

**LOCAL GOVERNMENT PECUNIARY
INTEREST TRIBUNAL**

PIT No. 4 /2000

**DIRECTOR GENERAL, DEPARTMENT OF
LOCAL GOVERNMENT**

**RE: COUNCILLOR ALAN FRIEND,
WALGETT SHIRE COUNCIL**

STATEMENT OF DECISION

Dated: 30 August 2002

INDEX

Background 3

Complaint..... 4

Preliminary Hearing..... 9

Hearing..... 10

Councillor Friend's Evidence..... 12

Conclusion 14

Tribunal's Order 15

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STATEMENT OF DECISION

BACKGROUND

Councillor Friend had been a Councillor of Walgett Shire Council for 13 years and was Shire President for 7 years from 1974 to 1981. He was re-elected to Council at the Local Government General Elections held on 11 September 1999. At the Council's ordinary meeting on 25 September 2000 he was elected as Mayor of the Council.

Walgett Game Meats Processing Works Pty Limited had two issued shares. One was held by Three Regions Opals Pty Limited and the other was held by Tynemar Pty Limited.

Mr Rodney White held one of the two issued shares in Tynemar Pty Limited and the other was held by a son of his, Timothy James White. Mr Rodney White was the sole director of Tynemar Pty Limited.

Councillor Friend's wife's sister was married to Mr Rodney White.

On 31 July 2000 the Walgett Shire Council considered certain business, the details of which are set out below, concerning Walgett Game Meats Processing Works Pty Limited.

On 28 August 2000 certain business was considered by the Council. At that meeting, a Councillor raised a question concerning Councillor Friend's position and as to whether he had a pecuniary interest. Councillor Friend moved a motion, which was subsequently carried, that the matter be referred to the Department of Local Government for investigation and to assess whether he should have declared a pecuniary interest.

The matter thus came to the Department and was the subject of a preliminary investigation.

On 29 November 2000 the Director-General made a complaint, pursuant to s.460(1) of the *Local Government Act 1993*. As required by s.468(1) of the Act, the Director General presented a report to this Tribunal of that investigation. The Tribunal gave notice to the Director-General and Councillor Friend that, after considering the report, it had decided to conduct a hearing into the complaint.

THE COMPLAINT

In accordance with its usual practice, the Tribunal's Notice set forth particulars of the complaint and the allegations made in support of it.

Relevantly, the Notice provided:

"THE MATTER WITH WHICH THE COUNCIL WAS CONCERNED AND THE MEETINGS AT WHICH COUNCILLOR FRIEND WAS PRESENT AT WHICH THE MATTER WAS BEING CONSIDERED WERE:

1. **31 July 2000 - Ordinary Meeting of Council**

1.1 **Background**

- (a) Alan Friend's wife's sister was married to Mr Rodney White. Mr White was one of two directors of Walgett Game Meats Processing Works Pty Limited.
- (b) Walgett Game Meats Processing Works Pty Limited had two

issued shares. One was held by Three Regions Opals Pty Limited. The other was held by Tynemar Pty Limited. Mr Rodney White held one of the two issued shares in Tynemar Pty Limited. The other was held by one Timothy James White. Mr Rodney White was the sole director of Tynemar Pty Limited.

- (c) By letter dated 3 July 2000, Walgett Game Meats Processing Works Pty Limited wrote to the Walgett Shire Council concerning Walgett Game Meat Processing facilities. In the said letter the said company sought assistance from the Council in relation to the upgrade of access to the Walgett Game Meat Processing facilities, and in relation to connection of those facilities to the town's filtered water supply and the installation of a pump and pipeline, it being proposed that repayments of any moneys owing to the Council were to be on agreed terms over a five (5) year period.
- (d) The Acting Director of Engineering Services, Mr Matt McFadyen, prepared a report in relation to the contents of the said letter.

