

Re: Section 56 of the "Municipal Act" and  
Meaning of "Occupation" in Subsection (2)

During discussion at the September 3, 1974 meeting of Council, it was suggested that a candidate seeking elected office should perhaps not be allowed to use the word "Mayor" to identify that person's occupation because this could result in an advantage that would not be shared by others who are officially running for the office. Comments on Council's related request for a legal opinion on the question of what information can be entered on the nomination paper under "Occupation" are contained in the following report from the Returning Officer.

RECOMMENDATION:

THAT the Minister of Municipal Affairs be requested to comment on the meaning of the word "Occupation" as it applies to nomination and ballot papers, and also, to consider the enactment of legislation that would provide clear guidelines on the use of this word in this context.

\* \* \* \* \*

September 17, 1974

TO: MUNICIPAL MANAGER  
FROM: MUNICIPAL CLERK  
RE: Section 56 of the "Municipal Act" and Meaning of "Occupation"  
in Subsection (2)

At a regular meeting of the Municipal Council held on Tuesday, September 3, 1974 a motion was passed that the Council seek the advice of the Returning Officer on the question of occupation which is required to be shown on the Nomination-paper and subsequently appears on the ballot-papers.

The Municipal Solicitor advises as follows by letters dated September 9th and 11th, 1974:

"This word (occupation) is not defined in the Municipal Act. The meaning given in the shorter Oxford dictionary is "the being occupied with or engaged in something; that in which one is engaged; employment, business".

In one Canadian decision, the following observation is made: "The term 'occupation' has not, so far as I can find, any technical meaning. It ordinarily means that which engages the time and attention".

In an English decision, the following comment is found. "The work 'occupation' in this Act means the business in which a man is usually engaged to the knowledge of his neighbours. The intention is, that such a description should be given that if inquiry be made in the place where the person resides, he may be easily identified".

I am not prepared to say that it was wrong for Mayor Constable to describe himself as Mayor on his nomination paper. However, the argument may be made that the word "Mayor" describes not an occupation but an office."

ITEM 15

MANAGER'S REPORT NO. 61

COUNCIL MEETING Sept. 23/74

"My letter of September 9 was in reply to yours of September 5 in which you directed my attention only to section 56 of the Municipal Act. Section 56, of course, refers to nomination papers and it did not seem to me that the designation of Mr. Constable as "Mayor" on his nomination paper gave him any particular advantage. However, seeing Alderman Lewarne in the Municipal Hall, I spoke to him about the matter and discovered that his objection was not to the designation "Mayor" on the nomination paper, but on the ballot. Section 72 of the Act, of course, requires the ballot paper to contain, in addition to the name of the candidate, his occupation. It may be that the description "Mayor" on the ballot paper gives the incumbent an advantage.

I have not been able to find any case in point. In a Saskatchewan case dealing with a provincial election, candidates were improperly described. Had the ballot paper been correctly printed, one candidate would have been described as "Secretary-Manager, Cabinet Minister" on the ballot paper. However, he was described as "Director of Organization". The judge remarked in the course of the judgment that "Mr. Brown was a cabinet minister and possibly felt there was some advantage to have this fact under his name." However, it was the opinion of the judge (and he was not, of course, dealing with the Municipal Act) that "all of the candidates were well-known in the constituency and no literate voter exercising ordinary care, and no illiterate voter, exercising his right and duty to seek assistance from the deputy returning officer, could have been misled by the misdescription of occupations or order of the candidates on the ballot forms." The judgment, of course, did not rule on the use of the description "cabinet minister" on the ballot since the candidate Brown was not so described, although he should have been.

In this case, I suspect that not many voters would have been unaware that Mr. Constable was Mayor, whether he was so described on the ballot or not. My own view is that on the ballot his occupation should not have been given as "Mayor", although I cannot say that the use of such description was legally wrong. If his election had been challenged for that reason, the judge, if he ruled that the use of the description "Mayor" made the ballot invalid, would have had to take into account section 118 of the Act. Having due regard to this section, I doubt if he would have set aside the election.

I would suggest appropriate legislation to provide a clear answer to the question."

Section 56(2) of the "Municipal Act" provides:

"56(2) A nomination-paper shall state the name, residence, and occupation of the person nominated in such manner as to identify the candidate, and shall contain a statement subscribed to by the two nominators that, to the best of the knowledge, information, and belief of each of them, the candidate is of full age, is a person who is a Canadian citizen or other British subject, is possessed of the qualifications by law required, and is not disqualified for any of the reasons set out in section 50."

Section 72(3) of the "Municipal Act" provides:

"72(3) Every ballot-paper shall contain a list of the full names of the candidates arranged alphabetically in the order of the surnames or, if there are two or more candidates with the same surnames, of their Christian or given names, and shall show the occupation of each candidate."

This is for the information of Council.

CC: SOLICITOR

  
MUNICIPAL CLERK

131