

LEGISLATIVE ASSEMBLY OF THE
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BRIEF

to the

48th SESSION

of the

COUNCIL OF THE NORTHWEST TERRITORIES

Submitted by the

NORTHWEST TERRITORIES

ASSOCIATION OF MUNICIPALITIES

BUSINESS LICENCES AND REAL ESTATE AGENTS

Present Situation

The powers of the municipality to prescribe conditions on the issuance of business licences are obscure under Section 158A of the Municipal Ordinance.

Section 158A, Subsection (2) states that "The Council of every municipality may make by-laws for the licencing, regulating, and controlling of all businesses that are carried on within the municipality and are not licenced or regulated under an Ordinance of the Territories."

Municipalities have generally passed Business Licence By-laws that exercise the licencing powers by requiring businesses to conform to very minimal requirements. For example, the City of Yellowknife requires that a business licence applicant submit:

- (i) the appropriate fee
- (ii) a Workmen's Compensation Insurance Certificate
- (iii) "such evidence of identity, legal capacity, authority or qualification to carry on the business as the Secretary-Treasurer may require."

It appears that municipalities have the power only to prescribe the conditions precedent to the granting of a licence within a fairly narrow framework. This interpretation seems to be supported by the minimal requirements set out for non-municipal jurisdictions under the Territorial Business Licence Ordinance. Even the most liberal interpretation restricts the municipality to only requiring compliance of businesses to existing legislation, even where the Council feels that present legislation offers too little protection for its citizens.

Thus, even in cases where a municipal council feels that a particular business may operate to the detriment of its residents because of a lack of protection in Territorial legislation, it appears that the council has no power to refuse a business licence application. This lack of

discretionary power forces councils to give such doubtful businesses implicit approval by the granting of a licence to operate.

Need for Examination of Area

With the developing responsibility and maturity of municipalities in the Northwest Territories, a very real need exists for concomitant authority to deal with development in an orderly and rational manner. The Northwest Territories Association of Municipalities is on record (October 4, 5, and 6 Conference, Resolution #11) as urging the Territorial Government to place the necessary authority in the hands of local government to regulate land use, as the municipality becomes responsible for land development through the acquisition of municipal status.

Similarly, the Association feels that greater authority in the exercise of business licencing powers would enable municipalities to maintain a level of control that is necessary for the proper execution of their responsibilities.

A glaring example lies in the protection of the public from real estate agents. It appears, at present, that such protection is, at best, spotty and at worst, non-existent. With increasing population growth in the Northwest Territories and with increasingly greater interest being shown by real estate agents, there is a developing need for proper governmental control, with particular emphasis on non-resident agents.

However, such control appears to be lacking both at the Territorial level -- in the absence of specific real estate agent licencing legislation -- and at the municipal level -- in the absence of general discretionary powers in the issuance of business licences.

Approaches to a Solution

1. Business Licence Legislation

The Municipal Government Act of Alberta specifically provides for broad discretionary power in the refusal of business licence applications: "215. (1) The Council may delegate to a municipal officer on such terms and conditions as the council by by-law may determine the power to refuse to grant or revoke any licence if in his opinion there are just and reasonable grounds for the refusal of the application or for revocation of the licence subject to the right of the applicant to appeal the refusal or revocation to the council."

Ontario also provides specific discretionary powers in its Municipal Act:

"246. (5) Subject to The Theatres Act, the granting or refusing of a licence to any person to carry on a particular trade, calling, business, or occupation, or of revoking a licence under any of the powers conferred upon a council or a board of commissioners of police by this or any other Act, is in its discretion, and it is not bound to give any reason for refusing or revoking a licence, and its action is not open to question or review by any court."

2. Real Estate Agents Legislation

The Province of Alberta maintains close supervision and control over Real Estate Agents through the Real Estates Agents' Licencing Act and related Regulations.

In the case of resident agents and salesmen, the Act specifies the requirements of licencing, bonding, investigations and actions to be taken by the Superintendent of Insurance, the maintenance of agent's accounts, the regulation of trading, and the recovery of commissions.

The sale in Alberta by personal solicitation of sub-divided land located outside of Alberta is governed by Regulation 409/67 which requires the filing of a prospectus and various other requirements. Protection in this area has arisen in Alberta in response to problems such as bankruptcy of developers and in some cases an inclination to high pressure salesmanship.

Examples of well-developed protective legislation are also provided by the Province of Ontario, and other provinces.

Recommendation

In view of the municipal need for broad discretionary powers in issuing business licences, and the apparent need for specific protection from real estate agents, the Northwest Territories Association of Municipalities recommends:

THAT the Territorial Government look into the whole area of:

- (a) the right of a municipality to establish conditions for issuing business licences, and
- (b) Territorial legislation to offer protection to the public from real estate agents.