



Legislative Assembly of Saskatchewan

BOARD OF INTERNAL ECONOMY

MINUTES AND VERBATIM REPORT

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The Honourable Glenn Hagel
Speaker



No. 3 — TUESDAY, MAY 28, 1996

BOARD OF INTERNAL ECONOMY

Hon. Glenn Hagel, Chair
Moose Jaw North

Bill Boyd
Kindersley

Hon. Joanne Crofford
Regina Centre

Myron Kowalsky
Prince Albert Carlton

Hon. Eldon Lautermilch
Prince Albert Northcote

Harvey McLane
Arm River

Grant Whitmore
Saskatoon Northwest

BOARD OF INTERNAL ECONOMY

Room 10 Legislative Building
5:10 p.m. Tuesday, May 28, 1996

Present: Members of the Board of Internal Economy

Hon. Glenn Hagel, Chair
Mr. Bill Boyd
Mr. Myron Kowalsky
Hon. Eldon Lautermilch
Mr. Harvey McLane
Mr. Grant Whitmore

Staff to the Board

Robert Cosman, Legislative Counsel and Law Clerk
Gwenn Ronyk, Clerk
Deborah Saum, Secretary

AGENDA Agenda, as delivered, proceeded with.

MINUTES Moved by Mr. Whitmore, ordered that the Minutes of Meeting #2/96 be adopted. Agreed.

ITEM 1 Decision Item - Consideration of the Issue of Recovery of Public Monies

Moved by Mr. Lautermilch, seconded by Mr. Whitmore:

That the Chair of the Board of Internal Economy retain independent legal counsel as soon as possible to review the potential for recovery of public funds concerning various criminal charges and/or convictions.

And, that the Chair of the Board of Internal Economy provide this independent legal counsel with the following terms of reference for the said review:

- 1) What amount of public money within the jurisdiction of the Board of Internal Economy is known to have been misappropriated by persons who have been charged with criminal offenses?
- 2) What amount of money has been recovered voluntarily or by court-ordered restitution?
- 3) What amount of money remains unrecovered?
- 4) From whom should such restitution be sought?
- 5) Does a civil action to recover this money have a reasonable likelihood of success?
- 6) Would the cost of conducting a civil action to recover these public funds be reasonable relative to the likelihood of recovery on a judgment?

And, that upon receipt of the review of the independent counsel, that the Chair make a report of the findings to the Board of Internal Economy.

A debate arising, it was recommended that out-of-province counsel be engaged for this review.

The question being put, it was agreed to.

Statement By Chair

Before adjourning I ask the indulgence of the Board to make a brief statement to clarify the role of the Chair in relation to the order just adopted.

As Chair of the Board I will carry out the order of the Board as instructed, but in doing so I will not exercise any personal discretion. Counsel will be retained and instructed as per the Board's direction. I believe it is important to make the distinction here, on the record, between my role as Chair of the Board of Internal Economy and my role as Speaker of the House. As Chair of the Board it is my duty to act on direction of the Board.

As Speaker, I act on direction of the Assembly. As Speaker, my first responsibility is to maintain the

confidence of elected Members and the public in the Office of Speaker and in the institution of the Legislative Assembly. To do so, it is essential to maintain the neutrality, fairness and dignity of the Speakership and to ensure that my duties are carried out with the best interests of all Members and the House foremost.

I believe it is important to recognize the distinction between these two roles in the present circumstances and I thank the Members of the Board for respecting and observing this distinction.

The meeting adjourned at 5:42 p.m.

The Chair: — Okay, I will call the meeting to order. I will begin first of all with the review of the minutes of meeting no. 2/96, which have been circulated to you. And let me ask first of all if there are any errors or omissions. And if not, it would be in order to have a motion to adopt the minutes of meeting no. 2/96. Mr. Whitmore. Did everyone have time to peruse them? Are you ready for the question? Those in favour please indicate; down hands. Opposed? And that's carried.

We have one agenda item, that being a decision item, consideration of the issue of recovery of public monies. And that is without recommendation from the Chair. And the floor is open.

Hon. Mr. Lautermilch: — Thank you. I appreciate you recognizing my request to convene a meeting, and I also appreciate the fact that it was done on short notice. These are busy times during the session, as you will know. And so being able to squeeze this meeting between . . . over the adjournment time between 5 and 7 is very much appreciated.

This issue that I have asked you to put on the agenda is one that I think needs some consideration by this board with respect to money that may be recovered. As I've indicated in the Legislative Assembly upon some comments made by the official opposition, that I felt it may be appropriate for the board to request of the Speaker that he retain independent legal counsel to view what options may be open to the board. And I guess that, from our perspective as government members, is the reason that we're here today.

