

NOTICE OF DECISION

THE CORPORATION OF THE MUNICIPALITY OF THAMES CENTRE COMPLIANCE AUDIT COMMITTEE

established under Section 88.37 of the *Municipal Elections Act, 1996*

IN THE MATTER OF an Application for Compliance Audit under section 88.33(1) of the Municipal Elections Act, 1996;

AND IN THE MATTER OF the Municipality of Thames Centre's Rules of Procedure for the 2018 Municipal Election Compliance Audit Committee in accordance with section 88.37(6) of the Municipal Elections Act, 1996;

Candidate: Marcel Meyer
Applicant: Jim Maudsley
Meeting Date: Monday, May 13, 2019 at 4:00 PM
Meeting Location: Council Chambers
Municipal Officers
4305 Hamilton Road,
Dorchester, ON N0L 1G3

DECISION

PURPOSE OF MEETING

The purpose of the meeting was to consider a Compliance Audit Application submitted by Jim Maudsley with respect to the 2018 Thames Centre Municipal Election as it relates to the candidacy of Marcel Meyer.

This meeting was held in accordance with the provisions of the Thames Centre Rules of Procedure for the 2018 Municipal Election Compliance Audit Committee.

DECISION

After reviewing the documentation submitted in response to the Application appended to the Compliance Audit Committee Agenda and hearing oral submissions from the Applicant, Mr. Jim Maudsley, and the Candidate, Mr. Marcel Meyer, it is the decision of the Compliance Audit Committee to dismiss the Application and not order a compliance audit of the Candidate's 2018 campaign.

REASONS

The reasons for the decision are as follows:

1. Jim Maudsley (the "**Applicant**") has applied for a compliance audit of the election campaign finances of Marcel Meyer (the "**Candidate**") in connection with Mr. Meyer's candidacy for the office of Mayor in the 2018 Municipal Election.

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2. The Applicant confirmed that he was entitled to vote in the 2018 Municipal Election and is therefore qualified to make this Application.
3. In the Application, the Applicant asserts that he has reasonable grounds to believe that the Candidate contravened a provision of the *Municipal Elections Act, 1996*, as amended, (the “**Act**”) relating to election campaign finances.
4. The Candidate ran for election as Mayor in the 2018 municipal election and was unsuccessful.
5. The Applicant did not run for office in the 2018 municipal election.
6. The Candidate’s financial statement with respect to the Candidate’s 2018 mayoral campaign in the prescribed Form 4 (“**Candidate’s Financial Statement**”) was filed in a timely manner on March 27, 2018. That statement is part of the record as an attachment to the Agenda for the May 13, 2019 Compliance Audit Committee (“**Committee**”) meeting to consider the subject Application.
7. It is noted that there is no Auditor’s Report attached to the Candidate’s Financial Statement. Subsection 88.25(1) of the Act requires an Auditor’s Report but subsection 88.25(8) provides an exception to that requirement in the circumstances that a candidate did not receive contributions nor incur expenses in excess of \$10,000.00. According to the Candidate’s Financial Statement, the Candidate satisfies the exception criteria.
8. For the 2018 mayoral campaign in Thames Centre the candidate’s campaign spending limit was \$16,287.30. According to the Candidate’s Financial Statement, the Candidate’s 2018 campaign expenses totaled \$9,090.38.
9. For the 2018 mayoral campaign in Thames Centre the amount which a candidate and spouse was permitted to contribute to the candidate’s own campaign was limited to \$9,567.60. According to the Candidate’s Financial Statement, the contribution made by the Candidate and spouse to his campaign was \$4,590.37.
10. Returning to the Application, the Applicant has raised a concern about the Candidate claiming as an expense the \$200.00 filing fee (“**Nomination Fee**”) paid at the time of the filing of the Candidate’s nomination papers. This expense is disclosed in the Candidate’s Financial Statement.
11. Section 34 of the Act provides that the Nomination Fee is to be refunded to the candidate if the candidate’s financial statement in Form 4 is filed with the Municipality in a timely manner. As mentioned, the Candidate’s Financial Statement was filed in a timely manner.
12. The Applicant asserts that, because the \$200.00 Nomination Fee is to be refunded, it should not be claimed as an expense. The Applicant extrapolates from that proposition that, removing the \$200.00 as an expense, yields a surplus of campaign contributions in

excess of campaign expenses. The Applicant asserts that the \$200.00 surplus should be paid to the Municipality.

