

**LOCAL GOVERNMENT PECUNIARY
INTEREST TRIBUNAL**

PIT NO 4/1996

DIRECTOR GENERAL, DEPARTMENT OF LOCAL
GOVERNMENT

RE: COUNCILLOR RAYMOND WADSWORTH
WENTWORTH SHIRE COUNCIL

STATEMENT OF DECISION

Dated: 21 May 1997

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THE COMPLAINTS

In May 1996 the Director-General, Department of Local Government, received two separate formal complaints under section 460 of the Local Government Act, 1993 that two Councillors of the Wentworth Shire Council, Councillor Raymond Wadsworth and Councillor William Wheeldon, had contravened the pecuniary interest provisions of the Act in relation to consideration by the Council at its meeting on 17 April 1996 of the Council's policy and administration with respect to advertising in local newspapers, the "Sunraysia Daily" in particular. The complaint alleged that, under the Act, both of these Councillors had a pecuniary interest in that matter which required them to comply with section 451 of the Act which provides as follows:

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.

Both complaints alleged that Councillor Wadsworth was employed by the Sunraysia Daily as a print compositor and Councillor Wheeldon's brother-in-law was employed by that paper as a journalist and that, consequently, both Councillors had a pecuniary interest in the matter before the Council by virtue of section 443 of the Act which, so far as material, provides as follows:

443(1) ... 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 a provided in this section.**

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

- (a) ... a relative of the person, or ... an employer of the person, has a pecuniary interest in the matter ...**

The word "relative" is defined in the Act in terms which include the brother-in-law of the person.

Section 442(1) of the Act, for the purposes of the Act, defines a pecuniary interest as:

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.

Section 442(2) provides that a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.

The Director-General, having made some preliminary inquiries into the complaints, decided to conduct an investigation into the complaints against Councillor Wadsworth and on 15 July 1996 notified the Tribunal. On 17 March 1997 the Director-General's report of the investigation regarding Councillor Wadsworth was received by the Tribunal. The report was furnished pursuant to the requirements of section 468(1) of the Act.

No notification or report of an investigation of the complaint against Councillor Wheeldon has been received by the Tribunal. It is apparent from material in the report on Councillor Wadsworth that the Director-General exercised the power under section 463 of the Act to decide to take no action on the complaint against Councillor Wheeldon for the reason that it was considered that, although he may have had a conflict of interest in the matter, it did not amount to a pecuniary interest within the meaning of the Act: see Exhibit "A", Annexure 7, pp6.8-7.3. The question of the existence of a pecuniary interest called for different considerations in each case. The question in Councillor Wheeldon's case was whether his brother-in-law would have had prospects of financial gain or loss as a result of whatever decision was made by the Council on its advertising policy, whereas the question in Councillor Wadsworth's case was whether his employer, the Sunraysia Daily newspaper, had such prospects of financial gain or loss. The two questions obviously permitted different answers. This Tribunal has no jurisdiction in relation to conflicts of interest unless the interest in question is a prospect of financial gain or loss within the meaning of section 442 and, where the interest is financial, the Tribunal has jurisdiction only on receipt of a report of an investigation presented to it by the Director-General under section 468(1). Consequently, in the present case the Tribunal is concerned only with the complaints against Councillor Wadsworth although the complaints were made against both Councillors.

After considering the Director-General's report, the Tribunal, pursuant to section 469 of the Act, decided to conduct a hearing into the complaints.

Notice of the Tribunal's decision was given to the parties on 20 March 1997 (Exhibit B). This Notice set forth particulars of the contravention alleged and the issues to be determined by the Tribunal as they appeared from the information contained in the Report. They were as follows:

PARTICULARS of the breach alleged are as follows:

Councillor Raymond Wadsworth, being a councillor who had a pecuniary interest in a matter with which the Council was concerned and being present at a meeting of the Council at which the matter was being considered:

- failed to disclose the interest to the meeting;
 - took part in the consideration and discussion of the matter; and
 - voted on a question relating to the matter
- contrary to the provisions of section 451 of the Act.

The matter with which the Council was concerned and the meeting at which Councillor Wadsworth was present and the matter was being considered was:

17 April 1996 - Ordinary Meeting of the Council.

The matter being considered was whether:

(a)(i) the policy of the Council with respect to the advertising of development applications which had been adopted by the Council on 19 June 1991 (that the advertising be carried out "to Council's best advantage");and

(ii) the practices which had been adopted by the General Manager in pursuit of that policy (which had the result of reducing the previous level of advertising in the "Sunraysia Daily" newspaper)

should be confirmed or changed by the Council; and

(b) the General Manager's actions relating to advertising and the Council's policy (that the General Manager advertise to the Council's best advantage) should be ratified by the Council.

Councillor Wadsworth at this meeting rejected the opinion of the General Manager expressed in a Report of the General Manager which was before the meeting and objections raised by other Councillors that he had a pecuniary interest in the matter which precluded him from participating on the issue at the meeting, did not disclose a pecuniary interest as required by section 451(1) of the Act, took part in the consideration and discussion and voted on the matter contrary to section 451(2) and (3) of the Act.

The Council resolved to adopt the General Manager's recommendation and Council Wadsworth requested that his vote against that resolution be recorded in the Council's Minutes.