1.2 **Proceedings at the meeting**

- (a) At this meeting the said report of the Acting Director of Engineering Services was received.
- (b) Councillor Alan Friend was present at the meeting.
- (c) At the said meeting a resolution was carried that \$30,000.00 be lent for the construction of roads in relation to the Walgett Game Meats Processing Works at the bond rate plus 1% subject to security with repayment being over five (5) years.
- (d) Councillor Alan Friend took no part in discussions nor did he vote in relation to this resolution.
- (e) At the said meeting it was moved by Councillor Mitchell and seconded by Councillor Alan Friend that further figures be investigated for the provision of filtered water to the Walgett Game Meats Processing Works.

2. **25 September 2000 - Ordinary meeting of Council**

2.1 **Background**

- (a) By letter dated 9 September 2000 to the Walgett Shire Council, Walgett Game Meats Processing Works Pty Limited requested that the Council provide financial assistance in the sum of \$17,000 for the purpose of water improvements for the site of the Walgett Game Meats Processing facilities.

- (b) Mr Kelvin Matthews, the Council's then General Manager, prepared a report in relation to the said application.

2.1 Proceedings at the meeting

- (a) Councillor Alan Friend was present at the meeting. He was elected Mayor at the meeting. He took no part in discussions and did not vote on either of the following resolutions.
- (b) At this meeting a resolution was passed that the Council agree to a loan of \$30,000 to Walgett Game Meats repayable over a five (5) year period in accordance with the terms and conditions of the Deed of Loan Agreement for the purpose of constructing an all weather access road into the Walgett Game Meats Abattoir site subject to mortgage security being determined.
- (c) At this said meeting, a resolution was also carried that the Council consider a request from Walgett Game Meats for a loan of \$17,000 to Walgett Game Meats repayable over a period of five (5) years for the purpose of establishing reliable and secure water improvements to the abattoir site from their own water supply, subject to mortgage security being determined.

3. 30 October 2000 - Ordinary meeting of Council

1.1 [sic] Proceedings at the meeting

- (a) Councillor Alan Friend was present at the meeting. He remained as Chairperson. He took no part in discussions and did not vote on the resolution below.
- (b) Mr Kellett provided a report to the said meeting concerning the application by Walgett Game Meats Processing Works Pty Limited for financial assistance.
- (c) At the said meeting, a resolution was carried that the Council approve the loan of \$17,000.00 to Walgett Game Meats repayable over a five (5) year period in accordance with the terms and conditions of the Deed of Loan Agreement for the purpose of establishing a reliable and secure water supply from its own bore and that security be a bank guarantee in favour of the Council and further authority be granted to sign the Deed under seal.

THE PECUNIARY INTEREST OF COUNCILLOR FRIEND IN THE MATTERS WITH WHICH THE COUNCIL WAS CONCERNED AT THE MEETINGS AS LISTED ABOVE IS ALLEGED TO HAVE BEEN AS FOLLOWS:

Section 442 of the Local Government Act, 1993 provides:

"442 (1) For the purposes of this Chapter, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in section 443.

(2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonable [sic] be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in section 448."

Section 443 of the Local Government Act 1993 provides:

"443 (1) For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the person or
- (b) another person with whom the person is associated as provided in this section.

(2) A person is taken to have a pecuniary interest in a matter if:

- (a) the person's spouse ... or a relative of the person ... has a pecuniary interest in the matter or
- (b) the person ... is a member of a company or other body that has a pecuniary interest in the matter.

(3) However a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2):

- (a) if the person is unaware of the relevant pecuniary interest of the spouse ... relative ... or company or other body or ...
- (c) just because the person is a member of ... a company or other body that has a pecuniary interest in the matter so long as the person has no beneficial interest in any shares of the company or body."

The Local Government Act 1993 provides as follows:

"Relative, in relation to a person, means any of the following:

- (a) the parent ..., sister, ... of the person or of the person's spouse,
- (b) the spouse ... of the person or of a person referred to in paragraph (a)."

