

LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

PIT NO 1/1996

DIRECTOR GENERAL, DEPARTMENT OF
LOCAL GOVERNMENT

RE: FORMER COUNCILLOR JOHN NORMAN
FRANK FISK, BURWOOD COUNCIL

STATEMENT OF DECISION ACTION BY TRIBUNAL UNDER S.482(1)

The Tribunal's Statement of Decision on the complaint in this matter, dated 12 November 1996, was delivered to the parties on that date. It found that the complaint had been proved.

The Statement of Decision dealt with a number of matters relevant to the question of action by the Tribunal under s.482(1) of the Local Government Act, 1993 but reserved its decision on that question to allow submissions to be made by the parties. In the first instance submissions were required to be furnished by 20 November 1996. At the request of Mr Fisk the time was later extended to 29 November 1996.

By letter dated 20 November 1996 the Director-General declined the opportunity to make submissions, leaving the matter to the Tribunal to decide.

Mr Fisk transmitted his submissions to the Tribunal by facsimile on 29 November 1996.

As mentioned in the abovementioned Statement of Decision, under s.482(1) the Tribunal, finding a complaint has been proved, may counsel or reprimand the Councillor, suspend the Councillor for a period of up to two months or disqualify the Councillor from holding civic office for up to five

years. As Mr Fisk is not presently a Councillor, the power to suspend does not come into consideration but the other powers continue to apply.

Some of Mr Fisk's submissions need not be detailed. They were not germane to the present question. They included comments on certain findings by the Tribunal which, having regard to the evidence and information before the Tribunal at the hearing on which they were based, should stand. They also included matters relating to previous proceedings or investigations outside the knowledge or control of this Tribunal which do not bear upon the decision to be made by this Tribunal. Mr Fisk's remaining submissions may be summarised as follows:

1. The matter of his dealings with Chama Motors has been hanging over himself and his family for three years since it was announced in Burwood Council in December 1993 that he was being investigated by the ICAC. (As mentioned in the Tribunal's earlier decision (at p.8) the ICAC decided in May 1994 to take no further action and referred the matter to the Director-General to consider pecuniary interest aspects of the allegations).
2. He and his family have had to endure adverse publicity of "huge proportions" in the local press. (This was supported by evidence given by Mr Chama at the hearing).
3. They have been unduly burdened financially with substantial legal and other expenses and with worry and stress. (Mr Fisk submits that this has been penalty many times over for any contravention of the law or indiscretion committed by him in this matter).
4. He and his wife are committed to voluntary charitable works in the community through their church and also by organising gifts for boarding house residents, principally psychiatric patients without family, providing care for a disadvantaged young person, helping the long term unemployed by *** on a skill share organisation. (He says that there is no self promotion or political advantage in these

activities and submits that they reflect well upon the sort of person he is).

5. In the light of the foregoing, Mr Fisk submits that a “censure” would be an adequate penalty in this case.

DECISION AND REASONS

The Tribunal must take into consideration its findings that there was no evidence of any corrupt conduct between Mr Fisk and Mr Chama and that there was no exchange of favours or intent to exchange favours relative to Mr Chama’s problems with the Council involved in their dealings with relation to the motor vehicle acquired by Mr Chama for Mr Fisk. The Tribunal concludes that in all the circumstances, disqualification from civic office would be too severe a penalty to impose for Mr Fisk’s failure to disclose his pecuniary interest in the matters before the Council relating to Chama Motors in which he participated.

However, as Councillor at the time of the events in question, he was a highly experienced, knowledgeable and capable member of Burwood Council. He should have fully appreciated the importance in the interests of public confidence in the administration of local government affairs, and the integrity of councillors, of adhering strictly to the requirements of the pecuniary interests provisions of the law. Having regard to the heat that had been generated both inside and outside the Council Chamber by the controversy over the operations of Chama Motors, he should have realised that any private dealings by him with Mr Chama for the acquisition of a motor vehicle at that time were not only unwise but, if they became known, were likely to cast upon any actions he took in Council favourable to Chama Motors a strong suspicion of bias on the ground of pecuniary interest, if not corruption. Where a pecuniary interest in a council matter is involved the object of the law is to prevent a decision of council from being contaminated by any bias or suspicion of bias in those entrusted with the power to make the decision. It seeks to achieve this object by requiring disclosure and non

participation. Whilst giving full weight to Mr Fisk's submissions, the Tribunal, in the circumstances, cannot do less than administer to him a severe reprimand for his failure to comply with the law.

The order of the Tribunal is as follows:

The Local Government Pecuniary Interest Tribunal **ORDERS** that John Norman Frank Fisk be and he is hereby severely reprimanded for his failure while a Councillor of Burwood Council to disclose a pecuniary interest and otherwise comply with the requirements of section 46C of the Local Government Act, 1919 with respect to matters before the Council at its meetings on 10 and 24 November 1992 relating to Chama Motors Pty Limited and Mr Michael Chama.

It is to be hoped that, in the interests of all concerned, this Tribunal's investigation and final conclusions will close the chapter on this complaint.

In accordance with section 484 of the Act, this Statement of Decision and a copy of the Tribunal's Order will be furnished to the parties and thereafter to Burwood Council and such other persons as the Tribunal thinks fit.

DATED: 3 December 1996



K J HOLLAND Q.C.
Pecuniary Interest Tribunal