

21.02.09

1 Connétable R.A. Buchanan of St. Ouen of the Attorney General regarding potential legal threats to the Overdale Hospital project (OQ.29/2021)

Will the H.M. Attorney General please advise whether there is any potential legal threat to the Overdale Hospital project from the 2 avenues of legal action, under the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 and the Human Rights (Jersey) Law 2000, outlined in Blakeley Legal's letter of 31st January 2021, a copy of which I forwarded to him and in fact I forwarded to all Members?

Mr. M.H. Temple Q.C., H.M. Attorney General:

I thank the Constable for his question. Blakeley Legal's letter of 31st January does indeed make legal threats. I am advising the hospital project and the political oversight group on those threats but my advice is confidential and subject to legal privilege. Thank you.

Deputy M. Tadier:

I am guessing the Constable does not have a supplementary.

The Bailiff:

Well if people do not ask for a supplementary then I assume that they are not asking for one and move on.

6.1.1 Deputy M. Tadier:

That is fine, I just did not want to jump the queue. I think this is related because it is related to the legal letter that has been going out do with the road at Overdale and the project. Is he aware that Mr. Blakely has been writing to residents of the area saying that there is a Parish meeting coming up and that they can give him power of attorney to vote for them at the Parish Assembly? If the Attorney General is aware of that, can he advise whether it is possible for members of any Parish to give power of attorney to another individual to vote on their behalf at such a Parish Assembly?

The Bailiff:

Mr. Attorney, if you happen to know the answer to that, but it is not within the 4 corners of the question that was posed by the Connétable of St. Ouen. But it is a matter for you if you are able to give advice on that question.

The Attorney General:

I have only just become aware of it a few minutes before Deputy Tadier raised his question. I could give a preliminary answer to it but I would prefer to give an accurate answer. I think it would be better if I deferred answering the Deputy's question. I could supply an answer to him in writing separately.

6.1.2 Deputy K.F. Morel:

I may have misunderstood but the Attorney General appeared to say that he was unable to answer the question because it is a matter of legal privilege. However, I am trying to understand why this is the case because the Attorney General has been asked a question separately to any legal advice he has given elsewhere. I would like the Attorney General to answer the question as asked to the Assembly, as this is a question of the Assembly asked of him, and it is not a question of repeating advice that he has given elsewhere.

The Attorney General:

Yes, my answer to that is it is a basic point concerning the relationship between lawyers and their clients. I am advising Our Hospital Project Group and also the political oversight group. In those circumstances, it is not open to me as a matter of professional practise to give my privileged and confidential legal advice to repeat it in a public forum because the Our Hospital Project Group and the political oversight group are entitled to take legal advice in a confidential way. It is a basic right of any client in relation to their lawyers. If Deputy Morel wants to have separate advice concerning Advocate Blakeley's letter, then he will need to get that from the Solicitor General and not from me.

6.1.3 Deputy K.F. Morel:

Would the Attorney General please explain in what circumstances he is then able to provide an answer to questions asked in the Assembly where they may also happen to overlap with advice given elsewhere because I would have thought it is the Attorney General's primary responsibility to this Assembly?

The Attorney General:

Yes, and in most circumstances, the vast majority of circumstances, I am able to advise Members in the Assembly concerning their questions, as Deputy Morel will be aware from the many previous answers that I have given in this Assembly, but where the matter concerns actual potential litigation, that is a different set of circumstances. That is a very specific set of circumstances and it is very difficult for me to give answers in a public forum in relation to a matter which is, by its nature, legally privileged and confidential. It is very much the minority of circumstances but, as I have said, where I am in that position then we make arrangements for the Solicitor General to give separate advice to Members under an ethical wall which we can operate in the Law Officers' Department.

6.1.4 Deputy G.J. Truscott:

I know questions on these matters are always very delicate. We are being constantly reminded by the project team that time is of the essence and that has been the whole thing that has been driving the hospital project all the way through. Could the Attorney General advise the potential delay that this challenge could bring to the project going forward?

The Attorney General:

That seems to me largely a factual matter rather than one of legal advice. Insofar as it is a matter for legal advice, then I am afraid I have to repeat my previous answer that my advice to the project group and to the political oversight group is subject to legal privilege. It is very difficult for me to give public answers on these sorts of questions, it being this very public forum.

Deputy I. Gardiner:

I am not sure if it is a question for you for a point of order or clarification, Sir. Can it be arranged that the Solicitor General will give advice for the Members during this sitting that we, as the Members, can understand the position, the legal position, that we can find ourselves in?

The Bailiff:

The answer is there is no natural ability to pose any question of the Solicitor General during the course of this sitting unless it is an urgent oral question and that would need to meet the appropriate test, Deputy, but I do not think that that is a matter for the Attorney General. A final supplementary, Connétable of St. Ouen.

6.1.5 The Connétable of St. Ouen:

I apologise to the Attorney General for putting him in a difficult position but I was just very concerned when I read the letter and I understand the position of not being able to answer the question. I thank him for his efforts and am reassured that he is on the case, so to speak.