The Pecuniary Interest of Councillor Wadsworth in the above matter is alleged to have been as follows:

At the relevant time, Councillor Wadsworth was a printer employed by the publishers of the "Sunraysia Daily" newspaper (the "Newspaper") as a Print Compositor. The business of the Newspaper included the publishing of advertisements for reward. The conduct of the Council's business required certain advertising to be published in newspapers

circulating in the Council's area. The "Sunraysia Daily" was one of three such newspapers in which the Council advertised. The General Manager had been appointed to his position in April 1995. Prior to and after that date the Council's pattern of advertising was such that a large amount of Council advertising was being placed with the "Sunraysia Daily" at a substantial cost to the Council, amounting to about \$26,000 in 1995. The General Manager formed the view that the pattern of advertising was not in accordance with the policy on advertising that the Council had adopted on 19 June 1991 and was resulting in excessive costs. For sometime prior to the meeting of the Council on 17 April 1996 the General Manager had altered the Council's advertising practice with a view to conforming with the policy of 19 June 1991 and reducing advertising costs. The result was to substantially reduce the amount of Council advertising in the "Sunraysia Daily" and the advertising costs paid to that newspaper. The extent of the reduction projected a considerable saving of costs to the Council as well as a substantial loss of income to the Newspaper (amounting in 1996 to about \$20,000).

The matter before the Council meeting on 17 April 1996 (described above) required a decision by the Council whether to adhere to the policy and practices then being followed by the General Manager, revert to the previous pattern of advertising or adopt a new policy. If the recommendation of the General Manager before the meeting were to be adopted by the Council there was a reasonable likelihood or expectation of appreciable financial loss to the Newspaper. Other possible outcomes, such as a decision to revert to the previous practice or adopt a new policy on advertising also presented a reasonable likelihood or expectation of appreciable financial gain or loss to the Newspaper.

It is alleged that Councillor Wadsworth had a pecuniary interest in the matter before the Council within the meaning of section 442(1) of the Act by virtue of that section and section 443(1)(b) and (2)(a) of the Act in that his employer had a pecuniary interest in the matter.

ISSUES

Information contained in the Director-General's Report of the investigation of the complaints which was received by the Tribunal on 17 March 1997 indicates that it is not likely to be disputed that the meeting described above took place, that Councillor Wadsworth was present, that he did not disclose to the meeting the alleged or any pecuniary interest in the matter in question, and that he took part in the consideration and discussion of and voted on the matter. On this basis, the issue for determination by the Tribunal would appear to be:

Whether, in relation to the matter dealt with at the meeting on 17 April 1996, Councillor Wadsworth had at the time of the meeting a pecuniary interest within the meaning of the Act to which section 451 of the Act applied.

If the Tribunal were to find that any contravention of the Act by Councillor Wadsworth has been proved, a consequential issue will be whether any, and, if so, what action should be taken by the Tribunal.

NOTE: The parties are at liberty to submit to the Tribunal that the issues arising out of the complaint are different or that there are other relevant issues not stated above, in which case, they each should specify to the Tribunal what they contend to be the issues to be determined by the Tribunal.

A copy of a Procedures Manual which has been published by the Tribunal was enclosed with this Notice of Decision to Conduct a Hearing for Councillor Wadsworth's information and assistance. This manual explains the Tribunal's functions and procedures and contains extracts from the Local Government Act 1993 of the relevant legislation.

HEARING

The Tribunal conducted a hearing into the complaint on 6 May 1997 in Sydney.

In responding to the Tribunal's Notice to Conduct a Hearing and in subsequent correspondence with the Tribunal prior to the hearing Councillor Wadsworth notified the Tribunal by letter dated 2 April 1997 that he would not be attending and would have no legal representation at the hearing because, he said, it was too far to come and he was unable to afford the expense. He also stated that he believed that he at no time had had a pecuniary interest in the matter in question at the Council meeting of 17 April 1996 and stated reasons for having that belief (Exhibit F).

The Tribunal then advised Councillor Wadsworth by letter dated 10 April 1997 that the hearing would be conducted on the date as previously notified to him and, as required by section 472 of the Act, would be a public hearing. He was also advised by the Tribunal that the Director-General's Report of the investigation of the complaint made against him would be part of the evidence and information taken into account by the Tribunal when considering the question whether the alleged contravention of the Act had been proved. He was further advised that, in view of the fact that he had informed the Tribunal that he would not be attending the hearing and also

believed that he had not had a pecuniary interest in the matter in question, the Report contained evidence and information which, if ultimately accepted by the Tribunal, would leave it open to the Tribunal to conclude that he had committed the contravention of section 451 of the Act alleged and particularised in the Tribunal's Notice of 20 March 1997. The Procedures Manual forwarded to Councillor Wadsworth with that Notice drew particular attention to the provisions of the legislation contained in the manual relating to the conduct of proceedings by the Tribunal and these included the provisions dealing with a party's right to legal representation, to call, examine and cross-examine witnesses, tender documents, adduce evidence and address the Tribunal (Sections 473, 474). This letter from the Tribunal reminded Councillor Wadsworth of those rights, informed him that any matters put forward by him would be taken into account and advised him that he was at liberty personally or by a legal representative to make submissions in writing for the purposes of the hearing or written or oral submissions at the hearing on all relevant issues (Exhibit G).