4. **The alleged pecuniary interests**

It is alleged that by reason of the foregoing facts, there was a reasonable likelihood or expectation of appreciable financial gain to Mr Rodney White if the Council at its said meetings passed the said resolutions and that Mr White was a relative of Councillor Friend as defined in the said Act.

5. **Alleged contraventions**

"451 (1) A councillor or a member of a council committee who has a pecuniary interest in any matter with which the council is concerned and who is present at a meeting of the council or committee at which the matter is being considered must disclose the interest to the meeting as soon as practicable.

(2) The councillor or member must not take part in the consideration or discussion of the matter.

(3) The councillor or member must not vote on any question relating to the matter."

- (a) It is alleged that Councillor Friend failed to declare a pecuniary interest that [sic] the matters being considered at the meeting of 31 July 2000. It is further alleged that at the said meeting Councillor Friend seconded the second resolution referred to above and took part in discussions of and voted on that second resolution.
- (b) It is further alleged that at the meeting of 25 September 2000, Councillor Friend failed to declare a pecuniary interest in the matters being considered at the said meeting which have been specified above in relation to that meeting.
- (c) It is further alleged that Councillor Friend failed to declare a pecuniary interest in the matters being considered at the meeting of the Council on 30 October 2000."

THE PRELIMINARY HEARING

At the preliminary hearing of this matter on 19 October 2001, Mr Bradford, Counsel for Councillor Friend, told the Tribunal that substantially the allegations against Councillor Friend were admitted, and he indicated that in due course his client would invite the Tribunal to make findings to the effect that Councillor Friend had contravened s.451(1) at the meetings of 31 July, 25 September and 30 October; and that he had contravened s.451(2) and (3) at the meeting of 31 July only.

Mr Bradford indicated that his client would not be relying upon either s.443(3)(a) or s.457 of the Act as any defence. He further indicated that in due course his client wished to be heard and to adduce evidence on the question of what action the Tribunal ought take, if any, by way of penalty, following these concessions.

In the circumstances it is unfortunate that the matter was not able to be dealt with earlier than the hearing, which took place on 12 August 2002. Much of the delay centred around the drafting of the formal concessions and discussions concerning them, between the representatives of Councillor Friend and the Department.

THE HEARING

At the hearing of the matter on 12 August 2002 Councillor Friend and the Department tendered a Statement of Agreed Facts, which became an Exhibit in the proceedings. The Agreed Facts were as follows:

- "1. At the meeting on 31 July 2000, Council considered, discussed and voted on questions relating to a proposal by Walgett Game Meat Processing Works for Council to construct a driveway for that company valued at \$22,500 and to provide further financial assistance to the company in the amount of \$37,500 to assist the company in the construction of roads and the provision of filtered water.
2. At the meeting on 31 July 2000, Councillor Friend participated in the discussion of and voted on a question relating to the proposal by Walgett for Council to provide financial assistance to the company to assist it with

the provision of filtered water to the site.

