

Type of Decision									
Meeting Date	Tuesday, February 13, 2018				Report Date	Saturday, February 10, 2018			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE – Legal Advice Invoicing									
Report #13/02/18 - 1203									

Subject: Responsibility for costs of legal advice for individual council members contrary to municipal policy and by-laws.

RECOMMENDATION:

That Council adopt the following recommendation invoicing the responsible party for expenses personally contracted for contrary to municipal by-laws and policy.

Since the meeting of January 23, 2018 where a similar resolution was passed; Councillor Foote contracted for legal advice on behalf of the municipality.

WHEREAS Council policy is to obtain legal advice through the Clerk's office or upon decision of Council as a whole;

AND WHEREAS procurement of goods and/or services may only occur under authority of municipal council as outlined in the municipal Procurement By-Law, legislation and municipal policy or by specific resolution of Council;

AND WHEREAS Council recently addressed the issue of procedure for consulting the municipal solicitor and incurring expenses on behalf of the municipality at the September 15th and November 14th 2017 and January 23, 2018 Council meetings;

AND WHEREAS despite those discussions, Councillor Foote cc'd the municipal legal counsel in a resolution to be presented to Council;

AND WHEREAS no one member of Council has the ability to contract for services on behalf of the municipality and in order to avoid a continuation of this occurrence and not set a dangerous precedent Council deems it appropriate to take steps immediately to prevent this behaviour from continuing;

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby direct staff to contact the municipal legal counsel, confirm the invoice owing due to Councillor Foote's direct and specific contact and further provide Councillor Foote with an invoice for the services he contracted for:

AND FURTHER THAT failing to reimburse the municipality for those costs, that the outstanding amounts will be added to the Councillor's tax roll as is allowed for unpaid invoices owing to the municipality under the Municipal Act.

BACKGROUND/EXECUTIVE SUMMARY:

The municipality hires staff to perform the duties of administration within the municipality. It is the role of staff to provide research, including obtaining legal opinion and provide educated, knowledgeable opinions to council prior to them making a decision.

As Jim Gibson repeatedly stated at numerous times over the past 13 years, it is the role of the Clerk to tell people things that they do not like. It is the role of the Clerk/CAO to “run the municipality” based on direction and policy provided by Council.

Over the past year, the Clerk would not bend to political pressure and has repeatedly told Council things that some members did not agree with and did not like to hear. That is the job. That is the legislated role; without favour without exception.

Based on the fact that some of these members of Council (and the public) do not agree with the advice that they have been given, there have been numerous complaints and emails filed and lately, the submission of resolutions providing direction to council outside of the norm. The contents of these resolutions and complaints are not based on legislation or policy as indicated in two of the reports to Council for this meeting.

Because of the unwillingness of some members of Council and members of the public to accept that the Clerk/CAO is working with the best interests of the municipality in mind, and according to legislation, there have been attempts to circumvent the Clerk and directly contact the municipal legal Counsel. In this instance, Councillor Foote copied the municipal solicitor in on the resolution he asked to be added to Council’s agenda referenced in Report #13/02/18/1201 – Harassment Complaint Investigation Report.

This email resulted in the municipal law firm responding with a detailed reply which mirrors that of the Clerk contained in the aforementioned report to Council.

Although these actions are not necessarily micro-managing, they appear to be attempts to circumvent the Clerk/CAO and should not be tolerated by Council or continued.

Options/Discussion:

Allowing this behaviour to continue is setting a dangerous and potentially costly precedent using taxpayers’ money to satisfy the personal agenda of a Council member who to this point appears not willing to take advice from fellow Council members or staff. Would these invoices be paid if anyone else undertook these actions on behalf of the municipality?

It is inconceivable that ratepayer’s should be on the hook for these costs; especially in this instance where Council just made a decision on this same issue at the last meeting.

It should be noted that Councillor Foote did apologize and state that he was not aware that by copying in legal counsel on an email would result in a lengthy response and agreed not to do it again. It did however; incur costs which were not necessary.

Why else would the municipal legal firm be copied in if not for an opinion?

Financial Considerations/Budget Impact:

It is not known what the costs of this correspondence are however we know that lawyers bill by the ¼ hour.

Policy Impact:

The processes within various municipal policies and by-laws are being simply disregarded. The Clerk/CAOs role is being circumvented at additional costs to the municipality simply because some people do not like the advice they are being given.

The Procurement By-Law has been breached in that a single council member has contracted for services by seeking personal legal advice through the municipal solicitor.

Not enforcing Council policy and rules is setting a dangerous precedent. At what point does Council stop paying for personal legal advice for individual members of Council? It appears that there is a complete disregard for Council policy, by-law and procedure; and with all due respect, staff believes Council should stop this practise immediately.

Others Consulted:

Ontario Municipal Law: A User's Manual – 2017 by Rust-D'Eye, Bar-Moshe and James
Emails from legal counsel.
Municipal policy.

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

Melinda Reith