



Fourth Session - Thirty-Seventh Legislature

of the

Legislative Assembly of Manitoba

Standing Committee

on

Law Amendments

Chairperson

Mr. Doug Martindale

Constituency of Burrows



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, December 12, 2002

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

VICE-CHAIRPERSON – Mr. Gerard Jennissen (Flin Flon)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Mackintosh

Mr. Aglugub, Ms. Cerilli, Messrs. Dewar, Jennissen, Laurendeau, Martindale, Penner (Emerson), Schellenberg, Mrs. Smith

APPEARING:

Hon. Jon Gerrard, MLA for River Heights
Mr. Richard D. Balasko, Chief Electoral Officer, Elections Manitoba

MATTERS UNDER DISCUSSION:

Bill 10–The Elections Finances Amendment Act

* * *

Mr. Chairperson: Good morning. Will the Standing Committee on Law Amendments please come to order?

This morning the committee will be considering the following bill: Bill 10, The Elections Finances Amendment Act. There are no presenters registered to speak on this bill. Is there anyone in the public who would wish to speak? Seeing none, does the minister responsible for the bill have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): No.

Mr. Chairperson: Does the critic from the Official Opposition have an opening statement?

Mr. Marcel Laurendeau (St. Norbert): No.

Mr. Chairperson: Shall we consider clause by clause? *[Agreed]*

Mr. Jack Penner (Emerson): I have one question. Before we start the clause by clause, there was a question that I put before the Chief Electoral Officer this year. The question was that I am a partner in a corporate farm. I am the chief executive officer. My wife is the other partner in that corporate farm. There was a golf tournament this year in my constituency. That corporate farm donated about four pounds of beans to that golf tournament. Under the act, is it allowed to make a corporate donation of any kind to any fundraising event? That is the question.

Mr. Mackintosh: I think the best answer would come from Elections Manitoba. There are the ones that are, of course, responsible for the administration of the act.

Is it important to the member that he have an answer right now? It may be Elections Manitoba would want to consider that before providing advice as well. Otherwise, I know that there are representatives here from Elections Manitoba.

Mr. Jack Penner: The reason I ask is that in section 40.1 it deals with exceptions for donations in kind with minimal value. Would this kind of a donation, would the beans fall under this consideration?

Mr. Mackintosh: I am not in a position to provide an opinion. Perhaps if there is leave of the committee, if Mr. Balasko so wishes he can address that at this point.

Mr. Chairperson: Is there leave of the committee to invite Mr. Balasko to the table to answer questions? *[Agreed]*

Mr. Balasko, please identify yourself and then answer the question.

Mr. Richard D. Balasko (Chief Electoral Officer, Elections Manitoba): My name is Rick Balasko. I am Chief Electoral Officer for the Province.

I heard most of the question as best I could further down in the room, so I would appreciate it if you could restate the question. Then I can provide you with my best answer to that.

Mr. Jack Penner: You are aware, the Chief Electoral Officer of the Province is aware of the issue because I did phone him and ask him about this, but I would like an answer based on the legislation that we are dealing with.

There was an event in my constituency where a fundraiser was held and a corporation which I am a member of or an owner of and my wife is also an owner of, my wife donated approximately four pounds of beans in a cooked state as a salad to this event.

Now, in the case that this had been a political fundraiser, would this donation of approximately four pounds of beans have been deemed a contribution made by a corporation to a political fundraising event, and would that be legal?

Mr. Balasko: The bill, as it is presented, as I understand it, and it certainly comes from a recommendation that we made after having discussions with political parties, applies to individuals. So, if a person is acting in their capacity as an individual and they are providing their individual goods under the value of \$15 then that would not constitute a donation in kind for the purpose of the act going forward.

In a specific circumstance where you might have someone who is both a corporate shareholder and an individual, that is something under the new law we would like to look at specifically and get all the details on it under the new law, and we can provide you with a specific answer, but this amendment applies only to individuals.

Mr. Jack Penner: This does not clarify the situation. I am not sure that under the new law

that is clarified. I have not been given a clear answer as to whether that has been clarified under the new law.

The reason I raise this, if we are going to clarify the law, if we are going to make an amendment to the act, then now would have been the time to make those kinds of amendments to the act. I was wondering whether you have given recommendations to the minister in regard to the question that was put to you prior to this meeting and to seek clarification if we have not already got clarification of the act.