On 23 April 1997 the Tribunal received a reply from Councillor Wadsworth (Exhibit J(a)) in which he repeated his intention not to attend the hearing but furnished handwritten statements made by a former Councillor Hyde (Exhibit J(b)) and Councillor Wheeldon (Exhibit J(c)) in support of a claim by Councillor Wadsworth that on an occasion some years before the meeting of 17 April 1996 he had been advised by a Mr Stephen Harding, the Council's then Chief Executive Officer, that he did not have a pecuniary interest in the matter of Council's policy for advertising in local newspapers, a claim which Mr Harding had denied. Councillor Wadsworth requested the Tribunal to take into consideration the two statements which he had furnished and he concluded his letter with the following:

Going on the letters you have sent me, I firmly believe you have already found me guilty so there is no point of me going further with this matter.

On 23 April 1997 the Tribunal replied to Councillor Wadsworth as follows:

The handwritten statements of Councillor Wheeldon and former Councillor Hyde enclosed with your letter will be admitted at the hearing

and taken into consideration as requested by you. Copies will be furnished forthwith to the Director-General with a request that Mr Harding be requested to provide a reply or comments in writing for submission to the Tribunal prior to or at the hearing. As already advised, Mr Harding's attendance to give oral evidence may be compelled by summons issued by the Tribunal, you are entitled to challenge his claims and cross-examine him if you wish. You may also tender the oral evidence of yourself, Councillor Wheeldon, former Councillor Hyde and any other witnesses at the hearing.

You concluded your letter by saying, "Going on the letters you have sent me, I firmly believe you have already found me guilty, so there is no point of me going further with this matter."

The Tribunal declines to take offence at this offensive remark because it may merely represent ignorance or misunderstanding on your part of the functions of the Tribunal. As pointed out to you in the Tribunal's letter of 10 April 1997, the law requires the Tribunal to hold a public hearing into the complaints in this case. The Tribunal's determination of the complaints will be made upon the evidence and information tendered to or received by the Tribunal and admitted at the hearing and will be made after the conclusion of the hearing.

In view of the fact that you informed the Tribunal in your letter of 2 April 1997 that you would not be attending the hearing, the Tribunal wrote to you on 10 April 1997 to ensure that you were aware that there was information in the Report that was adverse to your interests and to ensure also that you were aware of your rights and given full opportunity to answer allegations relevant to the question whether there was a contravention of the Act. There has not been and will not be any pre-judgment of the matter by the Tribunal before the hearing. Your suggestion to the contrary is a misconception and simply wrong. Whether you wish to go further with the matter is, of course, entirely your own decision but you should disabuse yourself of the idea that you

may justify yourself on the basis that the Tribunal has already found you guilty. (Exhibit K)

The Tribunal furnished to the Director-General copies of the correspondence with Councillor Wadsworth and the two statements furnished by him requested that Mr Stephen Harding's comments in writing be sought and consideration be given to having Mr Harding present to give oral evidence at the hearing with Councillor Wadsworth being notified accordingly (Exhibit N).

Mr Harding furnished a statement dated 24 April 1997 dealing with the claims made by Councillor Wadsworth and the two statements. (Exhibit M). The Director-General issued a summons from the Tribunal to Mr Harding to attend the hearing to give evidence. Councillor Wadsworth was notified and a copy of Mr Harding's statement was furnished to him (Exhibit N).

Councillor Wadsworth responded by forwarding a letter to the Department of Local Government with a request that the contents of his letter be considered by the Tribunal at the hearing. A copy of this letter was furnished to the Tribunal on 1 May 1997 and admitted as evidence at the hearing (Exhibit O(a) and (b)).

The hearing proceeded on 6 May 1997. The Director-General was represented by Mrs Josephine Kelly of counsel instructed by Mrs Jean Wallace, a legal officer from the Department. Councillor Wadsworth did not appear.

The Director-General's report of his investigation was admitted as evidence before the Tribunal and became Exhibit A.

The Tribunal's Notice of its decision to conduct a hearing and subsequent correspondence between the Tribunal, the Director-General and Councillor Wadsworth were received into evidence as Exhibits B to O, inclusive. They need not be further detailed at this stage.

The only other documents tendered at the hearing were copies of the declarations of the poll taken at the general election of Councillors for the Shire of Wentworth on 26 September 1987 and 14 September 1991 which became Exhibits P(a) and (b) respectively and a map showing the town and districts of the Wentworth Shire (called Wentworth, Curlwaa, Dareton,

Buronga and Gol Gol) and depicting the locations at which the newspapers "New South Western Standard", "Sunraysia Daily" and "Mildura Independent Star" were produced and the locations where those newspapers could be purchased or were available for collection. The plan was admitted as Exhibit Q.

The Director-General called Mr Stephen John Harding to give sworn evidence before the Tribunal.

