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Item No. 7.1.5
Halifax Board of Police Commissioners
January 18, 2016

TO: Chair and Members of the Halifax Board of Police Commissioners

SUBMITTED BY: Ashley Dutcher, Solicitor, HRM Legal Services

DATE: January 6th, 2016

SUBJECT: **Legal Opinion: Reserves Business Case, Police Officer On the Job Injury (Compensation) Reserve – Q323**

INFORMATION REPORT

ORIGIN

At the December 7th, 2015 meeting of the Halifax Board of Police Commissioners, Commissioners brought a motion seeking a legal opinion as to the Police Officer on the Job Injury (Compensation) Reserve (the “Reserve”). Specifically, the Commission asked Legal Services to provide an overview of the history of the Reserve, along with an opinion regarding the future use of funds of the Reserve.

At the December 7th meeting the Chief of Police indicated that the Reserve could be used to either pay the salary of an injured police officer who was injured in the course of his or her duties or the funds could be used to backfill positions that arise due to the absence of a police officer who is off-work for a period of time due to an on the job injury.

Some members of the Commission questioned the use of the Reserve funds to backfill positions and indicated that the intent of the Reserves Business Case was to be used for the benefit of members injured while on the job.

LEGISLATIVE AUTHORITY

Board of Police Commissioners Terms of Reference, By-Law P-100 **Respecting the Board of Police Commissioners for the Halifax Regional Municipality, section 8 (1)** which states:

The Board shall provide civilian governance in regards to strategic policy planning and policy driven budget planning for police service delivery within the communities serviced by the Halifax Regional Police and shall carry out an advisory role in respect of police matters within the communities serviced by the Provincial Police Service.

BACKGROUND

Conclusion

The funds of the Reserve can be used to pay the salaries/compensation to injured HRP Sworn Officers. The funds cannot be used to pay the salaries of new officers brought in to back fill the positions of the injured members. Positions can of course be backfilled by HRP; however, the funds to do so should not come from this particular Reserve.

History of the Reserve

The Police Officer on the Job Injury (Compensation) Reserve was established in 2005/06. The initial contribution of \$420,328 was transferred from the Police Operating Accruals account 2080. At the May 16th, 2006 meeting of Regional Council, Regional Council was asked to approve the establishment of 5 new Reserves that would be funded through the reallocation of existing funds within Operating and Reserve accounts. One of the new Reserves Council was asked to approve was the Police Officer on the Job Injury (Compensation) Reserve. The purpose of the report to Council was to obtain Counsel's approval for the on-going operation of the reserves as outlined in their respective business cases.

In writing this memo Legal Services reviewed the staff report that went to Regional Council on May 16th, 2006, as well as the minutes of the May 16th meeting. According to the minutes (attached hereto) it was moved by Councillor Rankin and seconded by Councillor Goucher that Regional Council:

1. Approve the establishment of the following new Reserves to be funded though re-allocation of existing funds within Operating and Reserve accounts, as described in the Reserve Business Cases.
 - Operating Cost of Capital
 - Alderney Gate Recapitalization/Leasehold Improvement
 - Police/Emergency/Extraordinary Investigation
 - Police Officer On the Jon Injury
2. Approve the final business case for Bedford South CCC Interchange Reserve Q133, which has been operating with a draft business case.
3. Approve the Reserve budgets for 2005/06 as per the following table:

Operating Costs of New Capital	M317 Operating Costs for New Capital unexpended funds at March 31, 2006.
Alderney Gate Recapitalization/Leasehold Improvement	Contribution of \$344,400 (savings identified in the purchase vs status quo model).
Police Emergency/Extraordinary Investigation Reserve	Contribution of \$581,258 (transfer from Q205 Police Vehicle Reserve).
<u>Police Officer on the Job Injury (Compensation) Reserve</u>	<u>Contribution of \$420,328 (transfer from Police Operating Accruals account 2080).</u>
Bedford South CCC Interchange Reserve	Contribution of \$522,275 plus \$450,000 from Fiscal Services as per the financing model attached to the business case.

During the meeting on May 16th, 2006 the motion was put and passed unanimously. Regional Council did not discuss the use of the Police Officer on the Job Injury (Compensation) Reserve. The Business Case was accepted as it was presented and Regional Council did not discuss the way in which the funds could be used. Therefore, it is Legal Services opinion that Regional Council intended the use of the funds within the Reserve to be for the benefit of members injured on the job (ie. salary /

compensation for injured Sworn Officers) and not for backfilling positions, as required, to replace injured members while on Injury Leave.

The "Application of Funds" section of the Business Case states: "The Reserve funds would be used to supplement the salary or assist with Sworn Officers expenses incurred as the result of the officer injured on the job, as provided by Article 44 of the 2003 MAPP Collective Agreement. Article 44 of the current Collective Agreement remains unchanged from 2003. The provision speaks to the wages, benefits, sick bank, treatment and return to duty of the injured member. Further, the provision speaks to the adjudication of injury leave claims and physician examinations. However, Article 44 does not speak to backfilling the positions of injured members.

In Legal Services' opinion the wording of the 2006 Reserves Business Case is not broad enough to include using the Reserve funds for the backfilling of positions of members absent while in Injury Leave, also, it is apparent from the minutes the Regional Council meeting of May 16th, 2016 that Council did not contemplate or discuss the use of the Reserve funds for the backfilling of positions.

If it is the intent to use the Reserve funds for backfilling of injury leave positions, then it is Legal Services' recommendation that the Halifax Regional Police amend the Reserves Business Case and have Regional Council approve the amendment. That said, the Reserve funds can be used to pay the salaries of /compensate HRP Sworn Officers who are injured while on duty.

I have also attached a print-out of the Reserves transaction history since its formation in 2006.

ATTACHMENTS

1. Q323 Reserve Transaction History

Q323 - Police Officer On The Job Injury Reserve

Fiscal Year	Balance as of April 1st	Deposits	Transfers to Operating	Transfers to Capital	Interest Earned	Balance as of March 31st
2005/06	\$ -	\$ 420,328				\$ 420,328
2006/07	\$ 420,328	\$ 140,500			\$ 18,481	\$ 579,309
2007/08	\$ 579,309	\$ 189,317		\$ 256,084	\$ 24,517	\$ 537,059
2008/09	\$ 537,059	\$ 9,000			\$ 15,707	\$ 561,766
2009/10	\$ 561,766	\$ -			\$ 4,226	\$ 565,992
2010/11	\$ 565,992	\$ 40,000			\$ 6,016	\$ 612,008
2011/12	\$ 612,008	\$ 264,600			\$ 7,864	\$ 884,472
2012/13	\$ 884,472	\$ 700,000			\$ 14,890	\$ 1,599,362
2013/14	\$ 1,599,362	\$ 140,100			\$ 20,787	\$ 1,760,249
2014/15	\$ 1,760,249				\$ 23,141	\$ 1,783,390
2015/16	\$ 1,783,390				\$ 11,334	\$ 1,794,724

Transfer to Police Training Center - Northbrook School

As of December 7, 2015