

**WRITTEN QUESTION TO THE ATTORNEY GENERAL
BY DEPUTY T. M. PITMAN OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 24th MARCH 2009**

Question

Does the Attorney General consider that he has the power to decide that one candidate should be prosecuted while another candidate should not when each have breached the same electoral law – possibly even within the same electoral district?

Answer

If this were a question of general principle, the short answer would be yes. However, it seems too close to the circumstances surrounding the pending prosecution of two States members, including the Deputy's wife, both of which prosecutions are sub judice, to be other than coincidental, and accordingly I do not regard this as a proper parliamentary question to put, notwithstanding that it may fall within Standing Orders. The answer given below is of general application and does not refer to the factual circumstances posed in this question.

On the point of general principle, I would say this. In 1951, Lord Shawcross, the then Attorney General for England, made a classic statement on public interest which has been supported by Attorneys General in England and Wales ever since:

“It has never been the rule in this country – I hope it never will – that suspected criminal offences must automatically be the subject of prosecution.”

House of Commons debates, Volume 483, column 681, 29th January, 1951.

This principle has long been applied both in Jersey and in the United Kingdom. It is, for example, the basis upon which many prosecutions of young people, which would take place if the evidential test were the only criterion, are in fact not brought, and those persons dealt with at Parish Hall enquiries and kept out of the court system.

The public interest is considered in each case where there is enough evidence to provide a realistic prospect of conviction. In cases of any seriousness, a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Prosecution lawyers must balance factors for and against prosecution carefully and fairly. There are lists of some common public interest factors, both for and against prosecution, on the Law Officers' website, to be found at paragraph 5 of the Code on the Decision to Prosecute, issued in January 2000.