The Director-General's report (Exhibit A) contained the two complaints to the Director-General, one by Councillor Austin Peter Nunan dated 3 May 1996, the other by Councillor Francesco Cannizzo dated 9 May 1996, both verified by statutory declaration, a copy of a letter dated 28 May 1996 from the Director-General to Councillor Wadsworth inviting him to comment on the allegations, Councillor Wadsworth's response dated 11 June 1996 and transcripts of interviews conducted by investigation officers of the Department of the Council's General Manager Mr David John McMillan on 5 August 1996, Councillor Wadsworth, Councillor Nunan and Councillor Cannizzo on 6 August 1996 and Mr Stephen John Harding, then being the Director, Corporate Services, Cabonne Shire Council, on 22 January 1997.

The report also contained a memorandum dated 29 November 1996 from Mr Harding to one of the Department's investigating officers setting forth his then recollection of the circumstances in which he had given advice to Councillor Wadsworth on the question whether he had a pecuniary interest in relation to consideration by Council of its advertising policy and the advice Mr Harding had given.

The report contained copies of other relevant documents.

The evidence given by Mr Harding at the hearing was the only oral evidence received by the Tribunal in the matter.

The proceedings at the hearing were recorded in a written transcript, references to the page and line numbers of which will be prefixed in this Statement of Decision by the letter "T".

BACKGROUND TO THE COMPLAINTS

It is necessary to provide an outline of the background to the complaints against Councillor Wadsworth as established by the evidence and information before by the Tribunal at the hearing. The Shire of Wentworth is in the southern part of New South Wales bordering the Murray River near the Victorian town of Mildura. The Shire has a population of 7,260 and it's Offices are located at Wentworth. Major growth areas in the Shire are the towns close to the Victorian border such as Buronga and Gol Gol. The Council of the Shire has occasion to advertise from time to time applications to the Council for development, building and other approvals, proposals for Council works and services, calls for tenders for Council works and services and numerous other items of Council business. The Shire is serviced by three regular newspapers:

- The "NSW Standard Bulletin" which is based at Wentworth and can be purchased or subscribed to for a donation of 50¢ per weekly edition. According to Councillor Wadsworth the paper prints 600 copies for local distribution: (Exhibit O(a)).
- The "Sunday Star Independent" which is based at Mildura and is a free newspaper published on Sundays. According to Councillor Wadsworth approximately 14,000 papers are printed (Exhibit O(a)) and according to Councillor Cannizzo the paper is home delivered to residents of Mildura and is available in outer areas as a free paper (Exhibit A, Annexure 8, p5).
- The "Sunraysia Daily" which is based at Mildura and is sold at the price of 60¢ per copy. According to Councillor Wadsworth the newspaper prints approximately 9,000 copies five days except Saturdays when 12,500 to 13,000 copies are printed and the paper is widely distributed on both sides of the border (Exhibit O(a)).

Mr Harding was an officer of the Council from 1985 and, after being Acting Chief Executive Officer, became its Chief Executive Officer in April 1990.

Council Meeting 19 September 1990

In 1990 when Mr Harding was Chief Executive Officer the Council was advertising development applications once each in the Sunraysia Daily, the New South Western Standard and the Mildura Independent News over a 14 day period. At the Council's August meeting in that year Councillor Hyde and another Councillor moved that a report be submitted on the cost of advertising each development application three times in each paper circulating in the area. A report was subsequently submitted to the Council and came before the Council meeting on 19 September 1990. The report dealt with the feasibility of repeat publishing in those newspapers having regard to the number of times the newspapers were published in the required advertising period and the increase in advertising costs to the Council compared to Council's income from development fees. The Council passed a resolution that "In future all development applications be advertised three times in the Sunraysia Daily and once each in the Mildura Independent Star, Mildura mid-week, and New South Western Standard." This resolution was moved by Councillor Hyde and the other Councillor who had requested the report: (Exhibit A, Annexure 14). This new policy was followed over the next nine months until a progress report on the advertising of development applications was made to the Council at its meeting on 19 June 1991.

Council Meeting 19 June 1991

The progress report at that meeting showed that under the advertising policy that had been adopted on 19 September 1990, the cost of advertising had become 2 1/2 times greater than the development application fees paid to the Council for the applications advertised. In considering the report, the Council resolved, Councillor Hyde being one of the movers, that "The Manager, Development and Environmental Planning advertise to Council's best advantage and (a) consider raising development application fees at next Estimates; (b) set different standards for advertising for different types of development." (Exhibit A, Annexure 15)

Councillor Wadsworth was not a member of the Council at the time of either of these advertising policy decisions by the Council. As mentioned earlier, he was not elected until 14 September 1991.

Mr David John McMillan first came to be employed by the Council in January 1993. In 1995 Mr Harding's contract expired and was not renewed by the Council. He stayed on until April 1995 when Mr McMillan was appointed as the Council's General Manager.

On becoming General Manager Mr McMillan reviewed the costs which the Council was incurring and one item which caused him concern was the high level of advertising costs. He found that the Council's administrators were advertising in line with the Council's resolution of 1990 instead of the policy decided in 1991 and that the frequency of advertising had been extended to all advertisements and not just the development applications in respect of which those policies had been decided. He found that all advertisements were being advertised three times in the Sunraysia Daily as well as being advertised in other newspapers and decided that the expenditure on advertising in the Sunraysia Daily was excessive. He took steps to reduce the amount of advertising in that newspaper to what he considered to be normal and in line with the 1991 resolution of the Council. (Exhibit A, Annexure 5, p1.10 - 2.3; Annexure 17, p15).

