

Judge rules chamber grant not a conflict for South Bruce Peninsula councillor

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By Rob Gowan

A judge has ruled that South Bruce Peninsula councillor and Wiarton businessman Jim Turner was not in a conflict of interest when he voted for an annual \$50,000 grant to the chamber of commerce to promote tourism, thereby dismissing a local blogger's application for a ruling.

Superior Court Justice David G. Price heard the case brought by blogger Craig Gammie last February and released a written decision July 3. A copy of the decision is filed at the Owen Sound courthouse.

Had Price found Turner in conflict, the Municipal Conflict of Interest Act could have required the judge to declare the councillor's seat vacant.

Instead, Price found no evidence Turner had a pecuniary interest or financial benefit and found no indirect pecuniary interest as a chamber member related to the \$50,000 tourism grant. Therefore, he had no obligation to declare a conflict.

"There is no evidence that any benefit that Mr. Turner may have derived from the Grant was any greater than the benefit derived by other owners of commercial property in the BIA" or Business Improvement Area, or any other electors, Price wrote.

Turner said in an interview Friday that though he thought he would be vindicated, the case has been an ongoing worry about what he could say when dealing with chamber issues at council.

"It's very frustrating as a member of council to not know where you stand, what you can vote on and what you can't until a judge decides."

Gammie said in an interview Friday he has already begun an appeal of the judge's decision. He said he expects once documents are filed by October, a date will then be set to hear the appeal. He said he has based his appeal on some 20 errors he says the judge made.

Price further argued voices like Turner's - and those of all property owners or owners of businesses in the area - should be heard in the debate over the use of public revenues in this way. Price said their right to do so should be protected.

"Restricting debate to those who are entirely disinterested, who own no property, and operate no business, would deprive public debate of its vitality and make it less likely that measures of value to all would be proposed."

While agreeing with Gammie it's possible Wiarton business owners catering to tourists would benefit more than other residents from the increased demand from people drawn by events like the Wiarton Willie Festival, Price found it too speculative.

He also found it speculative that people drawn to the area might be so impressed that they decide to purchase property such as the lot Turner and his wife have for sale, benefitting them more so than those not selling property.

Price ruled even if a benefit from the Wiarton Willie Festival amounted to a pecuniary interest

"which I find it does not," the fact Turner may derive a benefit from the festival or is more likely than others to, "is not an adequate substitute for evidence that he derived an indirect pecuniary interest from the grant."

There was no evidence Turner's TV repair business grew or the value of his lot for sale increased due to the influx of tourists drawn by the \$50,000 tourism grant, he wrote.

"Our courts have often cautioned against relying on speculation based on hypothetical circumstances to support an allegation that the benefit a politician may derive, in common with others, from a decision of his or her council, amounts to a pecuniary interest sufficient to give rise to a conflict of interest," the judge wrote.

South Bruce Peninsula council approved the chamber grant on April 17, 2012 as part of the annual municipal budget. The grant represented 0.7 % of the average property tax bill, the judge wrote, and was provided to enable the chamber to runs tourist events like the popular Warton Willie Festival.

Gammie, who represented himself at the hearing, sought a judicial ruling on his allegations that Turner was in a conflict of interest when he voted to approve the chamber grant.

The judge noted Gammie wrote on his blog: "It seems to me that Councillor Turner has a conflict of interest with respect to the grants, or at the very minimum has the appearance of a conflict of interest. In my view councillor Turner should have sat it out."

Turner argued he never had a direct or indirect pecuniary or financial interest. The grant, Turner argued, didn't result in any financial gain to him or the chamber or to him as a business and property owner "any more than it did other residents," the judge's reasons record.

Price awarded no costs because he said the case was in the public interest to be heard to clarify the law.