I think the process, as we understand it, is that because we deal with, as a board, the annual budget of the Legislative Assembly, that it would be appropriate — and it would appear to be the appropriate body if there were to be action to recover funds, if any are outstanding — that it would be the role of this board, through the chairman of the board, to determine if in fact those options may be open to us.

Having said that, Mr. Speaker, I've talked with the members of the official opposition, Leader of the Official Opposition, and I've talked to Mr. Boyd, the Leader of the Third Party, regarding this issue and we indicated that it was our intent to do just as I indicated in the legislature that we would do.

Therefore, I would move a motion, seconded by Mr. Whitmore, that the Chair of the Board of Internal Economy retain independent . . . And I can send you a copy of this motion, perhaps I should do that now, and I'll read it into the record:

That the Chair of the Board of Internal Economy retain independent legal counsel as soon as possible to review the potential for recovery of public funds concerning various criminal charges and/or convictions.

And that the Chair of the Board of Internal Economy provide this independent legal counsel with the following terms of reference for the said review:

1) What amount of public money within the jurisdiction of

the Board of Internal Economy is known to have been misappropriated by the persons who have been charged with criminal offences?

2) What amount of money has been recovered voluntarily or by court-ordered restitution?

3) What amount of money remains unrecovered?

4) From whom would such restitution be sought?

5) Does a civil action to recover this money have a reasonable likelihood of success?

6) Would the cost of conducting a civil action to recover these public funds be reasonable relative to the likelihood of the recovery on a judgement?

And that upon receipt of the review of the independent counsel, that the Chair make a report of the findings to the Board of Internal Economy.

I so move.

The Chair: — This is, I think the one you want to fill out, this one is marked, original. Do you have other copies of the motion? Can we just have a copy of that so that copies can be made for other members?

Do members just want to wait until you have a written copy?

You have before you then . . . do you want to take just a moment to peruse the written motion? Okay. We'll just take a moment.

Have you had sufficient time to review the written wording or do you want to continue in recess for another period? Are all members ready to proceed? Okay.

You have the motion before you. Will the committee take it as read? You have the motion before you then. Is there debate on the motion?

Mr. Boyd: — There is only two things that we would make as a recommendation, not as an amendment but as a recommendation. Certainly it is our view that we accept the motion, generally speaking. We are of the view that we also accept that the Chair retain independent legal counsel, and we accept the Chair's independence.

It is certainly our recommendation, if we were to give the Chair any recommendation or any direction is, is that we would prefer to see this independent legal counsel from out of province to remove any kind of suggestion of political motivations that might enter into this.

And I think we can use as precedent certainly the Mitchell situation being referred out of province. Phoenix Advertising being referred out of province. Milgaard being referred out of province. We think that this should have that same sort of

independence that I think we were all hoping and want.

The other thing is, and I just was going over it with Mr. Lautermilch, is we're a little bit concerned about point 1, what amount of public money within the jurisdiction of the Board of Internal Economy is known to have been misappropriated by persons who have been charged with criminal offences.

We're concerned about the wording "who have been charged with criminal offences." We think that should be "who have been convicted of criminal offences." I think our concern lies that people who have been charged with something are not guilty of anything at that point — only if they are convicted are they guilty of anything. And that would be our concern with the wording of that.

I understand the government has sought legal opinion with respect to it and feels it is covered off essentially in the first paragraph. I would feel more comfortable with a slight wording change there, but we don't see it as critical. But I want to be on the record, obviously, of just raising the concern in that specific area. Otherwise we are supportive.

The Chair: — Just to respond to that if I may, it would be the intention of the Chair, if the motion is carried, to provide a transcript of this meeting to legal counsel to ensure that the opinions and preferences expressed here are communicated as stated.

Is there further . . .

Mr. McLane: — Thank you, Mr. Chair. Certainly we are very happy that this motion has come forward. It's been something that I think the taxpayers of the province have been asking for and I think it will go a long way in the future as well, and hopefully in addressing these issues so that they won't happen again as they have in the past.

I just have a couple questions for Mr. Lautermilch, if I could, about the motion. In bullet 1 you talk about money within this jurisdiction of the Board of Internal Economy. Can you just explain that, Eldon, what . . .

Hon. Mr. Lautermilch: — Well I think, Harvey, I try to, in my preamble, describing the process that we go through in terms of setting the Legislative Assembly budget which is by a formula charged with funding caucuses during the term of a government and that it . . . I guess that would be what we would be referring to and that's the only purview that this board would have to look at in terms of budgets. We only deal with two budgets, that being the Provincial Auditor's at this point and the Legislative Assembly Office. So that would be why it would be worded as such.

Mr. McLane: — Thanks. The second one is, do you have any estimate of a cost?