Council Meeting 17 January 1996

After the amount of advertising in the Sunraysia Daily had been reduced by Mr McMillan, Councillor Wheeldon raised a question at a meeting of the Council held on 17 January 1996. At the time for questions without notice Councillor Wheeldon asked why the Council had not been advertising in the Sunraysia Daily for some time. The Minutes of the meeting record that, "Due to Councillor Wheeldon's question, Councillor Ray Wadsworth left his seat declaring a pecuniary interest in the matter." (Exhibit A, Annexure 16).

When interviewed, Councillor Wadsworth told the investigators that he had spoken to the General Manager about the reduction in advertising in the Sunraysia Daily after former Councillor Hyde had drawn it to his attention and

had told the General Manager that that newspaper was the only recognised newspaper that was widely distributed and that, "If it was not distributed it could be brought out that there's a possibility that other Councillors ... could get work out of it because there's no one going to see the advertising and I suggested to the General Manager he might be becoming political about it and he got a bit upset about that and I asked him to bring it to Council on two occasions. Finally it went to Council.": (Exhibit A, Annexure 6, p3.2, p13.2).

In the course of bringing the advertising under control, Mr McMillan sent a memorandum to senior Council staff directing them that in the future advertising was not to occur without his written authorisation or in his absence the authorisation of the Manager, Corporate Services. They were directed that if both were absent the managers should use their own commonsense but their action had to be ratified upon his return: (Exhibit A, Annexure 13). Mr McMillan told the investigators that he came under "A fair bit of pressure" to keep on advertising in the same way as before he reduced the advertising. He said that the pressure was coming basically from two Councillors in particular, Councillor Wheeldon and Councillor Wadsworth. He said that he had a number of discussions with Councillor Wadsworth who was under the impression that Mr McMillan was "Following the line of the Mayor and that I was not doing what I should be doing as General Manager." He said that as a result he decided to put before the Council the Council's policy and what he was doing to follow it and let the Council decide what they wanted their policy to be and how it should be administered: (Exhibit A, Annexure 5, p2; Annexure 17). In the result Council's policy for advertising became an item of business for the Council to consider at its meeting on 17 April 1996. For the purpose of that meeting Mr McMillan prepared a "General Manager's Report" that was put before the meeting on that date.

Council Meeting 17 April 1996

The General Manager's Report (Exhibit A, Annexure 17) contained an introduction to the matter in the following terms:

The issue of advertising, and more particularly, advertising in Sunraysia Daily has come to the point where something needs to be said. In the

first place, it seems to me that only two Councillors are concerned with the advertising issue. Both those Councillors have pecuniary interests in the matter and cannot, or should not, raise the matter in Council. I have received no requests from other councillors or members of the public for this Council to increase, or even advertise in Sunraysia Daily.

I am however told by various people outside the Council that “The knife is out for you because you won’t advertise in Sunraysia Daily” or I am told that I am a tool of the Mayor. I have also been warned off by one Councillor for getting “politically involved”. To have such emotions evoked by merely not advertising in Sunraysia Daily seems to me to be an over reaction to what is merely an administrative matter.

The Report went on to set out Council's advertising policy for development applications decided by the Council at the meeting of 19 June 1991 to which reference has already been made. A copy of the Minutes of the Council meetings of 19 September 1990 and 19 June 1991 were attached to the Report for the information of Councillors. The Report stated that the General Manager had been following the policy laid down on 19 June 1991 by ensuring that Council's advertising was carried out to Council's best advantage. The Report explained that when he took over the General Manager's position he had discovered that the Council's advertising was being carried out in accordance with the 1990 resolution instead of the 1991 decision and was being applied to all Council advertising even though the resolutions in question had related only to development applications. The Report detailed the costs to the Council of placing all advertisements three times in the Sunraysia Daily. The monthly costs for each month of 1995 were listed, totalling \$25,165. The figures showed that for the 11 months January to November 1995 the costs of advertising in the Sunraysia Daily, averaging over \$2,000 a month, had come down to \$627 for December 1995. The Report continued:

I am therefore of the view that I am complying with the letter, and the intent of the Council in seeking to place our advertising to the best

interests of the Shire. There are others who appear to be following another path different to the letter and intent of Council's decision.

Those persons have a personal axe to grind which, while associated with the subject of advertising, is being used for much wider personal attacks on both myself and the Mayor.

The Report went on to deal with the question of "future policy":

Now that this matter has come to a head, Council needs to decide what its future policy is to be, if it intends to change its current policy. The current policy applies purely to development applications and I believe that it should extend to all other advertising.

After outlining the Council's statutory and other advertising requirements the Report continued:

My action in reducing advertising in the Sunraysia Daily was firstly to reduce the costs and secondly to assess whether it had any adverse reaction on the public and the ratepayers. I have certainly reduced the cost, and the only reaction I have had is from two Councillors. No member of the general public, no ratepayer has indicated to me, or to the staff any dissatisfaction with the current method of advertising. People have been aware of development applications and all other statutory advertising has been carried out.

