THE MUNICIPAL GOVERNMENT ACT (MGA) AND MUNICIPAL BUSINESSES

Does the MGA or the common-law prohibit or allow municipalities to run businesses?

There is no section in the MGA, nor is there any specific doctrine at common-law, that expressly prohibits municipalities from running businesses. Municipalities are created by statute and therefore, may do only what the statute, or the common-law derived from it, permits them to do.

Rather than list specific powers, the MGA gives municipalities wide authority to carry out the purposes for which they were created. Section 3 defines the purpose of municipalities. Therefore, if an action falls within the purview of the section 3 purpose, a municipality has the authority to do it.

Although the courts have not yet interpreted section 3, it is clear that the Legislature intended to confer broad powers to municipalities. The closer an action falls to the traditional core of municipal powers, the more likely it will fall within the purview of section 3. The more removed the power from municipal services, the less likely the legislature intended to confer the power to the municipality.

The MGA does state that where a municipal council controls a corporation to make a profit, it must have ministerial approval to do it.

Cautions:

- If the municipality establishes a corporation to make a profit, REMEMBER to obtain permission from the Minister before proceeding.
- If the municipality intends to act solely as an agent and not establish a corporation to make a profit, ensure that:
  a) Legal advice is obtained before proceeding to ensure any risk to the municipality is minimized.
  b) Consideration is given to any potential costs to the municipality and especially any potential liabilities such as damage to agency property or equipment.
  c) Consideration is given to the liability risk that might exist for any adverse staff actions that could be adverse to the agency and/or the municipality.