

LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

PIT NO 2/1997

DIRECTOR GENERAL, DEPARTMENT OF
LOCAL GOVERNMENT

RE: COUNCILLOR JOHN FREDERICK MILLER,
ORANGE CITY COUNCIL

STATEMENT OF PRIMA FACIE FACTS

From the material contained in the Director-General's Report to the Tribunal of the investigation of the complaint against Councillor Miller it appears to the Tribunal that the following facts would be likely to be established at a hearing:

1. John Frederick Miller was elected as a Councillor of Orange City Council in September 1995. He became a member of the Council's Development and Promotions Committee.
2. At the time of his election, and continuing thereafter, Councillor Miller was a member and held the office of Secretary of the Orange Chamber of Commerce and Industry (OCCI) to which office he had been appointed in November 1994. As Secretary he was a member of the OCCI Executive, attended its meetings and was aware of the affairs and activities conducted by the OCCI. The office of secretary was honorary and Councillor Miller derived no remuneration from it.
3. On 19 August 1996 Councillor Miller was appointed sub-editor of the Orange local newspaper, the Central Western Daily (CWD), and has continued in that employment since that date.
4. In 1994 and 1995 there had been communications between the Orange City Council and the OCCI regarding the possibility of the OCCI with the support of the Council organising a campaign to the public promoting the idea of shopping locally. The OCCI through its

Executive had thereafter endeavoured to develop a plan to put before the Council based upon receiving some financial support from the Council. These endeavours continued into 1996. Progress was regularly reported to the Executive of the OCCI at its meetings. Councillor Miller was present at these meetings.

5. The minutes of the OCCI Executive Meeting of 11 March 1996 record that CWD was keen to be involved in the promotion and that one of the major tasks which had been identified for the promotion was a “Multi-media Campaign involving CWD” and some other named media outlets.
6. The OCCI set up a “Shop Orange” Sub-Committee to organise and further the campaign. On 15 May 1996 the Chairperson of this Sub-Committee wrote to the Council's General Manager, Mr Allen Joseph Dwyer, stating that its objectives were to encourage local people and attract regional people to do their shopping in Orange and suggesting that the Council commit a direct contribution of \$50,000 to the campaign. On 30 May 1996, the President of OCCI, wrote to the General Manager advising that the “Chairperson of the Shop Orange Campaign organised by the Chamber is willing to act as spokesperson for the Chamber.”
7. At a meeting of the OCCI Executive held on 15 July 1996, a budget totalling \$49,000 to get the campaign off the ground was presented. This included costs of \$7,000 for promotional material and \$25,000 for the media. The meeting was attended by the Council's Director, Human Services, Mr Michael Grouse Milston, who informed the meeting that the amount of money being considered by the Council as its contribution was \$10,000 and “the committee will need to lobby Councillors for this amount of support.”
8. On 26 August, representatives of the OCCI's “Shop-Orange” Sub-Committee, at the Council's invitation, made a presentation to a meeting of the Council's Development and Promotions Committee in the course of which a financial contribution from the Council of \$10,000 for the campaign was suggested and it was noted that a

formal submission from the OCCI would be made to the Council. This development was reported to a meeting of the OCCI Executive held on the same date. Councillor Miller was present at both of these meetings.

9. On 25 October 1996 the Chairperson of the OCCI "Shop-Orange" Committee wrote to the Council's General Manager outlining the proposed campaign, setting out details of a budget totalling \$50,000 and making a request for a "direct cash funding contribution of \$10,000." The budget included \$7,000 for printing and \$25,000 for media. It was proposed by the OCCI as part of the campaign program that the CWD would be involved in voluntary pre-launch publicity, sponsorship and paid press advertising.
10. On 31 October 1996 the Council's Director, Human Services wrote to the General Manager a report on the OCCI request for a \$10,000 cash contribution from the Council, attaching the OCCI letter of 25 October 1996 and designating the sources from which the Council could provide the funds. the Report stated that, if the Council wished to support the contribution, the appropriate recommendation to make to the Council would be:
 - “1. That the report be noted.
 2. That Council sponsors the Shop-Orange campaign to the value of \$10,000 to be funded from the Civic Promotions Program.
 3. That the Council be constantly apprised of the progress of this campaign, including the development of performance measures that the Chamber of Commerce will devise prior to, during, and following the campaign.”
11. An Ordinary Meeting of the Council was held on 7 November 1996. The Report of the Director, Human Services was presented to the meeting. A motion was moved and seconded in the terms of the recommendation proposed in the Report as set out above.

An Amendment was moved and seconded that the Council "extend to the Orange Chamber of Commerce an offer to underwrite any shortfall in the Shop-Orange Campaign to a maximum amount of \$10,000, with

this possible contribution being funded from the Civic Promotion Program.”

The Amendment was carried and, on becoming the Motion and being put to the meeting, was also carried.

12. The Executive of the OCCI met on 11 November 1996. Disappointment was expressed at the Council's decision because “up front money” was needed to get the campaign underway. The Chairman of the meeting thanked Councillor Miller, who was attending the meeting, for his “defence of the OCCI” and “acknowledged the difficult position he faced in Council.” It was suggested that members should attend the next Council meeting and also lobby Councillors for support.
13. On 15 November 1996, Councillor Miller and three other Councillors signed a Notice of Rescission Motion for the Council's resolution of 7 November 1996 to be rescinded and gave notice of a Further Motion in terms of the original motion as recommended by the Council's Director, Human Services in his Report.
14. The Council's next Ordinary Meeting was held on 21 November 1996. The Rescission Motion and the Further Motion were both passed with the result that the Council's ultimate resolution was to commit itself to a payment of \$10,00 to the OCCI for the campaign rather than to an undertaking to meet any shortfall up to an amount of \$10,000.
15. At an OCCI Executive Meeting on 25 November 1996 official thanks to Councillor Miller “for his help and effort in changing the decision by the Council” was placed on record.
16. Councillor Miller was present at both of the Council meetings 7 and 21 November 1996. He did not make any disclosure to either meeting of a pecuniary interest in the question of Council providing funds to the OCCI for its “Shop-Orange” campaign.
17. At the Council meeting of 7 November 1996 Councillor Miller participated in the consideration and discussion of the question, supported the Director, Human Services’ recommendation, put forward a strong case for a cash contribution of \$10,000 rather than the

Council underwriting a shortfall, and voted against the amendment of the original motion and, after the amendment was carried, against the amended motion.

18. At the Council meeting of 21 November 1996 Councillor Miller strongly participated in the consideration and discussion of the matter along the same lines as at the meeting of 7 November 1996. He supported the rescission motion and the subsequent motion and voted in favour of both.

DATED: 16 October 1997

A handwritten signature in black ink, appearing to read 'K J Holland', written in a cursive style.

K J HOLLAND Q.C.
Pecuniary Interest Tribunal