The Report concluded with the recommendation that the Council ratify the General Manager's actions relating to advertising and that the Council's policy remain that "The General Manager advertise to Council's best advantage."

The Minutes of the meeting record that on the motion of Councillors Nunan and Cannizzo, the Council resolved that the General Manager's recommendation be adopted. They also record that Councillor Wadsworth and Councillor Wheeldon requested that their vote be recorded against the motion.

Information given to the investigating officers by Councillors Nunan and Cannizzo, the General Manager and Councillor Wadsworth himself (Exhibit A, Annexures 5, pp3, 4; 6, pp6 - 7; 7, p1 - 2 and 8, p5) establishes

that, before the advertising policy issue went to the vote at this meeting, strong objection was taken by Councillor Nunan to Councillors Wadsworth and Wheeldon participating in the debate. Councillor Nunan rose on a point of order to object on the ground that they both had a pecuniary interest in the matter. He told the investigators that Councillors Wadsworth replied by denying that he had a pecuniary interest because, "Steve said so," Steve being Mr Harding, the former Chief Executive Officer.

Councillor Wadsworth told the investigators that before the meeting he had spoken to Councillor Hyde and a couple of other people about the pecuniary interest question and they put it to him that he had been present four years ago when he had been told by Mr Harding and other Councillors that he did not have a pecuniary interest in relation to the Council's advertising policy. He claimed that they advised him that there was no reason for him to withdraw from the debate. Councillor Wadsworth said to the investigators, "So under that basis well I thought, well I thought if I didn't have one, a pecuniary interest, then, why should I have one now." Councillor Wadsworth went on to tell the investigators that he had retaliated to the suggestion that he had a pecuniary interest in the matter by suggesting to the Mayor that the Mayor was the only one to possibly have a pecuniary interest because the outcome of the proposed advertising policy could give him more work if there was no advertising in the Sunraysia Daily. Councillor Wadsworth added that the Mayor became "very irate" about it and an argument developed at the meeting. (Exhibit A, Annexure 6, p3).

Councillor Wadsworth explained to the investigators that the reason for his attack on the Mayor was because the Mayor was an electrical contractor and would be advantaged over other electrical contractors in tendering for work for the Council if fewer competitors became aware of work that would be available for tender because of a reduction of advertising in the Sunraysia Daily. (Exhibit A, Annexure 6, p3.7)

Regarding Councillor Wadsworth's denial of a pecuniary interest at this meeting, Councillor Nunan told the investigators that the Councillors had received the General Manager's Report a week before the meeting but,

although the General Manager had brought their pecuniary interest to their attention in the Report, both Councillors Wadsworth and Wheeldon chose to remain in the room and debate the issue. (Exhibit A, Annexure 7, pp1-2). In making their complaints, both Councillors Nunan and Cannizzo asserted that the General Manager had given Councillors Wadsworth and Wheeldon advice before the meeting that he considered that they had pecuniary interests in the matter and had repeated that advice in his report to the meeting, but they had chosen to ignore it. (Exhibit A, Annexures 1 and 2).

Councillor Cannizzo, who was the Deputy Mayor, considered that both Councillors had a “definite and unambiguous” pecuniary interest. He told the investigators, “I was absolutely flabbergasted that they actually took part in the debate and then voted ... and had their vote recorded against the motion.” (Exhibit A, Annexure 2, Annexure 8, p5.8).

When interviewed by the Department's investigating officers, Councillor Wadsworth's response to the fact that the General Manager had asserted in his Report to the Council that he and Councillor Wheeldon had a pecuniary interest was to impugn the bona fides of the General Manager, the Mayor and Councillor Nunan. He told the investigators that he was under the impression that by putting the suggestion that they had a pecuniary interest the General Manager was “Getting political” at the time and that “There was a vendetta out against Bill and myself.” (Exhibit A, Annexure 6, p8.6). He went on to tell them that he was “100 per cent certain” that the saving of money had nothing to do with the General Manager's recommendation to the meeting. He repeated his accusation that the move to reduce advertising was calculated to benefit the Mayor's business. (Exhibit A, Annexure 6, p9.10). Later, he accused the Mayor of being against the Sunraysia Daily because the newspaper was not giving him enough publicity, he was not getting his photograph in the paper and he was all the time “Having a go” at the photographer and one of the journalists. He said, “Because he's not getting his name in the paper very much these days I know he's forever having a go at the Sunraysia Daily over that and that could be an influence (on) his decision.” He also claimed that it was the Mayor who had decided

that the Council was not going to be advertising in the Sunraysia Daily. (Exhibit A, Annexure 6, p12.8).

As to Councillor Nunan's point of order, he told the investigators that Councillor Nunan had raised it because "We (himself and Councillor Wheeldon) knew they wanted us out of the room so they could walk it through." (Exhibit A, Annexure 6).

POTENTIAL AND ACTUAL IMPACT OF THE COUNCIL'S DECISION ON THE "SUNRAYSLIA DAILY"

The General Manager's Report to the Council meeting made it clear that his reversion to the Council's 1991 advertising policy and the application of that policy to all Council advertising would mean a substantial reduction in the Sunraysia Daily's advertising income from the Council. The General Manager's actions had already resulted in a considerable reduction and, as the General Manager told the investigators, "Certainly there'd be an impact on Sunraysia Daily - they wouldn't get as much advertising as they were getting before" if the Council adopted his recommendation to the meeting. (Exhibit A, Annexure 5, p2).