3. At the meeting on 25 September 2000, Council considered, discussed and voted on questions relating to Council's decision to lend Walgett the sum of \$30,000 for the purpose of constructing an all-weather access road into the company's abattoir [sic] site and to consider a request from the company for a loan of \$17,000 for the purpose of establishing reliable and secure water improvements to the abattoir [sic] site.
4. At the meeting on 30 October 2000, Council considered, discussed and voted on questions relating to Council's decision to lend Walgett the sum of \$17,000 for the purpose of establishing a reliable and secure water supply from their own bore.
5. Councillor Friend was present at the meetings on 25th September 2000 and 30th October 2000 when those matters were considered, discussed and voted on by Council.
6. Rodney White is and was at all material times a "relative" of Councillor Friend within the meaning of Sec 443(2)(a) of the Act, in that he (White) is and was at those times married to Councillor Friend's wife's sister.
7. That, during the period from 31 July to 30 October 2000, Rodney White was a 50% equity participant in Tynemar Pty Ltd.
8. That, during the period from 31 July to 31 October 2000, Tynemar was a 50% equity participant in Walgett.
9. By reason of the facts stated in 7 and 8 above, Rodney White was a 25% equity participant in Walgett during that period.
10. By reason of the facts stated in 6 to 9 inclusive above, Councillor Friend had a "pecuniary interest" within the meaning of Sec 442 of the Act in relation to the matters described in 1 to 4 inclusive above.
11. That, during the period from 31 July to 30 October 2000, Councillor Friend knew that Rodney White was a director of Walgett and he (Friend) could reasonably be expected to have known that Rodney White had money at stake in Walgett.
12. That, during the period from 31 July to 30 October 2000, Councillor Friend had no knowledge as to the amount of money which Rodney White had at stake in Walgett, nor any knowledge as to the nature and extent of Rodney White's financial interest in Walgett."

Counsel for Councillor Friend reiterated that no reliance was placed by his client on either ss.443(3) or 457 of the Act. At the hearing there was tendered, on behalf of Councillor Friend,

four references. The Tribunal also heard evidence from Councillor Friend. On the basis of these references, his evidence, and indeed the whole of the evidence before the Tribunal, it finds Councillor Friend to be a highly dedicated and respected leader of the Walgett Shire community. He is a man of personal integrity and honesty and in the Tribunal's opinion, nothing which has occurred in relation to the proceedings before it casts any doubt on those attributes. Indeed, the way in which the proceedings have been conducted on his behalf, and the evidence which he has given, reinforces, in the Tribunal's view, these qualities.

COUNCILLOR FRIEND'S EVIDENCE

Councillor Friend gave oral evidence before the Tribunal. In the Tribunal's opinion it is clear from that evidence that Councillor Friend and Rodney White were, and had been for many years, close friends who mixed socially together on a frequent basis. Councillor Friend had never had any business dealings with Mr White.

Councillor Friend believed that at one point of time Walgett Game Meats got into financial difficulties and was put up for sale; he believed that Mr White had obtained control of the company. He believed that the proposal being put forward by Walgett Game Meats to the Council was one which was very beneficial to the community of Walgett and its economy.

Councillor Friend did not vote or take part in the discussions on the matters which came before the Council because he was conscious of the fact that he was a friend of Mr White and he just did not want to be part of the discussion or resolution for that reason. A further consideration, so the Tribunal finds, was that because of the beneficial nature of the proposals coming before the Council, Councillor Friend believed that there was no opposition to them, and that they would be passed without his vote in any event.

Councillor Friend did not believe he had a pecuniary interest in the matters before the Council. In the event, that belief was misplaced, and the Tribunal finds that the reason it was misplaced was because Councillor Friend did not properly appreciate the operation of the *Local*

Government Act, although he did appreciate, sufficiently, the underlying facts concerning his wife's sister, her husband, Mr White and Walgett Game Meats. It appears to be the case that he turned his mind to the question of whether his wife's sister had a **direct** financial interest in Walgett Game Meats and came to the conclusion that she would not have been financially involved in that business. To this end, he appears to have relied, in part, upon the material contained in the Local Government and Shires Association of New South Wales "Conflict of Interest in Local Government" Participants Manual, particularly at page 16.

He says that while he did not really, consciously, consider the question of whether or not he had a pecuniary interest before the July 31 meeting, he believed that he had no pecuniary interest and had nothing of that sort to declare.

