

2017.03.14

4.13 Deputy M.R. Higgins of the Solicitor General regarding the actions that would be taken against a States Department in instances where criminal charges had been brought in the Magistrate's Court without knowledge, consent or assistance of the Law Officers' Department: [1(168)]

Will Her Majesty's Attorney General advise Members what actions, if any, would be taken against a States department that brought criminal charges against Jersey residents in the Magistrate's Court, without his department's knowledge, consent, or assistance?

The Solicitor General (Rapporteur):

All criminal charges brought in the Magistrate's Court must be brought by a Centenier. The Honorary Police (Jersey) Law of 1974 provides that the Honorary Police - and hence all Centeniers - shall be under the general supervision of the Attorney General. The Attorney General, or a member of the Law Officers' Department, is generally consulted in relation to all such charges before they are brought; however, a Centenier is entitled to charge a defendant, acting in his discretion, as long as he, or she, has applied the published guidance in the Code to Prosecute. I repeat the answer in relation to question 168, that a States department is not entitled to bring a charge in the Magistrate's Court.

4.13.1 Deputy M.R. Higgins:

The Solicitor General is aware that, in fact, the Environment Department did exactly that. They went directly to a Centenier, who did not apply the evidential, or public interest test, which resulted in an individual being convicted in the Magistrate's Court and, subsequently, having his conviction quashed in the Royal Court. Will the Solicitor General tell Members whether any action was taken against the Environment Department for their actions, which were deliberately avoiding the Law Officers' Department?

The Solicitor General:

I do not agree that the Environment Department was deliberately avoiding the Law Officers' Department. The circumstances, which the Deputy is referring to, were set out in the answer that was given by the previous Attorney General to his question on 9th December 2014. I do not agree that there was a deliberate attempt to avoid the Attorney General's Department. As it happened, the prosecution of the case that the Deputy is referring to was prosecuted by a member of the Attorney General's department in the Magistrate's Court.

4.13.2 Deputy M.R. Higgins:

The Solicitor General is being disingenuous in his answer. **[Members: Oh!]** I do not believe that is unparliamentary...

The Bailiff:

Are you suggesting the Solicitor General is deliberately misleading the Assembly?

Deputy M.R. Higgins:

I am saying he may be inadvertently misleading the States Assembly with his answer. We have a situation where enforcement officers in the Environment Department did not consult any members of the Law Officers' Department before they went to the Magistrate's Court and - in their own words - had the person charged and brought a prosecution. That prosecution has caused an awful lot of upset to the person: financial loss and all sorts, which I will not go into. But the point is the

department later became aware of it, but took no action. Will the Solicitor General confirm that no action has been taken against the people and I mean that they wilfully and knowingly took the action they did, because they were talking about how they were not getting any information back from the Law Officers' Department and so they took the actions into their own hands?

The Solicitor General:

It is correct to say that the Law Officers' Department is not currently planning to bring any action against members of the Planning Department. I repeat that there was no deliberate attempt to avoid the Attorney General, or the Law Officers' Department, in relation to this specific matter. I reject the comment that I am being disingenuous, or misleading the Assembly. **[Approbation]**

4.13.3 Deputy M.R. Higgins:

Is the Solicitor General aware that a meeting took place shortly after the conviction was quashed whereby members of his department consulted with the Department of the Environment to try and sort out, to make sure, they never again went around them. By "around them" I mean the Law Officers' Department and is he not aware that that document is published on the web?

The Solicitor General:

I am not aware of that specific meeting, or that specific document. This is a case that is ... this case is *sub judice*, as the Deputy knows, so I think it is rather inappropriate for me to go into specifics in relation to this case. But, I have given the answers that I have given in relation to this and his previous question. The specific incidence was an extremely unusual one. It was one of only 2 cases at the time and the practice now is set out in the guidance that is published on the Law Officers' Department for States departments to refer to the Law Officers' Department for guidance in relation to prosecutions for suspected infractions of legislation. So, that is the practice now.

The Bailiff:

Well, that brings this part of question time to an end.

Deputy M. Tadier:

I have a point of order I would like to raise. Could I draw the Chair's attention to Standing Order 104, part (c), and ask whether he thinks the Chief Minister's comments earlier ... from what I recall the Chief Minister said, although it will need to be, perhaps, verified with Hansard, is that he said: "The sole purpose of Reform Jersey and / or, by extension, the 3 Members here, is to sow division in Jersey and create instability." Not only is that not true - and we are quite happy to refute that outside of this Assembly - it seems to fall foul of the instruction not to impute improper motives directly, or by innuendo, to any Member of the States. It would be helpful if it could be placed on record to know whether, or not, the Chief Minister fell foul of that, or whether his comments were acceptable political banter and, if so, will he take note of that for future.

The Bailiff:

It is difficult for me to answer that, without seeing precisely what words were used, Deputy. I have to say, that as I listened to the Chief Minister, I certainly heard him say that the effect, as he saw it, of the questions, was to introduce instability but, perhaps, I could ask him to clarify whether he meant that you, and your colleagues in the Reform Party, had that as your intention. Chief Minister?

Senator I.J. Gorst:

It was few moment ago now and in the heat of answering a question. I think I did indicate that the purpose of the questions were to illicit further resignations and for the Government, itself, to resign.

I think the leader of the Reform Party left this Assembly on the day that Senator Ozouf said he was stepping aside and suggested that I should resign also. Bringing down a government is no small matter and, I think, that a correlation between bringing down a government and instability should be quite clear for all Members to be able to understand.

Deputy M. Tadier:

It is just a further question, because I definitely heard ... I thought I heard the Minister say that the sole purpose of Reform Jersey and us was to create instability and, clearly, is it not only the sole purpose, it is not a purpose at all. So, I would like to know, in future, whether it would be acceptable for me to say that the Council of Ministers ... the sole purpose of the Council of Ministers is to make life worse for the majority of people living in Jersey and to give public assets to their rich mates and make them richer. But, if I said that was the sole purpose of the Council of Ministers, would that be okay because, clearly, they might say that they went into politics to try and make life better for everybody and they might have a different way of going about it?