

**OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA**

**REPORT OF INVESTIGATION
INVOLVING THE MEMBER FOR CYPRESS-MEDICINE HAT**

FEBRUARY 14, 1996

BACKGROUND

Dr. Taylor, the Hon. Member for Cypress-Medicine Hat, advised me by telephone that he believed a company operated by a direct associate of his had performed work on a public building. I advised Dr. Taylor that the matter would best be dealt with by a request for an investigation from him. He subsequently requested the investigation in writing on January 5, 1996.

FACTS

On December 10, 1995, an employee of the Department of Public Works, Supply and Services (PWSS) telephoned Triple M Coring and Cutting (Triple M) and asked that the company cut six holes in concrete at a provincial building in Medicine Hat.

Triple M is operated by 248825 Alberta Ltd. which is a direct associate of Dr. Taylor under section 1(5)(b) of the *Conflicts of Interest Act* (the Member is a director or senior officer of the corporation).

The work requested was performed by Triple M around December 13, 1995. After the work was completed, PWSS sent a purchase order to Triple M. Although he is not involved in the day-to-day operations of the company, Dr. Taylor does periodically review such matters as the work orders. According to Dr. Taylor, as soon as he saw the purchase order, he immediately advised the management of Triple M that there might be a problem under the Conflicts Act. Dr. Taylor then notified me of the situation. He also provided me with a copy of a letter dated December 19, 1995, instructing the managers of Triple M that the company was not to perform such work for PWSS.

Both parties involved estimate the value of the work performed at under \$500. Dr. Taylor has refused to complete the purchase order and submit it to PWSS to initiate payment.

PWSS confirmed that Triple M was asked to cut six holes at the remand centre in Medicine Hat in December. No purchase order has been received for the work performed and the department therefore has limited information on which to base its estimate of the work performed. The department did acknowledge that if it was not able to use a local business, additional costs would have been incurred relating to time and travel.

FINDINGS

Under section 8(1)(c) of the *Conflicts of Interest Act*,

- 8(1)** A Member breaches this Act if, while being a Member, the Member or a person directly associated with the Member becomes a party to a contract within any of the following classes:
- (c) a contract to which the Crown is also a party and that is for the construction, demolition, alteration or repair of a public work.

I obtained legal opinions from both in-house and outside counsel on the issue of whether a contract exists in this situation since the Member has not received -- and he indicates he never will receive -- payment for the work performed. Both counsel gave the same opinion: a contract does exist despite the fact that payment to Triple M has not been made.

The Act does not provide any discretion to me where a contract prohibited under section 8 is entered into even when it occurs without the Member's knowledge, where the amount involved may be considered trivial, where good faith is evident, and even where the Member exercised diligence in trying to prevent the breach. As soon as Triple M performed the work requested by PWSS, Dr. Taylor's direct associate entered into a prohibited contract and thereby placed Dr. Taylor in breach of the Conflicts Act.

Similarly section 25 of the Act does not provide any discretion for me in reporting this matter. I must report a breach I know has occurred, even where the breach was inadvertent.

RECOMMENDATIONS

The Member was placed in breach of section 8 of the *Conflicts of Interest Act* by his direct associate; however, I find that the actions of his direct associate were inadvertent. For that reason and because the Member brought the matter forward and has not submitted and will not submit the purchase order for the work performed, I recommend no sanction against the Member.

I am very much aware of the fact that in a case like this one where a Member initiates the investigation, a possibility exists that other Members may not wish to confide matters to me for fear that I will have to report them to the Assembly. I firmly believe Dr. Taylor did the right and honourable thing in bringing this matter to my attention and that such honesty should be acknowledged. My concern that Members may have some reluctance in the future to advise me of similar situations is tempered by my belief that all Members of the Legislative Assembly will continue to do the right thing.

Members will be aware that the report of the *Conflicts of Interest Act* Review Panel recommends that section 8 be rewritten. I concur with that recommendation. If amendments are made, Members may wish to consider whether they wish to add provisions to allow for discretion on the part of the Commissioner in cases, for example, where the value of the work performed may be considered trivial or where a tender process is employed.

I wish to thank Dr. Taylor for his continued honesty in his dealings with my office.

Robert C. Clark
Ethics Commissioner

February 14, 1996