

2.4 Deputy G.C.L. Baudains of the Minister for Health and Social Services regarding composting at La Collette:

Would the Minister with reference to the Statutory Nuisances (Jersey) Law 1999 and the La Collette composting, explain why it is that he is unable to curtail what many residents consider to be an ongoing nuisance?

Senator B.E. Shenton (The Minister for Health and Social Services):

May I just say that I am going to miss the Deputy's difficult questions in the new House. The Statutory Nuisances (Jersey) Law provides for any matters that constitute a statutory nuisance and I will quote from the Law: "One that is any dust, steam, smell or other effluvia arising or emanating from industrial, agricultural, trade or business premises or resulting from processes conducted on such premises which is prejudicial to health or a nuisance." I think the whole Assembly would concur that the composting site at La Collette is a business process which can produce smells and at times these smells are evident at considerable distance away from the site. At the time the law was approved by the States Assembly it was accepted that there was a need to safeguard the legitimate interest of business. The law reflects this need to ensure that a Minister should not deny businesses from being able to reasonably undertake their operations. To that end there is under the law an opportunity for industrial, agricultural, trade or business premises to plead the defence that the best practicable means were used to prevent or counteract the affects of the nuisance. This approach is consistent with other jurisdiction operations of nuisance legislation such as in the U.K. My Health Protection Service has worked closely with officers at Transport and Technical Services to ensure that the composting process achieves best practice for the current process type and continues to monitor actively, particularly at times during complaints. I have recommended that the open windrow composting process currently operating is unsuitable for a small Island such as ours and that the process should be replaced without delay by a covered process which would minimise smells and subsequent nuisance.

2.4.1 Deputy G.C.L. Baudains:

As the Minister is fully aware residents of St. Helier, St. Saviour and St. Clement have suffered from this nuisance for some years and it is getting worse. It does occur to me, referring to the Statutory Nuisances (Jersey) Law, under Article 5(1), that the Minister is under an obligation to serve a notice. Also under Article 8(d) it further occurs to me that the defence under Article 7, which of course relates to using best practicable means and that, does not apply. I do wonder - and I mean this in the kindest possible way - is this not more a case of one Minister seeking to protect another rather than protecting the public?

Senator B.E. Shenton:

No, it is not that case at all. It is the case of one Minister not wanting to waste money. You are right. The department does have to serve notice under the Statutory Nuisances (Jersey) Law which was done. The Transport and Technical Services Department indicated that they would wish to appeal that statutory notice, which we believe that they may well win that appeal because under the law they may be able to prove that the best practicable means were being used. This would have left us with a high cost to the taxpayer and the compost site still ongoing. We felt that it was much more realistic and much more commonsense for our department to have the power to determine what is best practice with regard the composting site as opposed to a costly Royal Court process which would then end up perhaps with nothing occurring out of it apart from the composting site still being ongoing. There is a law change which will be brought to this House very early in the New Year which will change the law very slightly to give our department more power and also prevent the need to go to a court route that could cost hundreds of thousands of pounds and end up with no one gaining anything from it.

2.4.2 Deputy R.C. Duhamel of St. Saviour:

The Minister indicated that some protection was afforded by the definition of the law through his department to businesses. Does this apply to all businesses including those that continually make losses?

Senator B.E. Shenton:

I am not aware that the profit and loss of a business is relevant towards this law. I cannot see that we would monitor premises differently because they made a profit to premises that made a loss. From that point of view I do not think the P. and L. (Profit and Loss) account comes into it.

2.4.3 The Connétable of St. Helier:

The Minister has said that industrial and agricultural processes have a right to pursue best practice. Is he able to tell the Assembly how long this particular process has been carried out in town and whether he and his officers have considered that there are alternative places where this might be carried out which would not prejudice the majority of the Island's residential and indeed working population? Has he looked at this as an alternative?

Senator B.E. Shenton:

I have only been a Member of the States Assembly for 3 years. I will have to have a word with the Constable after the debate to ask him why during his term of office he decided to put an open windrow composting site in town. The fact is that as an Assembly we are charged by the public to come up with solutions. I think what we need to do is make sure that we ensure that we have the funds for an in-vessel composting site somewhere on the Island and we do it sooner rather than later so that the residents of Havre des Pas can breathe easier at night.