Mr. Balasko: No, our recommendations were to the Legislature. I have not specifically discussed the information you provided to us with ministers or other members of the Legislature, but this is clear that, if it is an individual who makes a donation of a good or a service below a value of \$15, he/she can do that twice in a year. So, if you are acting as an individual, then you are covered. If it is an otherwise prohibited contributor, then it continues to be prohibited.

Mr. Jack Penner: It still does not answer the question. The question is, if a president of a corporation or a vice-president of a corporation makes a donation that is less than \$15 to a political fundraising event of any kind, is that allowed or is it not allowed?

Even though this prescribes that a donation under \$15 would be deemed exempt and would not be recognized because the donor's name would not even be recognized, however, there is a section in the act that speaks to corporations and that no corporate donations will be allowed. This muddies that, I believe. This does not clarify it, it lends to the uncertainty of whether that should or should not be allowed. I think laws should be made to be clear and specific. Now, is this clear enough and specific enough in your view that that can be clearly identified and spoken to by an officer such as you? Are you satisfied?

Mr. Balasko: Yes, I am satisfied with that draft as it is now. It is clear that contributions from corporations, for example, would continue to be prohibited. Contributions from individuals below a minimal value will be accepted without having a contribution recorded.

Really the matter of fact is: Whose funds are they? Are these the corporate goods or are these the goods from the individual? That comes down to a matter of fact in every case. So I think the law gives us the tools to be able to do that. So my answer is, yes, I think it is clear enough.

* (10:10)

Mr. Jack Penner: Mr. Chairman, I am still not clear, because the officer of a corporation, can that officer be deemed an individual or is that officer always an officer of the corporation?

Mr. Balasko: Mr. Penner, I am sure that with the law as it is now, we will be able to get advice on exactly the circumstance you are talking about and give you an exact answer. I do not think that this makes it any more difficult. In fact, I think it makes it, if anything, clearer. I would be very pleased to provide to you a written reply to your situation.

Hon. Jon Gerrard (River Heights): My interpretation of what you are saying is that a person can act either as an individual or as a corporation, but if those goods, in this case the beans, are corporate goods, then the individual will have to pay the corporation for those goods market value. Having paid those goods market value, they now are the property of the individual. The individual can make that donation.

Mr. Balasko: Yes, you understand me exactly.

Mr. Jack Penner: That does not give me a great deal of comfort. That leaves the door open to question. As I say, laws, when we draft or make law they should be clear and concise. I am not sure that this adds any clarity to it. This deals with individual donations, and I respect that. I think there should have been a clause added to deal specifically with officers of corporations when and when shall they not be deemed as individuals and in what capacity can that be done. I only say this because I think this committee should give direction to the legal people to take a look at this, to make sure that we can clarify that matter once and for all, because I think this will leave this whole thing open again to question. I do not think it should be. I think we should as legislators make sure that there is clarity in legislation when we draft it and present

it in the House as much as possible. I am not sure that this does that.

Mr. Mackintosh: I think the problem here is not the law; it is the evidence. In your case, was the donation from a corporation or from an individual? That would depend on whether the beans were the product of the corporation. I do not know what all the tests are, what the intention of the donor was. So I do not think you can in law ever put in rules that deal with every situation. Elections Manitoba will have to ask the question then: Was that a corporate or an individual donation? You know, I am sure that there are precedents available. I think if the Chief Electoral Officer thinks it is worthwhile to provide some definition as to when a donation is corporate or individual, he could come forward with recommendations, and I am sure the Assembly would listen to him. I know from my time in law that you cannot always tailor legislation to every fact situation.

Mr. Jack Penner: I respect that, Mr. Chairman. I think the minister makes a good comment. However, I think that should be done prior to, that we are very clear that the definition or the terms of a corporate office be deemed very clear and specific in either a definition or in spelling out in an act exactly what defines an officer of a corporation and when an officer's responsibility in a corporation ends and starts, I think that in this case especially, in election donations and support of elections campaigns because we have made a big issue out of this.

We as legislators have made a big issue out of this. If we want to define and ensure that no corporate donations will be made to an election campaign in any form, we had better be very specific and very clear and define it very precisely that there will be no question. That needs to be done, in my view. I would suggest to the minister and to the Chief Electoral Officer that there be an effort made to define that and clarify that specifically that there be no questions at all when donations are made that there is any allowance for questions.

Mr. Chairperson: Is the committee ready for clause by clause? *[Agreed]*

Clauses 1 and 2—pass; clauses 3 through 5—pass; clauses 6 through 10—pass; enacting clause—pass; title—pass. Bill be reported.

What is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 10:16 a.m.