



CORPORATE SERVICES DIVISION

789 Broadway Street, Box 3000
Wyoming, ON N0N 1T0
Telephone: 519 845-0801
Toll-free: 1-866-324-6912
Fax: 519 845-0818
www.lambtononline.ca

MEMO

DATE: November 9, 2007

TO: Corporate and Community Services Committee

FROM: Linda Ross, Clerk

CC:

RE: Closed Meeting Investigator

On May 22nd, 2007, the Minister of Municipal Affairs and Housing wrote to all Heads of Council to advise that the government has set January 1st, 2008 for proclamation of various sections of The Municipal Statute Law Amendment Act, 2006. One such amendment will enable any person to request an investigation of whether a municipality or local board has complied with the 'closed meetings' requirements in the Act. The municipality has two options if a request for an investigation is filed:

- 1) Engage the services of an independent investigator, or;
- 2) By default, if no investigator has been appointed, then the Provincial Ombudsman will conduct the investigation.

Rather than rely on a provincially-appointed investigator, the County Council may prefer to appoint an experienced and knowledgeable individual. According to the Act, the appointing municipality shall have regard for:

- 1) The investigator's independence and impartiality;
- 2) The confidentiality with respect to the investigator's activities; and,
- 3) The credibility of the investigator's investigative process.

The investigator should have extensive knowledge of municipal government; a solid understanding of municipal council operations and policies; detailed knowledge of the Municipal Act and other related statutes; credibility with municipal councils, staff, public and the media; and no specific connections with any of the municipalities represented.

Council may choose one of the following four options;

- 1) Mr. John Maddox has offered his services through his company, JGM Consulting for a retainer of \$2,500.00 for the County and \$300.00 per lower-tier municipality for a one-year term. In addition, Mr. Maddox would bill out at \$75 per hour plus expenses, when called upon to investigate a complaint.
- 2) AMO's Local Authority Services has offered a Closed Meeting Investigator option through a third-party company, Amberley Gavel Ltd., with each municipality paying a retainer of \$600.00 for a two-year term with a per diem for investigations set at \$1250.00 (approximately 179.00/hr).
- 3) The Ontario Ombudsman is the default investigator should a municipality choose not to appoint a local one. It is uncertain if a charge would be levied for this service.
- 4) Choose a local resident to provide the services.

Discussion:

- 1) John Maddox is the recently retired Regional Director of Municipal Affairs and Housing and a former C.A.O. who has extensive municipal experience, a reputation as a fair-minded conciliator and familiarity with the Lambton County area and its constituent municipalities. His knowledge of the Municipal Act and how municipalities work is unquestioned. Mr. Maddox has offered a "multi-municipal" agreement which will provide the local municipalities (excluding City of Sarnia) with a discounted retainer fee of \$300.00 should the County enter into an agreement with him.
- 2) The LAS option will be offered through a third-party company (Amberly Gavel Ltd.). Two of the principals of this company, Nigel Belchamber and Fred Dean also have many years of municipal service experience however it is unclear if they would be providing the investigation services themselves or contracting with others to perform the actual work. They are unable to give any assurances in this regard other than it would likely be a local person appointed by them who they are confident could perform the duties. The issue of not knowing or having any input into the decision about who might perform the services is troubling to others in the municipal field as well and there are likely to be negotiations between LAS and the Municipal Law Departments Association regarding several issues about which that membership has concerns. Those negotiations have not yet begun as of this writing and it is difficult to determine the outcome. While the retainer fee for the County would be considerably less than that of Mr. Maddox, the per diem rate is considerably higher.

- 3) The Ontario Ombudsman is the least expensive option since there is no retainer fee however, there will be costs incurred for expenses of the investigator during the investigation as with the other options. The office of the Ombudsman does have experience in the area of investigations of public complaints about public bodies. The extent of municipal knowledge and experience is not known.
- 4) The appointment of a local resident is fraught with potential pitfalls. Most local residents who may have knowledge and experience with municipal government would likely have some tie to a local council whether current or past. Although that person may have the utmost of integrity and ability, the potential for the appearance of or allegation of bias by the public is great.

Conclusion:

Staff suggests retaining Mr. Maddox for the first year of the program, reassessing the model later in 2008 to determine how best to proceed in the future. The issues with LAS may be resolved within the year and there may be some experience either from other municipalities or within the County which we can draw upon to better assess how this program will work and what will work best for Lambton.

Recommendation

THAT Council appoint Mr. John Maddox operating as JGM Consulting as Closed Meeting Investigator for a one-year term commencing on January 1st, 2008 for the County of Lambton; and,

THAT the County's budget for 2008 make provision for said fees (estimated at \$2500.00 plus an allowance for possible investigation(s)); and

THAT the Warden and Clerk be authorized to enter into the necessary agreements; and further,

That the necessary by-law be prepared.