The Connétable of St. Helier:

A point of clarification. The moving of the composting site from St. Mary at the beginning of the millennium was not taken under my jurisdiction. In fact the Parish were not even consulted about it and Deputy de Faye has apologised that that took place. Could the Minister advise us given the perception that at least exists in the public mind that departments are doing deals to protect each other that it would be worth considering the use of an independent environmental protection agency in Jersey, possibly in association with our sister Island, because that would give the perception that such matters of regulation are being done without fear or favour?

Senator B.E. Shenton:

I can assure the Constable that no fear or favour was given in this case. With regard to the Health Protection Department, this will be discussed in opposition from Deputy Le Claire later on where it will be shown that we do not interfere on a political basis. The only reason that we have come to the point where we are is that we realised that the law was deficient. We would have ended up with a situation where we could have spent hundreds of thousands of pounds of taxpayers' money and got absolutely nowhere. It does not just apply to this particular case. There are one or 2 other cases where unfortunately commonsense was not written into the law. What we want to do is write a little bit of commonsense into the law and also I think Health Protection would also like to see the ceasing of open windrow composting on the Island of Jersey and that a long-term solution is found.

The Bailiff:

Final supplementary, Deputy Le Claire.

2.4.4 Deputy P.V.F. Le Claire of St. Helier:

It is interesting to hear the Minister's answers but could I ask the Minister under the law - in the letter of the law - there is nowhere in that law that says the Minister can consult with the other Minister and decide to hold in abeyance any action. If the Minister was in the belief that a nuisance existed it is his duty under the statutory powers of his position to table an abatement notice. Why did the Minister act outside of the law?

Senator B.E. Shenton:

Unfortunately the Deputy has a complete misunderstanding of the law. We can serve a notice and the business practice can use as their defence that they are using the best practicable means which in this case is the best practicable means for an open windrow composting site. We believe that they would have been able to prove that they were using best practice and, therefore, we would not have been able to close the compost site. That is why we would have gone through a very costly process and got absolutely nowhere. So what we felt was the law needed to be changed and an amendment to the law will be brought early in the New Year.

Deputy P.V.F. Le Claire:

Could I seek clarification on that issue? I do not know if the Solicitor General would care to consider this in the interim period between now and the time that we debate this matter but the Minister has stated that his belief of the law is that he is able to hold off an abatement once he has considered a nuisance on the grounds that it might cost the States a lot of money and he has asserted that I do not have an understanding of the law. From my reading of the law, there is no provision for the Minister to hold off on a notice ...

The Bailiff:

Is this a supplementary question for the Minister?

Deputy P.V.F. Le Claire:

No, Sir, it is a point of clarification.

The Bailiff:

Then please sit down, Deputy. No, you are entitled to ask the Minister for clarification of his answer but if it is a speech you are not allowed to make it.

Deputy P.V.F. Le Claire:

It is a point of order, Sir. The Minister has asserted that I do not understand the law so I am asking for clarification of the law from the Law Officers Department, Sir.

The Bailiff:

No, I am not prepared to allow that, I am sorry.

Deputy G.C.L. Baudains:

Sorry, I was hoping I might be allowed to respond to a response that the Minister had given to my question earlier as the prime mover of this question.

The Bailiff:

I understand that but I would certainly have invited you to speak had you stood immediately after the answer had been given.

Deputy G.C.L. Baudains:

I did, Sir. I have had my light on several times.

The Bailiff:

You have? In that case I will allow you to ask one final supplementary.

2.4.5 Deputy G.C.L. Baudains:

I thank the Minister for these answers but I would ask him... he has referred many times to the fact that he cannot proceed because of Article 5, paragraph 7, best practicable means. Could I ask him in the near future to revisit that because in my view paragraph 8(d) takes away the paragraph 7 "best practicable" means "defence"? I do not believe that defence stands.

Senator B.E. Shenton:

I am willing to look into it as the Deputy has requested. Obviously our understanding of the law is based on advice that we receive from the Law Officers.