



Beach locked up for 20 years: Levy

Did legal opinion from the city cinch vote on sole-sourced deal for boardwalk food and drinks?

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Last Updated: June 9, 2010 10:50pm

There's no doubt in my mind an 11th-hour legal opinion suggesting Tuggs Inc. could sue the city — even though no agreement has yet been signed — swayed enough councillors to opt not to re-open the controversial 20-year deal Wednesday.

The vote was 22-19, but the motion needed two-thirds of the votes, or 28 councillors, to reconsider the deal to let Tuggs exclusively sell food, drink and more on the Eastern Beaches without the contract going out for competitive bids.

Sandra Bussin, the ward councillor under fire over the deal and several other issues in her ward, left the Speaker's chair for the vote, although Coun. Frances Nunziata told me Her Royal Spokeness was spotted hanging near the back door of the chamber throughout.

It is unclear who asked for the legal opinion.

However, it is bizarre. It states Tuggs Inc. has forwarded signed copies of the agreement to the city but the city itself "has not yet signed the agreement."

That notwithstanding, writes solicitor Jasmine Stein, "does not mean there is no agreement."

In fact, she writes, the actual signing by the city may be considered a "mere formality."

Stein indicates that in her opinion a "valid agreement" has been reached and to rescind it would constitute a "breach of contract."

"Tuggs could ... seek damages against the City as a result of the breach of contract," she writes, noting Tuggs Inc. could also argue significant profits will be lost "by virtue of the breach."

That's all councillors needed to read. The deal to give Tuggs Inc. owner George Foulidis the exclusive rights to sell food and beverages at the Boardwalk Cafe, Kew Gardens and neighbouring Balmy Beach and at D.D. Summerville Pool for the next 20 years will go ahead.

Once the deal is signed and sealed, he will also have a monopoly on liquor sales in Ashbridges Bay and Woodbine Park and will be able to sell trinkets throughout the entire Eastern Beaches.

It was clear Bussin's NDP pals were prepared to circle the wagons and support her. Never mind whether the deal is good for the city and for the Eastern Beaches — which it most definitely is not.

Stein's legal opinion, in my view, only leads to more questions.

She makes no mention that the city has been negotiating with Foulidis for three years and has been unable to reach a deal with him. Or that the newly proposed terms would see him paying \$1 million less in rent and \$400,000 less in sponsorship revenue than Foulidis agreed to in 2007.

There is no indication either that council already provided itself an out on May 12 by approving a plan to ask for bidders for the Beach contract if the deal was not executed by June 30.

As a lawyer well versed in contract law told me it's not a "done deal until it is a done deal," and the legal opinion "makes a mockery of all contract law."

But I'm told Bussin, who received a combined \$12,250 in donations from friends, family members, employees and officers of Foulidis' company in 2003 and 2006, spent Wednesday morning lobbying councillors — instead of running council — into voting not to re-open the contract.

Calls and e-mails to Bussin following the vote were not returned. Foulidis said in an e-mail he's happy with council's decision.

Coun. Frances Nunziata, who moved the motion to re-open the deal, feels all the "arm-twisting and threats" by Bussin in the past day and a-half worked.

"Until you sign on the dotted line, I don't believe it's a legal document," she said. "But council has made a decision and we're going to have live with this for 20 years."

Doug Holyday said after "eavesdropping" in on a phone conversation he had Wednesday morning in the area off of the council chamber, Bussin approached him, along with the city clerk and solicitor, and accused him of "divulging confidential information."

He denied doing so, later telling me he thought her actions a "blatant attempt" to deflect attention away from herself.

Holyday intends to file an informal complaint with the Integrity Commissioner over Bussin's handling of the deal.

He has no doubt Bussin abused her power.

"They (the NDP) think it's their right to do that," he said. "This can't be the way city continues to do business."

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