Hon. Mr. Lautermilch: — Well I think that would . . . from our perspective what we want to do is satisfy the public of Saskatchewan that their funds, their dollars, their tax dollars, if they haven't been appropriately spent, will be accounted for in

as best that we can, whether that be through court action, civil action. And I can't suggest to you that we have dealt with the issue of cost as being a prerequisite to moving the motion, because we think what is here is a principle; that we are accountable for public funds and that whatever the cost of that would be, certainly we don't want any more spent I think, and you would agree with me, than is necessary.

But I think it's important that the Speaker be comfortable with the counsel that they retain, that they be a capable and a reputable firm, a respected firm. And just in passing I might comment that I think Mr. Boyd's comment in terms of legal counsel outside the province, given the breadth of the experience that's happened here in Saskatchewan in the past months, that looking outside of the province may not be inappropriate. Certainly it would be at the discretion of the Speaker to choose legal counsel. And that, I think, is what we're charging him with today. But I think it's a good suggestion and makes some sense.

Mr. McLane: — Thank you. I agree that the cost shouldn't be a prerequisite of what we're trying to do here. But it probably might have been appropriate to have an estimated cost of what it might be, and that would be certainly dependent on whether it was out of province, I suspect, as opposed to in province.

The last question might be, we talked about that the Chair make a report of these findings to the Board of Internal Economy. Is that report any way binding upon the board or will the board at that point in time then have to make a decision as to what the next step would be?

Hon. Mr. Lautermilch: — Well certainly. You know I'm only one member of the board and I think it would be something the board would have to decide on based on what kind of a report would come through the Speaker. You know, I don't want to prejudge what might come as a result of this process, and I think it would be probably best left to members when the information is brought to us and then we could, based on our best judgement at the time, determine what the next process would be.

Mr. McLane: — So then it would be a recommendation to the board or a report not binding in any way to the board.

Hon. Mr. Lautermilch: — No. I think the Chair, as the motion is worded, would be reporting to the board the findings of the process embarked on by the independent legal counsel.

The Chair: — Any further debate?

Mr. Kowalsky: — Thank you, Mr. Chair. With respect to the question raised by Mr. Boyd, I think we need to clarify the reason behind the word "charged" as opposed to "convicted", only. And it is my understanding that even though a person may have been found not guilty of a criminal charge, there still may be grounds for a civil suit for recovery of money, and I believe that being the purpose for the reason for the wording "charge".

Now I'm not being known worldwide as an expert in law. I

would ask for Counsel or the Clerk to comment on that and to clarify the meaning of the phrases with respect to the difference between civil and criminal suits.

The Chair: — I'd ask the Legislative Law Clerk to comment on that, please.

Mr. Cosman: — Thank you, Mr. Chairman. Yes, there two standards of proof at play here. In a criminal case the conviction would rest upon whether or not there was reasonable doubt. If there was reasonable doubt that the alleged criminal had not committed the act, then there would be a finding of not guilty.

In a civil case for recovery of funds, it's based on the preponderance of evidence — the probabilities. There are two different standards, so it's easy in the civil case to see that funds have been misappropriated and should be recovered back. It's an easier situation than in a criminal case; all of the benefit of the doubt goes to the accused. And if there's the slightest possibility of reasonable doubt raised, then the accused is found not guilty, even though there may be very good indication that money was misappropriated. So I think the word "charged" here certainly would fit the civil suit situation. There's every possibility of a recovery of funds under a civil suit, notwithstanding the person may not have been criminally convicted.

The Chair: — Any further debate? There being none, then you have the motion before you. Those in favour, please indicate; down hands. Opposed? And it's carried unanimously.

That being our single agenda item, before adjourning, all hon. members will be aware of the Speaker's concern for the importance of neutrality. And before proceeding further, or before adjourning, actually, I would ask the indulgence of the board to make a brief statement to clarify the role of the Chair in relation to the order that just has been adopted.

As the Chair of the board, I will carry out the order of the board as instructed. But in doing so, I will not exercise any personal discretion. Counsel will be retained and instructed as per the board's direction.

I believe it is important to make the distinction here on the record between my role as Chair of the Board of Internal Economy and my role as Speaker of the House. As Chair of the board, it is my duty to act on direction of the board. As Speaker, I act on direction of the Assembly.

As Speaker, my first responsibility is to maintain the confidence of elected members and the public in the office of Speaker and in the institution of the Legislative Assembly. To do so, it is essential to maintain the neutrality, fairness, and dignity of the Speakership and to ensure that my duties are carried out with the best interests of all members, and the House foremost.

I believe it is important to recognize the distinction between these two roles in the present circumstances, and I thank the members of the board for respecting and observing this

distinction.

If there is no more business before the board, I will declare the meeting adjourned.

The meeting adjourned at 5:42 p.m.