

**WRITTEN QUESTION TO THE ATTORNEY GENERAL
BY DEPUTY T. PITMAN OF ST. SAVIOUR
ANSWER TO BE TABLED ON TUESDAY 10th MARCH 2009**

Question

Will the Attorney General assist members in defining the scope of Article 39A of the Public Elections (Jersey) Law 2002 by giving his opinion as to whether the following acts of assistance by a candidate or his/her representative are proscribed by the article –

- Informing the constituent of their electoral number so that it can be filled in on a request for a postal vote?
- Telephoning the parish hall on behalf of the constituent, and in his/her presence to request that a parish official come to the constituent's home to help the constituent to fill in the postal application or to collect it in the case of those who are housebound?
- Offering the constituent a stamped addressed envelope to return their postal application form?
- Offering a lift on polling day to a constituent so that they might vote
 - as an ordinary voter
 - as a person with a postal vote who now wishes to vote in person?

Does the Attorney General accept that the use of the word 'assistance' in Article 39 renders the Law open to the widest interpretation which might hinder the use of postal voting on the part of candidates and potential voters?

Answer

I have considered anxiously the extent to which it is proper for me to answer a question which has potential links to the prosecution of the Deputy's wife and another politician for offences under this Article. I think that, surprising as this series of questions is, it is possible to answer on this occasion without prejudicing those prosecutions and, therefore, remaining within Standing Order 10(10).

Article 39A is in these terms:

- “(1) A candidate, or a representative of a candidate shall not –
- (a) complete, on behalf of a person entitled under Article 38, or assist such a person in completing, any form required to be completed for the purposes of an application under Article 39(4);
 - (b) deliver, or cause to be delivered, to the Judicial Greffier, on behalf of a such a person, any form or supporting documents required for the purposes of an application under Article 39(4); or
 - (c) provide transport for such a person so as to enable the person to make an application in person under Article 39(4).
- (2) Paragraph (1) shall not prohibit a candidate or representative of a candidate providing a person entitled under Article 38 with the form (if any) required to make an application under Article 39(4)(a):“

Whether a candidate is or is not assisting the completion of the form or causing it to be delivered to the Judicial Greffier is a question of fact for the court dealing with the matter. In determining that issue, the court is likely to have regard to all the material facts.

In its Report to P65/08, the Privileges and Procedures Committee gave this rationale for the proposed amendment:

“This article inserts a provision in the law that PPC believes is extremely significant and important. At present there is no restriction in the Law on candidates or their representatives assisting with the postal voting process. Candidates can, for example, assist electors to complete forms for postal voting, can take these to the Judicial Greffe and offer other assistance to enable people to obtain a postal vote. Although candidates may believe they

are simply assisting electors in these circumstances, PPC is concerned that the current provision could be seen to interfere with the fairness of the election process. Any elector who has received significant assistance from a candidate or his or her representative to obtain a postal vote may feel, in some way, pressurised to vote for that candidate when the ballot paper is received from the Judicial Greffier.

This new Article would make it illegal for a candidate to assist an elector in completing the application form for a postal or pre poll vote. In addition it would make it illegal for candidates to deliver or cause to be delivered the forms to the Judicial Greffier. For the avoidance of doubt, paragraph (2) of the new Article makes it clear that a candidate or representative can still distribute blank forms to enable a person to apply for a postal or pre-poll vote but, with the new provisions, it would be illegal for the candidate to do anything further. It would, nevertheless, still be possible for staff, for example, in an old people's home to assist residents to complete the necessary paperwork but this would distance the process from the candidate or his or her representative. “

I mention this for completeness only because a court would be entitled to consider the intended ambit of the criminal offence as disclosed by the report if there were ambiguity in the language of the statute or there were a judicial review, if that is possible, of a prosecution decision. However, in my view, the language of the statute is clear.

The core of the offence in Article 39A(1)(a) lies in completing the application form for a person entitled under Article 38 to a postal or pre poll vote, or assisting the person to do so.

The core of the offence in Article 39A(1)(b) lies in delivering or causing to be delivered the form or the supporting documents to the Judicial Greffier.

The first of the illustrations put to me - informing the constituent of their electoral number so that it can be filled in on a request for a postal vote - seems to me to lie within the terms of the offence. The prescribed form does contain space for the electoral number to be completed. It is then followed by the words in parenthesis “(if known) “. One can see that informing the voter of the electoral number could fall within the ambit of assisting in the completion of the form, albeit the information provided was not essential to that application. It is clear from the comments of the Privileges and Procedures Committee in its Report, mentioned above, that the purpose of the amendment was to protect the integrity of the election process, and that it was intended that candidates should not get into a debate with prospective voters about the content of the form.

In my view, to telephone the parish hall on behalf of the constituent, and in his/her presence to request that a parish official come to the constituent's home to help the constituent to fill in the postal application or to collect it in the case of those who are housebound, would lie outside the ambit of these offences. Such an action does not amount to assisting in the completion of the form, nor does it amount to causing the form to be delivered to the Greffier. In the latter case, it would be the parish official, if the request were acted upon, who would be causing the form to be delivered.

Nor do I think that merely offering the constituent a stamped addressed envelope to return their postal application form is conduct which brings the candidate within the ambit of Article 39A, though I express no view as to whether any other offence might have been committed. Such action is clearly not assisting in the completion of the form, nor, of itself, does it amount to causing the form to be delivered to the Greffier. Taking the envelope from the voter and putting it in the post would, so it seems to me, amount to “causing it to be delivered” if it were correctly addressed.

Offering a lift on polling day to a constituent so that they might vote,

- as an ordinary voter
- as a person with a postal vote who now wishes to vote in person,

is not an offence under Article 39A. I express no view as to whether any other offence might have been committed.

As the word “assistance” does not appear in Article 39, I do not answer the last question. In any event, even if the correct Article had been identified, the question seems to me to invite a comment on a hypothetical political issue

rather than anything else.