant to *The Municipal Act* to authorize the \$5,025 expenditure for road work?

We reviewed the publication *The Council Members Guide Once Elected... What is Expected? 2010-2014* that is provided to all council members. It states the following:

Only council has the authority to make decisions for the municipality. Individual councillors who make decisions on their own may be held legally or financially liable. (p.15)

The municipality advised our office that the expenditure for road repairs was within budget parameters and was approved in the financial plan. *The Municipal Act* requires that municipalities must have a public hearing before approving the annual financial plan that includes an operating budget. No evidence has been provided to suggest that the financial plan was not approved in accordance with statutory requirements.

We note that council passed Resolution No. 293-13 on June 25, 2013, approving a series of cheques, including the \$5,025 expenditure for the road repair.

We contacted Manitoba Municipal Government for additional information and were advised that the expenditure for road repair does not require a council resolution when authorization exists under the financial plan.

The Road and Gravel Committee meeting minutes of December 28, 2012 list capital projects recommended to be included in the 2013 budget. This included seal coating of “Rat River Road - another section of the road (to be determined).” It is our understanding that the Golf Course Road branches off of Rat River Road. Further, the Public Works foreman confirmed that this road was identified for repair in accordance with the financial plan and priorities of council.

Based on the evidence we reviewed, including interviews with municipal administration and public works staff, we concluded that the road repair work was identified and previously approved by council as part of the financial plan and not by an individual member of council.

However, as it was not immediately clear at the council meeting how the decision was reached, it resulted in a formal complaint to this office. Conflict can occur when ratepayers perceive that individual council members are making decisions independently rather than following the processes established relating to the roles of committees of council and/or responsibilities of municipal administration. It can result in the public forming a belief that council has been denied the opportunity to consider expenditures against competing priorities that exist elsewhere in the community.

2. Did the RM respond to the complainant in an appropriate manner?

The complainant represents the Otterburne Ratepayers Association, which was seeking information from council to clarify a decision that was believed to be non-compliant with *The Municipal Act*. When she contacted our office on July 25, 2013, she had not yet received a formal response from the municipality with respect to the concern she raised in an email dated June 27, 2013.

The complainant subsequently received a letter from the RM dated July 17, 2013, advising her that the expenditure was within the municipality’s budget parameters. The RM indicated that it set aside funds for road patching and that this project qualified under this category. Further, the RM explained that council had authorized the expenditure by Resolution No. 293-13.

A second letter, dated August 19, 2013, was sent to the complainant with a copy of the 2013 municipal budget showing an allotment of \$9,700 for road repairs.

The two responses from the municipality to the complainant were provided within a reasonable time frame and included information about the amount that had been designated in the operating budget.

However, it should be noted that prior to the complainant receiving the letters from the RM, she had sent a follow-up email dated July 3, 2013 to the chief administrative officer and reeve, and copied to all council members, requesting a response to her concerns about the authorization of \$5,025 for road repairs. The email was from the association’s email account and was signed by the complainant as

“President.” This email was pointed. It notes that the association has not received an answer to the letter of June 27th, expresses the opinion that the councillor who they allege has spent money without authorization should be removed from council committees until the matter is resolved, and indicates that a failure to respond will result in a further complaint. Although her email was addressed to the head of council, the deputy reeve responded to her by email dated on July 5, 2013. The deputy reeve wrote:

[First name]

You are right, I choose to ignore an Organization that's not taken the time to present itself properly to council but I will respond to yourself this time because I think you are crossing the line between your opinions and outright threats. I do not take kindly to threats and hope you think this over and apologize to councillor [name] and council before it's too late.

If you understood how a municipality and council operates – you would still be on council. Councillor [name] acted well within the plan and budget for the maintenance and upkeep of the RM roads. After some discussion council decided to pay the bill as per municipal standards.

In closing I would like to say that this RM has not received a response to OUR enquiries into your organization. We want your minutes, hierarchy, goals, reasons for existing. Again for this reason I choose to ignore your phantom organization that you hide behind to spew your venom trying to poison this council.

While Manitoba Ombudsman receives complaints from the public regarding their right to a fair process or the fairness of a decision, there are times when complaints are filed on the basis that they feel a government official has treated them inappropriately.

Section 84.1 of *The Municipal Act* requires councils to adopt a code of conduct that provides guidelines on acceptable behaviour for council members in dealing with each other, employees and citizens. The code is a public document that reaffirms the standards and values that council members are expected to uphold.

The RM adopted a code of conduct on January 29, 2013. Section 4.1 of the policy relates to respectful conduct and states:

that every member of Council is expected to conduct himself or herself in public, and in respect to the public, in such a way as to reflect the decorum and dignity of the office that he or she holds.

This code of conduct is a public document and it would be beneficial if it was posted on the RM website for public viewing.

Council considered the email exchange and concluded that the response of the deputy reeve was in compliance with the code of conduct. In light of section 4.1 of the policy, it is difficult to understand council's conclusion.

The RM advised that there is a long standing interpersonal conflict between the complainant and the council member who sent her the email in question. Although conflict between members of the public and individual elected officials can occur, the goal should be to de-escalate such conflict. In this situation, it would have been more appropriate for either the CAO or the reeve, to whom the email had been addressed, to respond to complainant's concerns in a neutral and respectful manner on behalf of council.

Each council member is a representative of the municipality and therefore the public expects the highest standard of conduct from elected officials. The adherence to these standards helps to maintain the integrity of the office that elected officials are entrusted to hold.

CONCLUSION

On June 25, 2013, council considered the expenditure of \$5,025 for road work and subsequently approved the expenditure by passing Resolution No. 293-13. Council had previously budgeted \$9,700 for road patching as part of the RM's financial plan which was approved by council on May 14, 2013.

We concluded that the RM had not failed to meet statutory requirements as set out in *The Municipal Act* with respect to authorizing a cheque in the amount of \$5,025 for road repairs. However, we would suggest that minutes of council meetings contain detailed information regarding the prioritization of road repairs within the RM to prevent future misunderstandings or the perception that elected officials are acting in isolation of council.

With respect to the fair treatment of the complainant, we note that the RM responded to the complainant within a reasonable timeframe by way of letters dated July 17, 2013 and August 19, 2013. These letters are signed by the respective CAO, representing the municipality, and appear to provide relevant information in an appropriate manner. However, we are unable to reach this same conclusion in relation to the email that was sent to the complainant on July 5, 2013 and that is referenced earlier in this report.

Individuals who feel like they are being treated poorly by government are less likely to believe that an action or decision affecting them is fair. Even if the decision has been made fairly, ignoring the relational side of fairness can result in a feeling that the decision is unfair and a loss of confidence in government.

Concerned ratepayers associations are in existence throughout Manitoba and council members must remember that ratepayers should be treated courteously and respectfully, even if there is disagreement on issues or interpersonal conflicts. The public expects a high standard of conduct for elected officials in the performance of their duties on behalf of the municipality, as reflected in provincial legislation.

MANITOBA OMBUDSMAN