

9. Statement by H.M. Attorney General regarding the results of the Deputies elections in No. 2 District St. Helier

9.1 The Attorney General:

I have been asked by some Members and by members of the public whether I will be challenging the results of the Deputy's elections in No. 2 District of the Parish of St. Helier held last November on the grounds that election offences had been committed. Article 57 of the Public Elections (Jersey) Law 2002 is in these terms: "Application to Royal Court. Every case of a disputed public election shall be dealt with by the Royal Court." At paragraph (2): "Any person, whether or not a candidate in an election, may dispute a public election by making application to the Royal Court, being an application on oath setting out the grounds for the dispute and made before the end of the period of 6 months following the day that has been fixed for delivering the returns to the Royal Court." In my opinion it would be appropriate for the Attorney General to make an application under Article 57 if you are satisfied that he had the evidence to support it and that it was in the public interest to do so. Having the evidence is obviously critical for without it no such application would be ventured. In addition, however, I do not consider that there would be any or any sufficient public interest in an application being made if it is clear that the outcome of the election would not be affected by the application. The purpose of an application under Article 57 must ultimately be to seek a remedy under Articles 60 or 61 with a view to unseating a candidate or candidates who has or have been elected. Although that purpose will always be pursued where what is sought is the declaration of a vacancy under Article 61(2), the same is not true where Article 60 applies which relates to the discounting of numbers of votes. The relevant part of Article 60 is as follows: "If the Royal Court upholds a dispute that turns on any of the following circumstances, it shall order that the relevant return be amended by subtracting from the number of valid votes the number of votes (if any) cast by persons in those circumstances." The relevant paragraph for these purposes being paragraph (e): "that a person recorded his or her vote in a manner contrary to the requirements of this law." The election offences which have been admitted are contraventions of Article 39A of the law in relation to postal voting. The exact number of contraventions relevant to any such application would have to be established by evidence tendered in the case in question. Article 60 of the law is not, in some respects, dissimilar to the United Kingdom provision in section 166(1) of the Representation of the People Act 1983 which provides: "Where, on a parliamentary election petition claiming the seat for any person, a candidate is proved to have been guilty by himself or by any person on his behalf of bribery, treating or undue influence in respect of any person who voted at the election, there shall on a scrutiny be struck off from the number of votes appearing to have been given to the candidate, one vote for every person who voted at the election and is proved to have been so bribed, treated or unduly influenced." The United Kingdom legislation does not have provisions similar to Article 39A and I refer to the provision from the Representation of the People Act as analogous to the provisions of Article 60. In my view, the effect of the election offence under Article 39A is that the voter, exercising the postal vote, has cast that vote in circumstances in which it is recorded in a manner contrary to the requirements of the Law within the meaning of Article 60, paragraph (e). The result is that the relevant candidate's tally of votes stands to be reduced even if it be the case that the voter in question did not in fact cast the vote in the candidates favour. Deputy Southern and Deputy Shona Pitman have pleaded guilty to offences under Article 39A. Accordingly, the tallies of votes cast for them would be reduced by the numbers of offences which they could be shown to have committed. The tally of their fellow Jersey Democratic Alliance candidate, Deputy De Sousa, would only be reduced if she could be shown to be an accessory to the offences contrary to Article 67 or had committed offences herself. I have seen no evidence against Deputy De Sousa which would justify any such conclusion and the fact that she is, like Deputy Southern and Shona Pitman, a member of the J.D.A. (Jersey Democratic Alliance) is, in my view, immaterial. There is nothing in the law which suggests that wrongdoing committed by a particular candidate

can affect a fellow candidate from the same political party. I think you would need express language to produce such a result and there is no such language in the law. It is to be noted that the wider power to declare a vacancy or to declare the entire election void is prescribed in Article 61 of the law but that power is based on 3 different types of circumstance, none of which apply in this case. Deputy Southern and Deputy Shona Pitman would, respectively, need to have 253 and 186 votes discounted in order to be left with an equal total to that of the fourth place candidate. However, they both appear to have given candid confessions of the extent of their offences and in the absence of any evidence that those offences extend to 253 and 186 occasions respectively, I do not consider there is any public interest in my bringing the election result before the Royal Court. An application under Article 57 must be made within 6 months of the date fixed for delivering the returns to the Royal Court. In this case, the application would have to be made by 8th June 2009. Deputy Southern and Deputy Shona Pitman are awaiting sentence which is currently scheduled to take place on 20th May 2009. I would rather have made no statement on the electoral position until the criminal case had been concluded, but given the deadline of 8th June for others to take action if they are so advised, I have decided to make my position clear at this stage. I do not, however, think it would be appropriate for me to answer questions until after the criminal case is over and I, accordingly, ask the Members for variance in that respect.

