

Type of Decision									
Meeting Date	Tuesday, May 3, 2011				Report Date	Monday, May 2, 2011			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Election Issues Report part 2 - 03/05/11/002									

Subject: Additional information for Tuesday's meeting.

RECOMMENDATION: It is the Clerk's recommendation that this issue be brought before a judge with the intent to have Mr. Gibson and Mr. Aiston reinstated as per direction of the municipal solicitor.

It is further staff recommendation to have this matter cleared completely at the same time by granting an extension for all 5 candidates so that their forms may be resubmitted completed correctly to avoid any future challenges.

Doing anything other than that is not in the best interest of the ratepayers or staff of this municipality.

BACKGROUND/EXECUTIVE SUMMARY: Additional information has been received which bears on the decision to be made. Additionally, there is clarification to some comments made during previous discussions.

1. The clause in the legislation requiring forfeiture of a council seat for failure to file is new in 2010 – not one council member was through this before.
2. Councillor Aiston was not a candidate in the 2006 election, he was appointed upon the resignation of Mr. Charron.
3. A similar instance has occurred in Elizabethtown-Kitley in 2011 where a Mr. Brayton failed to file due to the chaos of home kitchen renovations. His was actually a contested seat. He has the support of his council and is attempting to be reappointed by the Court.
 - a. In support, his council has declared the seat vacant but is not taking any further action to fill the seat until his case is heard.
 - b. Further, that municipality is having a special meeting to pass the attached resolution requesting that the province amend the legislation to make it more fair. I have enclosed the entire email exchange between Yvonne Robert and myself.
4. In another instance in Athens Township the clerk failed to send the registered letter, all candidates including the 5 sitting members failed to submit on time and have since been reappointed by a court. That decision was only made late last week.
 - a. Their Clerk has confirmed that the application was made with Municipal and personal lawyers to have the remedy sought.
5. A similar situation has occurred in Thunder Bay where the Mayor failed to file due to the Clerk not giving him accurate information.
 - a. His was a contested seat with 6 others vying for the position.
 - b. His Council stood behind him and the Clerk applied for the court order on behalf of the municipality.

c. He was granted an exemption and is deemed to have been in his seat during the entire time.

6. For 2011, we have \$6,000 allocated for legal fees; we have \$0 for a by-election.

Others Consulted: Stephen Seller, MMAH; Bill Instance, Municipal Solicitor; John Hannam, City of Thunder Bay; Ruth Morin, Treasurer; Peter Harrington, Municipal Auditor; Darlene Noonan, Clerk Athens Township; Yvonne Robert, Clerk-Administrator, Elizabethtown-Kitley;

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

Melinda Reith

Email between Yvonne Robert and Melinda Reith

"That would be Athens Township.

Sincerely yours,

Yvonne L. Robert

Administrator-Clerk

Township of Elizabethtown-Kitley

Tel.: 613-345-7480 or 1-800-492-3175

Fax: 613-345-7235

Email: yrobert@elizabethtown-kitley.on.ca

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From: twpshcm@xplornet.com [mailto:twpshcm@xplornet.com]

Sent: Monday, May 02, 2011 12:06 PM

To: yrobert@elizabethtown-kitley.on.ca

Subject: Re: Disqualified Councillor

Yvonne

Thanks for the information. Could you please let me know which other municipality recently had this settled with all Councillors being reinstated?

Thanks

Melinda

On May 2, 2011, **Yvonne Robert** <yrobert@elizabethtown-kitley.on.ca> wrote:

Melinda:

Mr. Brayton's case has not yet been heard by the Ontario Supreme Court, though I believe he may be heading there shortly. He was awaiting the decision on a neighbouring municipality where the

Clerk did not send out the registered letter and none of the candidates had filed the financial report (including all the sitting members of Council). That decision came out on Thursday/Friday of last week, all members of Council were reinstated. In Mr. Brayton's case, he was one of three candidates that did not file (out of 11 total). Notice did go out by this office but may have been a couple of days late, though in ample enough time for Mr. Brayton to file. With regard to a non-election, our Mayor was acclaimed but still filed.

To date, Council has declared the seat vacant, in accordance with the Municipal Act and now have until June 10th to decide how to fill the seat, if required. Council will not make that decision until all avenues are looked at by Mr. Brayton. In a show of support, a special meeting of Council has been called for this evening to consider the following resolution:

Municipal Elections Act, Section 80

WHEREAS Section 43 of the *Election Finances Act*, governing the financial reporting requirements for members of the Ontario parliament provides for a 60 day period following the announcement of non-compliance by a member to comply with the reporting requirements prior to the seat being declared vacant;

AND WHEREAS Section 80 of the *Municipal Elections Act* sets out the penalty to municipal election candidates who have not complied with the financial reporting requirements provides for the automatic vacancy of the seat on Council and the candidate being deemed to be ineligible to be elected or appointed to any position covered by the Municipal Elections Act until after the 2014 municipal election;

AND WHEREAS there is a discrepancy in the standard to which elected representatives are being held to between the provincial and municipal levels in relation to the penalty for non-compliance for election financial reporting;

AND WHEREAS the penalty to municipal candidates appears to be far beyond what would appear to be fair and reasonable, considering that the sentence could amount to 8 years of ineligibility to be elected or appointed;

NOW THEREFORE the Council of the Corporation of the Township of Elizabethtown-Kitley strongly requests:

THAT the Province of Ontario immediately amend the Municipal Elections Act to ensure that municipal representatives and candidates are held to the same standard as their provincial counterpart with regard to the penalties applicable for non-compliance to the election financial reporting requirements;

1. **AND THAT** a copy of this resolution to be forwarded to the Association of Municipalities of Ontario, for support and circulation to all Ontario municipalities.

As soon as I hear what is happening, I will let you know. Good luck.

Sincerely yours,
Yvonne L. Robert
Administrator-Clerk
Township of Elizabethtown-Kitley
Tel.: 613-345-7480 or 1-800-492-3175

Fax: 613-345-7235

Email: yrobert@elizabethtown-kitley.on.ca

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Email between Darlene Noonan and Melinda Reith

Good afternoon:

The Lawyer for the Municipality and the Lawyer for the Councillors brought an application in the Superior Court of Justice for relief from forfeiture. This is the only remedy that we are aware of and the application requires the assistance of lawyers.

Darlene Noonan, A.M.C.T., CEMC
CAO/Clerk Treasurer, Tax Collector
Township of Athens
613-924-2044

-----Original Message-----

From: Melinda Reith [<mailto:twpshcm@xplornet.com>]

Sent: May-02-11 1:12 PM

To: athens@ripnet.com

Subject: Athens Township: form 4

This is an enquiry e-mail via <http://www.athenstownship.ca/> from:
Melinda Reith <twpshcm@xplornet.com>

Good afternoon

I am a clerk in a small municipality in Renfrew county. We are in the unique situation of having two council members not file their form 4 on time. We did not have an election, all seats were acclaimed. Due to personal conflicts two of the remaining council members want to have the two who failed to file removed from their seats. Our solicitor has recommended that Council pay to have a court order to have them reinstated. I am grasping to find precedent to have them reinstated.

I have learned that your council recently had a Court Order resolving an issue of failing to meet the deadline. Are you able to share any of that situation with me so that I may use it as precedent to settle our issue. We have a meeting called for tomorrow at 10:00 a.m. Any help would be appreciated.