



February 8, 2021

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File: 90387.0001

Dear Ms. Lawrie:

**Re: Legal Rules Regarding Council Vacancies**

I am writing to summarize our recent communications regarding this matter. I understand that although this letter constitutes legal advice, it may be considered in an open public session.

**The Situation**

I understand that the relevant facts are as follows:

1. One of the Municipality's councillors became ill in late December, 2020, with the result that the councillor is no longer able to communicate and is immobile.
2. The councillor attended the December 18, 2020 Council meeting. The first meeting that the councillor missed was the January 6, 2021 Special Council meeting that was held to appoint the new Deputy Mayor.
3. It is uncertain when the councillor will be able to return to her normal duties.
4. Council's last meeting in March is on March 16, 2021. Council's first meeting in April is on April 7, 2021.

It is my understanding that these are all of the relevant facts that need to be considered in this situation. If there is any further information that you think I should be aware of and that might affect the opinion given herein, please let me know.

**The Law Governing Council Vacancies**

The rules governing the declaration of Council vacancies are set out in sections 259 to 267 of the *Municipal Act, 2001* (the "Act"). Section 259 provides that if a councillor is absent from the meetings of Council for three successive months without being authorized to do so by a resolution of Council, the office of that member of Council becomes vacant. Pursuant to section 262 of the Act, if the office of a member of Council becomes vacant due to non-attendance without authorization, the council shall at its next meeting thereafter declare the office to be vacant.

The question of whether or not to grant an authorization for absence from Council for greater than three months is within Council's discretion. There is no specified limit on the length of time that a Council resolution can authorize a member to be absent for, and the only legal limit would be to the end of the term of the Council. The authorization can be done as a series of authorizations over time, and does not necessarily have to be considered once only.

There is no requirement that the absent member ask for authorization to be absent. The only requirement is that there be a Council resolution authorizing the absence. In the current circumstances and given the inability of the councillor to communicate, it would be appropriate for Council to consider the issue without specifically being requested to do so.

### **The Interpretation of the Legal Provisions**

The question of what constitutes "three successive months" has been considered by courts and can be open to interpretation. One argument would be that the period runs for three months from the date of the first-missed Council meeting (i.e. the same numbered date in the calendar month which is three months after the month of meeting missed). A second interpretation is that "three successive months" means whole months, and that an attendance at any meeting in a particular month means that the first month to form part of the calculation does not start until the next month in the calendar.

In this case, an interpretation of the above argument is not needed given the Municipality's Council schedule. On any interpretation of the Act, the March 16, 2021 meeting will be within the three-month period, and the April 7, 2021 meeting would be outside of the three-month period. There are no meetings scheduled between March 16 and April 7.

Accordingly, the councillor will have to either attend Council on or before the March 16, 2021 meeting, or have a Council authorization in place prior to the April 7, 2021 meeting.

### **Other Points to Consider**

In determining this matter, the following additional points are worth considering:

1. If this issue was to be considered by a court, the judge would likely lean towards an outcome that would preserve a councillor's seat. That is, if there were dual interpretations that could be given, the interpretation that would be more protective of a councillor's seat would likely be given preference. The reason for this is that councillors are democratically elected by a majority vote of their constituents, and a court would not want to find that a seat had been vacated unless the facts fell clearly and inarguably within the wording of the Act.
2. Attendance at a Council meeting does not mean attendance for the full meeting. If a councillor attends for at least a portion of a meeting, that would in my opinion satisfy the requirements of the Act and stop the three-month clock from running.
3. Attendance at a meeting is much easier now that the Municipality (and most municipalities in the Province of Ontario) have provisions in their procedural by-law for remote attendance. This makes it easier for councillors to attend meetings and should in all likelihood decrease the occasions on which a seat is declared vacant due to non-attendance.



If you require anything further on this matter, please let us know.

Yours truly,

MILLER THOMSON LLP

per:

Original Copy Signed

Steven J. O'Melia

SJO/dms

