

2020.02.25

**10 Deputy M.R. Higgins of H.M. Attorney General regarding conflicts of interest arising from the Law Officers' role as legal advisors to the Government of Jersey the support they offered to 'backbenchers': (OQ.58/2020)**

Will Her Majesty's Attorney General [sic] advise Members how he deals with any conflicts of interest arising from his role as the legal adviser, or advocate, to the Council of Ministers and the Government in general and the support he offers to backbenchers when they represent members of the public in conflicts with Government Departments?

**The Solicitor General (*rapporteur*):**

The Deputy refers to a situation where the Attorney General meets a States Member, who is representing a member of the public who is in dispute with a Government of Jersey Department. In this situation, the States Member is effectively acting as the agent of a member of the public and the A.G. (Attorney General) is not giving legal advice to the States Member, but is acting as the Government's legal adviser. In these circumstances, the meeting is between parties representing different interests and no conflict of interest arises. If the States Member were in this sort of meeting, to ask for legal advice, in these circumstances the Attorney General would have to decline to provide it, as he cannot advise a member of the public, either directly, or vicariously, through the States Member. The Attorney General may consider ways of resolving the issue, but he would need to seek instructions and liaise with the relevant Government Department.

**3.10.1 Deputy M.R. Higgins:**

I thank the Attorney General [sic] for his answer. In that particular area, I am in agreement totally with him and no problem. Where my concern is: if a Scrutiny Panel, or if a backbencher, comes to the Attorney General, or Solicitor General, for information that would help them, in a sense opposing Government policy, or dealing with aspects to it, who effectively does his loyalty lie with? Is it with the Government, who he is advising and representing, or is it the backbenchers? How does he resolve the conflict?

**The Solicitor General:**

In this sort of situation, the Attorney General needs to think carefully about conflicts. The question that the Deputy has just posed is different from the one that is in oral question. We have a Conflicts of Interest Policy in the Law Officers' Department, which deals with these sorts of situations. There is correspondence, which my predecessor had with P.P.C. (Privileges and Procedures Committee) concerning advice to Scrutiny Panels, which I believe is going to be published quite shortly. The answer is largely in the correspondence that should be published shortly by P.P.C. I hope that will be sufficient to answer the Deputy's questions.

**Deputy M.R. Higgins:**

I would like to thank the Attorney General [sic] for his answer. I just re-read the question, I saw reference to the public, so it was misleading in that sense.

**The Deputy Bailiff:**

Deputy Tadier, I think you got in just before the next question.

**3.10.2 Deputy M. Tadier:**

In the Clothier Report, surprisingly to some of us, the Report did not recommend any suggestions about separating the roles of the Attorney General from the Assembly roles and other roles that are held by that office. However, it did make a suggestion that steps should be taken to minimise any conflicts that might occur. Could the Attorney General [sic] explain what steps have been taken, if any, since the publication of that report in this regard?

**The Solicitor General:**

In terms of the date of the Clothier Report, the exact date of that report escapes me. We have a division in the Law Officers' Department between the criminal division and the civil division. There are strong information barriers between those 2 divisions, so that information does not cross those 2 barriers. In usual circumstances, there are 2 Law Officers, namely the Attorney General and the Solicitor General. The Solicitor General has a full separate, independent discretion from the Attorney General as regards prosecution decisions. If the Attorney General does have any personal conflict of interest in relation to a particular matter then the Solicitor General should be able to advise on the matter and deal with it. If, in very unusual circumstances, both Law Officers have conflicts then, in addition, we can get separate legal advice and there will be Crown Advocates who are available to deal with the matter. There are many arrangements that are established within the Department for dealing with conflicts of interest. I hope that answers the Deputy's question.

**3.10.3 Deputy M. Tadier:**

Could I follow up with a supplementary? I hope it goes without saying that obviously the questions are about the role of the officer. I have the most respect for the current incumbent. With regards to giving advice to the States Assembly, is it not the case that the Attorney General, or the Solicitor General, will be advising Government on the formation of legislation and then have to give advice to the Assembly, if asked and when asked, about that same legislation, the questions which might then seek to undermine the Government's position? Is that not an inherent conflict of interest, which any Attorney General would be put in an invidious position by?

**The Solicitor General:**

In practice, the Attorney General, or the Solicitor General, are frequently not advising Government Departments on legislation. In practice, it is the minority of legislation where our Department is involved in giving advice. Even where the Attorney General, or the Solicitor General, has been personally involved in giving advice, in my view there is still not a conflict, because that advice is provided on the basis that the Attorney General, or the Solicitor General, as the case may be, will be in the States Assembly and will be questioned by States Members about legal issues. The advice has to be given on the basis of the law and it is a strength, in my view, of our system that the same advice is available to Ministers as would be given to backbencher States Members. In my view, it is a strength of the system that all States Members, whether they be Members of the Government, or backbenchers, are given the same legal advice. That benefits the public overall and it also works out as being more economic and cost-effective for the public overall.