13. At the May 13, 2019 Committee meeting to consider the Application, the Applicant appeared and reiterated the above position outlined in his Application. With respect to the surplus he suggested had been created, from his verbal submission to the committee, it appears that the Applicant was unaware of how a surplus would be treated by the Municipality.
14. At the May 13, 2019 Committee meeting to consider the Application, the Candidate appeared and made verbal submissions with respect to his intent in completing and filing his financial statement. The Committee accepts the Candidate's submission that he filed his financial statement in good faith and believed it was completed in accordance with the Act. His intention was to be fully transparent and he followed the same practise that he had adopted in previous elections. The Candidate clarified his understanding that the refund could not be made under the Act until after his financial statement has been filed. He offered to refile his financial statement if he had incorrectly understood the requirements of the Act.
15. When deciding about whether to commission a compliance audit under the Act, the Committee needs to consider whether there are reasonable grounds to believe that there has been a contravention of the Act relating to election campaign financing.
16. A review of applicable case law has been instructive in both determining the role of the Committee and determining when an application should be granted. At this stage of the proceedings, the Committee acts primarily as a gatekeeper in determining whether a compliance audit should be undertaken. It is a pre-investigatory stage and not a determination that the Candidate has contravened the Act in any way. The test is whether the Applicant, acting in good faith, has reasonable grounds to believe the Candidate contravened the Act. In its role as gatekeeper the Committee should also have regard for the purpose to be served by a compliance audit and whether the asserted contravention is technical and/or minor and where such audit would serve little purpose. The Committee ought to avoid putting the Municipality to the very considerable cost of a compliance audit over something which is technical or minor or which would serve little purpose.
17. In this case it is useful to examine relevant provisions of the Act.
18. Subsection 88.19(1) of the Act provides that: "For the purposes of this Act, costs incurred for goods or services by or under the direction of a person wholly or partly for use in his or her election campaign are expenses." Section 88.19 goes on to provide clarification about what are or are not to be considered to be "expenses" for the purposes of the Act.
19. Section 88.19 does not specifically include or exclude as an expense the fee paid at the time of nomination pursuant to clause 33(2)(c) of the Act.
20. Clearly the \$200.00 Nomination Fee had been paid and had not been refunded at the time the Candidate's Financial Statement was completed and filed. The refund could only

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occur after the Statement was filed on time. Because the Nomination Fee is an integral element of the campaign process, it is a campaign expense at least initially. The issue raised by the Applicant is whether the refund after the filing of the Candidate's Financial Statement disqualifies the Nomination Fee as a campaign expense in that Statement.

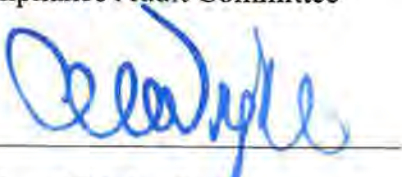
21. If the refund is to be taken into account for the purpose of disqualifying the \$200.00 expense, the same amount would also be taken into account in reduction of the Candidate's contribution to his own campaign resulting in no surplus. The Applicant's position is that the Candidate made an error in the expense portion of the Candidate's Financial Statement resulting in a surplus which needs to be turned over to the clerk of the Municipality.
22. The Applicant relies on subsection 88.31(4) when asserting the \$200.00 surplus should be turned over to the municipal clerk. While subsection 88.31(4) provides for a surplus to be paid to the municipal clerk; subsection 88.31(5) says that the clerk is to hold such funds in trust for the candidate. Subsection 88.31(6) goes on to say that, if the candidate who has a surplus has made a contribution to his or her campaign, the surplus is to be refunded to the candidate.
23. In this case the Candidate contributed to his own campaign \$4,590.37 according to the Candidate's Financial Statement so, if the Candidate had a surplus of \$200.00, it would be paid to him.
24. If it is determined that the Candidate was in error in claiming the Nomination Fee as an expense and not taking the refund into account in determining the amount of his contribution to his own campaign, then subsection 88.25(3) makes provision for correcting an error by filing a corrected financial statement. Again the corrected financial statement would show no surplus.
25. One way or the other there was either no surplus or, if there is, it would be returned to the Candidate. The Committee is thus satisfied that little purpose would be served by a compliance audit of the Candidate's campaign.
26. The Committee is also of the view that the \$200.00 in issue is minor in amount and does not go to any "in principle" purpose of the Act. What is minor is something to be determined by the circumstances of each case. In the context of a campaign the total expenses of which are \$9,000.00, the Committee is satisfied that \$200.00 is a minor amount.
27. The Committee is also of the view that the issue raised by the Applicant, even if he is correct, is technical and of no significant consequence regardless of how the technicality is resolved.
28. The Committee therefore dismisses the Application.

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ISSUED by the The Corporation of the Municipality of Thames Center Compliance Audit Committee at Dorchester, Ontario, as of May 13, 2019.

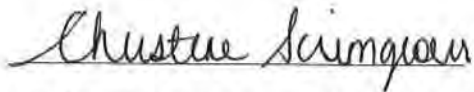
Compliance Audit Committee



Andrew Wright, Chair



Dan Ross, Member



Christene Scrimgeour, Member