Councillor Wadsworth told the investigators that at the time of the meeting he considered that Council's advertising in the Sunraysia Daily should have remained as it previously had been but he acknowledged that he was aware that if the General Manager's actions and recommendation to the meeting was adopted by the Council there would be less advertising revenue for the Sunraysia Daily. (Exhibit A, Annexure 6, p12.7, p13.3)

At the Department's request, the General Manager prepared a comparison of the Council's advertising costs between 1995 and 1996. It showed that advertising costs in the New South Western Standard and the Mildura Independent Star remained about the same but the costs of advertising in the Sunraysia Daily were reduced from \$26,283 in 1995 to \$6,410 in 1996. (Exhibit A, Annexure 20).

DID COUNCILLOR WADSWORTH HAVE A PECUNIARY INTEREST? FINDINGS

There is no dispute that Councillor Wadsworth was an employee of the Sunraysia Daily within the meaning of the Act. (Exhibit A, Annexures 4, p1; 10 and 11). When he declared a pecuniary interest at the Council meeting of 17 January 1996 he did so on the express ground that he was an employee of that newspaper. He was still an employee at the time of the meeting of 17 April 1996.

The question then is whether the Sunraysia Daily had a pecuniary interest in the matter before the Council at that meeting because, if his employer had pecuniary interest, Councillor Wadsworth must, by law, be taken to have had a pecuniary interest in the same matter: Section 443.

In the Tribunal's view, there is no room for doubt that the Sunraysia Daily had a pecuniary interest in the matter. The newspaper had been deriving a substantial revenue from Council's advertising before the General Manager had intervened to reduce it in order to bring it into line with what he considered to be the policy laid down by the Council in 1991. The General Manager's actions had greatly reduced the paper's revenue from the Council. The issue which he put before the Council for decision was whether its 1991 policy be affirmed and the actions taken by him in administering that policy be ratified or a new policy be adopted by the Council. In the context of the dispute about the level of advertising in the Sunraysia Daily, the only likely new policy, if any, would be one either increasing the then amount of advertising in that newspaper or restoring it to its former level.

The Sunraysia Daily was faced with the prospect that if the Council endorsed the 1991 policy and the General Manager's current administration, the severe loss of revenue already suffered would be likely to continue but an increase of revenue could be expected if the Council decided to restore its previous practice or adopt some new policy. As the figures for Council's costs of advertising in the Sunraysia Daily in 1995 and 1996 show, the amount of revenue involved was considerable. Whichever way the Council might resolve the issue, there was a reasonable likelihood or expectation of

appreciable financial gain or loss to the newspaper hanging on the outcome. The interest which that gave the newspaper in the matter could not be said to have been remote or insignificant.

It must be concluded, therefore, that the Sunraysia Daily had a pecuniary interest in the matter within the meaning of section 442 of the Act and that, by virtue of section 443(1) and (2)(a), Councillor Wadsworth, as its employee, is to be taken as having had a pecuniary interest in the matter. The Tribunal finds accordingly.

DEFENCE UNDER SECTION 457

Section 457 provides that a person does not commit a breach of section 451 of the Act if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

As the Tribunal has had occasion to rule in previous cases, (Councillor Roberts, PIT1/1995, 3 August 1995, pp48-51; Former Councillor Fisk, PIT1/1996, 12 November 1996, p51), this section is concerned with a person's knowledge of facts not their beliefs or opinions. It calls for an objective test. If the person knows all the relevant facts which would give the person a pecuniary interest, it is no defence to say, "I did not know that those facts would give me a pecuniary interest in the matter" or, "Although I knew those facts, it was nevertheless my belief that I did not have a pecuniary interest."

As the evidence before the Tribunal already mentioned proves, Councillor Wadsworth knew all the relevant facts including the fact that the future revenue of the Sunraysia Daily from Council advertising hung on the outcome of the meeting and that the loss of revenue would be substantial if the Council adopted the General Manager's recommendation. Councillor Wadsworth's position as an employee of the Sunraysia Daily in relation to the question of a pecuniary interest in the matter had been forcefully brought to his attention and the attention of the meeting by the General Manager's report and Councillor Nunan's point of order. Councillor Wadsworth's claim

to have been influenced to an opposite belief by advice he alleges had previously been given to him by Mr Harding and the advice of some other Councillors is no denial of his knowledge of the facts which gave him a pecuniary interest under the Act and, in the Tribunal's opinion, cannot be used to found a defence under section 457.

In the Tribunal's view, the defence of honest and reasonable mistake which had been held to be available to answer a charge of an offence against the Local Government Act, 1919 is not applicable to a complaint of contravention of the 1993 Act (See the **Roberts' case** mentioned above, at pp51-53) but, even if it had been available, it could not have been established on the facts of the present case.

