

2.5 Deputy G.P. Southern of H.M. Attorney General regarding Article 39A of the Public Elections (Jersey) Law 2002.

Are any of the following offences outlined in the U.K. Electoral Commission's guidelines on postal voting called into question by Article 39A of the Public Elections (Jersey) Law 2002 - bribery, treating, undue influence, secrecy, personation, multiple voting and proxy voting; and is his department satisfied that the "traditional standards" of the polling station were observed in line with those guidelines (that political propriety should be carried through to the postal voting context)?

Mr. T.J. Le Cocq Q.C., H.M. Solicitor General (Rapporteur):

The question so far as I understand it appears to be in 2 parts: the first part refers to Article 39A of the Public Elections Law. This Article deals with specific activities such as completion and delivery of forms and documentation in connection with pre-poll or postal voting. The Article does not appear to me to be identical in terms with the offences mentioned in the Deputy's question. That is all, however, I feel able to say about Article 39A. Since the Deputy was charged with offences under that Article there have been questions about it put to the Attorney General which we have, as a matter of routine, discussed. While the Attorney General has sought to answer those answers constructively, increasingly they have run the risk of relating directly or indirectly to those charges. In accordance with the principles of Standing Order 10(10), accordingly we will decline to answer any further conditions on Article 39A or elaborate on answers already given until the criminal proceedings against the Deputy have been concluded. As to the second part of the question, as the Attorney General's Department has no responsibility to ensure the observance of standards in polling stations in accordance with U.K. guidelines or otherwise, the satisfaction of the department is irrelevant and that part of the question seems to be incapable of a meaningful answer. If an allegation of any form of electoral irregularity in connection with postal voting or otherwise was investigated by the police and a police file submitted to the Attorney General, it would be for the Attorney General, of course, to decide whether or not a prosecution should be brought.

2.5.1 Deputy G.P. Southern:

In the hope that I may squeeze a little further information out of the Solicitor General, may I ask the Solicitor General on what grounds (the decision to prosecute or not to prosecute given sufficient evidence) would that decision be made?

The Solicitor General:

It is certainly not for me to discuss in this Assembly the basis on which any decision to prosecute could be made, nor, with respect, could I see this as being a supplementary question relating to the ambit of Article 39A. As the Deputy will know, and indeed as can be seen from the public documentation on the Law Officers' website, there is a code of practice relating to decisions to prosecute. The first test that has to be passed is the evidentiary test and thereafter every decision to prosecute where the evidentiary test is passed is subject to a public interest consideration. In most cases, the public interest will be in favour of a prosecution; in some cases they may not.

Deputy G.P. Southern:

I thank the Solicitor General for his answers.

2.5.2 Senator S. Syvret:

The Solicitor General said, or implied, that the application of U.K. laws or otherwise - the "otherwise" I take it to mean U.K. legislation - satisfactorily when it comes to polling stations was of no concern to the Attorney General's Department. Could he explain that point further? Because I find it very strange given that a variety of laws come into play in polling stations and presumably if the department is dissatisfied with them, they will consider prosecuting. So surely the conduct is relevant. Does he also not accept there is a grave danger that the integrity of the enforcement of the law in general terms will fall into disrepute when it is seen to be applied selectively to different candidates [**Approbation**] and not completely across the board?

The Solicitor General:

I do not intend to answer any point relating to the supposed selective application of the law. I am not aware of any selective application of the law.

Senator S. Syvret:

I am. I can tell you...

The Solicitor General:

However, in connection with polling stations, all I said was that it is not the responsibility of the Attorney General's Department, and it is that department to which the question was addressed, to satisfy itself that any particular standards have been reached. It seems to me that the standards of the polling station are firstly within the direct oversight of the returning officer for any particular polling station and he will report at the end of the poll to the Royal Court. It seems to me that ultimately polling stations are under those supervisions. Naturally should there be any allegation of polling irregularity at the polling stations, those matters must be investigated by the police and I repeat my answer to the question previously relating to the presentation of the file to the Attorney General for decision on prosecution.

2.5.3 Senator S. Syvret:

A supplementary. So it is correct then to say that in fact ultimately the conduct of what takes place in the polling stations is of relevance to the Attorney General's Department?

The Solicitor General:

The conduct of what takes place in polling stations is of relevance to the Attorney General's Department if it forms the basis of an investigation by the police and a file by the police is forwarded to the Attorney General's Department for consideration. Only at that time, in my opinion, does the Attorney General's Department have a direct involvement in response to this.

2.5.4 Deputy G.P. Southern:

Can I ask a point of clarification? Could I ask the Solicitor General to put some meat on the bones of the phrase: "Not identical in terms of the offences in the code of conduct", what does that mean in legal or English terms "not identical with"?

The Solicitor General:

I do not think I can elaborate on the answer in any way, I am afraid. I indicated at the beginning we were not going to elaborate and we are not going to discuss the ambit of Article 39A and therefore I do not go any further on it.