The Deputy Bailiff:

Does any Member wish to ask a question?

9.1.1 Deputy S. Pitman:

The Attorney General said in his statement that the United Kingdom legislation does not have provisions similar to Article 39A. Could he confirm if he knows this is the case for any Commonwealth country?

The Attorney General:

I rather suspect this is an area where I have been asked questions or Members have tried to ask me questions previously and I have said it would not be appropriate, but I will answer in this case to say I am not aware of other Commonwealth countries which have similar legislation.

9.1.2 Deputy G.P. Southern:

The Attorney General talked about the Representation of the People Act and talked about where votes have been obtained by bribery, treating or undue influence. Will he clarify for Members that undue influence under the United Kingdom law means threatening people to vote for you and that has not happened and is not the same as 39A, which is all to do with helping people obtain a postal vote?

The Attorney General:

I think it is quite clear Article 39A is not to do with undue influence.

9.1.3 Deputy T.M. Pitman:

I will not ask any questions to do with my colleagues. Could the Attorney General just clarify in light of the statement about the subtraction in the tallies of votes, whether he has had any investigation into St. Helier No. 3 where it would certainly make a difference yet nothing has happened?

The Attorney General:

I have seen no evidence or investigation in relation to St. Helier No. 3.

9.1.4 Deputy T.M. Pitman:

Just to clarify, even though the complainants have been to the police, Judicial Greffe, Solicitor General, where is the link there? What happens? Who is accountable? Does the law only apply in certain instances or is it a law that applies for all? The complainants have been waiting for 5 months and no answers. It is the same law; evidence.

The Attorney General:

I am not sure I can add very much to what I have just said. I have seen no evidence. As far as I am aware, the Solicitor General was approached and directed the complainant to go to the police. I do not know the outcome of that.

9.1.5 Deputy T.M. Pitman:

Could the Attorney General then tell us what is going to happen next because clearly it is a very unsatisfactory situation and we would all like the law to be applied equally, would we not? I am sure we would.

The Attorney General:

I am certainly willing to tell Members that I am, as a result of the information which came to me last night, considering the position with the Solicitor General further and I think I do not wish to say any more at this stage except to add that I entirely agree that the law is to be applied fairly and equally.

9.1.6 Deputy S. Pitman:

Could the Attorney General clarify, were any of the members of the public who made representations either an election candidate or representatives of a candidate during the St. Helier No. 2 election?

The Attorney General:

In my view, the question of such communications as the Attorney has with members of the public raises the issue as to whether a duty of confidence arises. I think it is less likely to arise with members of the public than with Members of the States, but in the circumstances of this case I do think a duty of confidence arises and I am not willing to answer the question.

9.1.7 The Deputy of St. John:

It cannot be right for Members who are charged with offences and the Attorney General ... or their families to be questioning the Attorney General when he has asked this House for their forbearance given the circumstances of the case and I ask that we move on to the next item, Sir.

Senator P.F.C. Ozouf:

I heard Deputy Trevor Pitman accuse the Deputy of St. John of wanting cover up. I know that perhaps you did not hear that, but I heard that **[interruption]** ... he used the word “cover ups” in the context of the Deputy of St. John and I think that is inappropriate. Would you care to comment?

The Deputy Bailiff:

Deputy Pitman, what did you say?

Deputy T.M. Pitman:

I asked the Deputy as he was saying a question should not be asked and if he liked cover ups. I think it is a perfectly valid question. It was not an accusation.

The Deputy Bailiff:

It clearly carries an inference, does it not?

Deputy T.M. Pitman:

I would not make that accusation over my colleague, but I think he is very wrong so I will withdraw it.

The Deputy Bailiff:

That completes questions to the Attorney General.