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July 7, 2008

Mayor Gordon Smith
&
Ron Campbell
Chief Administrative Officer
City of Rossland
City Hall
Box 1179, Rossland, B.C. V0G 1Y0

Steve Knox
c/o City Council
City of Rossland
City Hall
Box 1179, Rossland, B.C. V0G 1Y0

*By fax to (250) 362-5451
and email to gordon.smith@telus.net
rwcampbell@telus.net
steveknox@telus.net*

Dear Sirs:

RE: July 14, 2008 council meeting and disqualifying conflict of Steve Knox

I have been retained by the Citizens for Responsible Development ("CRD") of Rossland concerning this matter.

My clients' position is that Steve Knox is required by s. 100(2) of the Community Charter to state his conflict of interest due to his relationship with the Red Mountain companies, and refrain from voting or participating in any matter which will or could affect Red Mountain's proposed development of a golf course/commercial/residential project, and in particular the matter now scheduled to come before Council on July 14, 2008.

My understanding is that a development permit is sought by Red Mountain Ventures G.P. Ltd., which is a corporation which is part of a group of companies including one which employs Mr Knox as a regular employee from time to time (referred to collectively as "Red Mountain").

Our clients' information is that Mr Knox has been employed by Red Mountain for some time. The specifics of the employment are in Mr Knox and Red Mountain's possession. This appears to be a long range employment although described at times as seasonal.

Lately, I am advised that Mr Knox has indicated he is not at the moment employed by Red Mountain, but has a history of working for Red Mountain on a regular and seasonal basis.

I have been provided with the opinion letters of January 18, 2008 and June 4, 2008 of the law firm of Murdy & McAllister ("Murdy"). The latter opinion incorporates by reference the earlier opinion, which first opinion relies in part on a case which I prosecuted, *Godfrey v. Bird*, where the councillor in question was ordered disqualified by the Court and to pay costs of both the Petitioners and the North Saanich council.

What that decision indicates, as does *Guimond v. Sornberger* in the Alberta Court of Appeal, is that a sensible and reasonable approach must be taken in determining whether a direct or indirect pecuniary or non-pecuniary conflict exists.

Note that Mr Knox's obligation if there is any conflict of interest, either pecuniary or non-pecuniary, is to recuse himself: s. 100(3) of the Community Charter.

If the nature of the conflict is not pecuniary, then Mr Knox would be in contravention of the Community Charter, but not liable for removal from office. However, the validity of any vote in which he participated would be subject to attack in the courts and an application can be made declaring such vote void, voidable or nugatory.

If the conflict is pecuniary, directly or indirectly, then as well as the vote being subject to challenge, Mr Knox could be removed from office, unless he has voted "inadvertently or because of an error in judgment in good faith", per s. 103(2). By reason of being alerted to this conflict including by this letter, it is my clients' position, supportable in the authorities, that the innocent error exception cannot conceivably be available to Mr Knox.

So the question comes to whether being seasonally employed by an applicant before him can create either a pecuniary or non-pecuniary interest on Mr Knox's part that requires him to recuse himself, or if he proceeds at his peril to participate or vote on the matter, will make him subject to removal from office and payment of costs.

The Murdy opinion suggests that there is some difference between being managerial and being a lower level employee. It is our view that this is not a material consideration.

The Murdy opinion is premised upon accepting as a fact that "Councillor Knox's employment would not be affected by approval or rejection of the application" (see: Murdy June 4, 2008 opinion, at p. 2). However, this premise is untenable on its face if Councillor Knox is a seasonal employee or regularly works for Red Mountain.

Rather, the considerations set out in the *Guimond* case is more appropriate. Below are some passages from the decision:

“...[t]he word ‘indirect’ both invites and requires the court to examine all of the circumstances to determine whether, as a matter of judgment, there is a reasonable probability that Peden was likely to be influenced or biased in casting his vote. His motives are irrelevant, and the court is not to measure or weigh the extent or amount of his interest if an interest in the relevant sense can be said to exist.”

“...If he has personally a pecuniary interest or interest capable of being measured pecuniarily, the law raises a conclusive presumption of bias. For reasons of policy, which hardly require explanation, it is not thought convenient, where there is such an interest, to go into the question whether he in fact acted partially or impartially. A bias is presumed from the mere fact of the existence of the interest.”

“...I think it is fair to make the observation that the success of [the employer’s parent] for the purposes of which it is established is of concern to [the councillor’s employer] and that the financial and other advantages accruing to [the councillor’s employer] as a result of such success is a matter of interest to the [councillor], its long-time employee. Notwithstanding the sincerity and impartiality with which he may have weighed the merits of the presentation made to the board by [the employer’s parent], the real likelihood of bias on his part cannot be ruled out. The [councillor] draws his livelihood from [the employer] and it is not too remote to suspect that consciously or unconsciously he would prefer to be looked at favourably by his employer.”

“...Such matters are dependent in large measure on the good will of the employer: promotion, salary increases, even continuation of employment should reduction of staff be contemplated. Those are considerations inherent in the relationship.”

In Mr Knox’s case, this situation is even more pressing. He is subject to lay-off and rehiring.

Can it be conceived that if Mr Knox votes against Red Mountain’s scheme, he would be rehired with open arms? Just asking the question answers it.

It is also difficult to understand how an interest which encompasses the chance of employment can be so trivial that it cannot influence Mr Knox. I note that there are no details disclosed of the contractual arrangements, scheduling, or the chances of future employment should Red Mountain’s enterprises be expanded by reason in part that Mr Knox voted for its plans.

My clients are determined to oppose this. We note that under the Community Charter, if Councillor Knox is removed by the Court, then the City of Rossland must pay the costs of the petitioners, although it can request reimbursement from Councillor Knox. We ask this be addressed by Council prior to permitting Mr Knox to vote on this or any related matter concerning Red Mountain.

Yours truly,

A handwritten signature in black ink, appearing to be 'P. W. K.', written in a cursive style.

PIW/ki

TRANSACTION REPORT

JUL-07-2008 MON 09:09 PM

TX (MEMORY)

#	DATE	START TM	RECEIVER	COM TIME	PGS	TYPE/NOTE	DEPT	FILE
1	JUL-07	09:07 PM	12503625451	0:01:09	5	SG3 OK		798
TOTAL				0:01:09	5			

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