There was a further meeting of the Council in August, which was not the subject of any complaint concerning Councillor Friend. At that meeting, however, one of the other Councillors raised Councillor Friend's relationship with Mr White in circumstances where there was no doubt that what was being raised and commented upon at the meeting was the question of whether or not Councillor Friend had a pecuniary interest in relation to the Walgett Game Meats business. The General Manager of the Council said that he would have to report the matter to the Local Government Department. Councillor Friend acknowledges that from that meeting he was certainly on notice that the question of him having a pecuniary interest had been fairly raised. Indeed, after the August meeting and before the next relevant meeting, one of his friends who had been in the Public Gallery expressly told him that a pecuniary interest "could involve my wife's sister". Notwithstanding this, Councillor Friend did not seek any professional advice on the question prior to the matter being investigated by the Department.

It should, however, be said that it was Councillor Friend who moved a Motion at the August meeting, that the matter be referred to the Department for investigation and assessment as to whether he should have declared a pecuniary interest.

Councillor Friend acknowledged, in his evidence, that he had breached the Act and that he was extremely embarrassed by that fact. He was of the view that it was absolutely important that the pecuniary interest provisions of the Act be complied with and that the whole integrity of Local

Government was at risk if the legislation was not intact and acted upon. He said that he had a very strong feeling for the integrity of Local Government and that in representing people and in dealing with other people's money, one should be "squeaky clean".

CONCLUSION

Councillor Friend had a pecuniary interest in the matters which were before the Council on 31 July, 25 September and 30 October 2000, as particularised above, in relation to Walgett Game Meats Processing Works Pty Limited. He had such a pecuniary interest by virtue of his wife's sister's marriage to Mr Rodney White, who had the relevant direct pecuniary interest in the business before the Council.

The Tribunal accepts Councillor Friend's evidence as to his belief and accepts that the proposals before the Council had a significant community benefit element to them. It also accepts that neither he nor his wife themselves had any financial gain or interest in those matters before the Council.

On the other hand, this Tribunal has, on more than one occasion, emphasised the importance of scrupulous compliance with the pecuniary interest provisions of the *Local Government Act*. As Councillor Friend said, the "integrity of Local Government is at risk if the legislation isn't intact and acted upon". This requires that Councillors and others who are required to comply with those provisions of the *Local Government Act* ensure that they are thoroughly familiar with their obligations under that Act and the extent of those obligations beyond the more glaring examples of direct financial interest. They should make it their business to be fully informed.

In the present case, accepting Councillor Friend's position and belief, although it was erroneous, prior to the August meeting, there can be no doubt but that, at that meeting, a question was directly raised concerning his "pecuniary interest" in the Walgett Game Meats business, and indeed he moved the resolution that the matter be referred to the Local Government Department for assessment and report. Commendable though the latter course of action was it did not, in the Tribunal's opinion, relieve him of the obligation to himself investigate and, if necessary, obtain professional advice on his position which had been squarely raised at the August meeting. He

did not do so. He ought to have.

The Tribunal is of the opinion that for his lack of diligence in ascertaining the full nature and extent of his obligations under the *Local Government Act*, particularly after 31 August 2000 meeting, Councillor Friend should be reprimanded.

THE TRIBUNAL'S ORDER

The Tribunal's Order is as follows:

1. The Local Government Pecuniary Interest Tribunal finds that a complaint against Councillor Alan Friend of Walgett Shire Council, namely, that at meetings of the Walgett Shire Council on 31 July, 25 September and 30 October 2000, he was present when matters concerning Walgett Game Meats Processing Works Pty Limited were being considered, and he failed to disclose his interest to the said meetings, pursuant to s.451 of the Act, is proved.
2. The Local Government Pecuniary Interest Tribunal, having found that the said complaint has been proved REPRIMANDS Councillor Friend.

The Tribunal's order will be published to Councillor Friend, the Director- General and Walgett Shire Council, forthwith.

Copies of the Tribunal's Statement of Decision will be provided to Councillor Friend and the Director-General in accordance with s.484(1). Pursuant to s.484(3) copies will also be provided to Walgett Shire Council and such other person as the Tribunal thinks fit.

DATED: 30 August 2002

D.P.F. OFFICER QC
Pecuniary Interest Tribunal