CONTRAVENTION OF SECTION 451. FINDING

Councillor Wadsworth has not disputed and the evidence proves that at the Council meeting on 17 April 1996 he rejected all suggestions and declined to declare that he had a pecuniary interest in the matter before the meeting, took part in the consideration and discussion of the matter and voted on it. As the Tribunal has found that he did have a pecuniary interest, the Tribunal further finds that by his actions he contravened section 451 of the Act and that the complaints against him must be upheld.

ACTION BY THE TRIBUNAL - SECTION 482(1)

Section 482(1) of the Act provides that the Tribunal may, if it finds a complaint proved, counsel or reprimand a Councillor, suspend a Councillor from civic office for up to two months or disqualify a Councillor from holding civic office for up to five years.

In the Tribunal's letter of 10 April 1997 to Councillor Wadsworth (Exhibit G) his attention was drawn to the provisions of this section and to his right to address the Tribunal by written submissions prior to the hearing or by oral or written submissions at the hearing on the question of what action if any the Tribunal ought to take under that section in the event that the complaints against him were found to have been proved. Councillor Wadsworth has made no response on that question but the Tribunal will now

proceed to consider for itself the explanations and reasons for his actions which Councillor Wadsworth has at various times put forward that are contained in the evidence and information admitted before the Tribunal at the hearing. The Tribunal will also take into account submissions on this question which were made by counsel for the Director-General at the hearing.

The explanations and reasons advanced by Councillor Wadsworth fall roughly into four categories: (1) his actions were for the public good; (2) he relied and acted on advice received from others; (3) he was resisting adversaries on the Council; and (4) ignorance. They will be considered by the Tribunal under those headings but it should be made clear that in the Tribunal's view none of them are relevant on the question whether Councillor Wadsworth committed the breach of the Act which was the subject of the complaint made against him. They go solely to the question of what action, if any, should be taken by the Tribunal in consequence of the breach.

Action for the Public Good

In various ways Councillor Wadsworth has said that he was driven to oppose the change in Council's advertising practices by public interest considerations. He said that he believed that all Council advertising should be done as widely as possible and that he had been told by people in the Local Government Department that it should be done in the most widely distributed newspaper in the area. He was opposed to reducing the amount of advertising in the Sunraysia Daily because residents in the Buronga and Gol Gol areas would not then learn of tenders, building applications and other works which had hitherto been advertised in that newspaper and some residents of the Shire would not be properly informed of all of the Council's activities. (Exhibit A, Annexure 4; Annexure 6, pp4-5). He said that at the time of the Council meeting of 17 April 1996 he believed that there was no reason to change the previous system of advertising in the Sunraysia Daily (Exhibit A, Annexure 6, p12) and, as earlier mentioned, he claimed that the real reason for the Mayor's and the General Manager's desires to reduce

advertising in the Sunraysia Daily was not a matter of cost but the ulterior purpose of advancing the Mayor's own business interests.

When asked by the investigators whether the reduced advertising would disadvantage residents in the Shire or the Council, the General Manager rejected the suggestion on the basis that he had received no complaint from any residents or ratepayer or from any Councillors except Councillors Wadsworth and Wheeldon. He said that all Council tenders and the like continued to be advertised in the Sunraysia Daily but his instructions to the staff were to advertise applications which were peculiar to only one area in the newspapers in that area but not necessarily in the Sunraysia Daily unless the development or matter in question affected Buronga or Gol Gol. He claimed that the advertising actually being carried out under the new practices was proper and adequate. (Exhibit A, Annexure 5, p6; Annexure 17).

The differences in the points of view of Councillor Wadsworth and the General Manager do not require to be resolved by the Tribunal. Even if Councillor Wadsworth was right, that could not justify him for failing to comply with the provisions of section 451 if he had a pecuniary interest. It has long been settled in relation to pecuniary interest legislation that non-compliance is not excused by honest motives, good intentions or perceptions of a public duty to participate in the matter if there is a pecuniary interest. Cases in which this principle was decided were referred to in **Councillor Robert's case** (above, at pp54-56) and need not be repeated here. In any event, the fact that all of the Councillors except Councillors Wadsworth and Wheeldon supported the General Manager's recommendation must throw doubt on Councillor Wadsworth's assertions that the advertising then being done was inadequate and did not serve the interests of the Shire and the Council.

Advice Received from Others

Councillor Wadsworth has repeatedly claimed that he was justified in his actions because he had been advised by Mr Harding when he was Chief Executive Officer of the Council that he did not have a pecuniary interest in

the matter of Council's advertising policy although he was employed by the Sunraysia Daily. (Exhibit A, Annexure 4, Annexure 6, pp2, 3, 7; Exhibits F, J(a) and O(a)). In terms of time, Councillor Wadsworth has said in 1996 that it was four years ago and in 1997 that it was approximately five years ago thereby placing the event sometime in 1992. He has also repeatedly claimed that the occasion on which the advice was given was a meeting and that other Councillors, Councillors Wheeldon and Hyde in particular, were present and the question under discussion was the policy to be followed by the Council in its newspaper advertising. He has also asserted that because on that occasion Mr Harding advised him that he did not have a pecuniary interest in that subject matter he "stayed and voted on the policy." (Exhibit A, Annexure 4).

Neither Councillor Wadsworth nor Councillors Wheeldon and Hyde who support him, have been able to fix a date when this event occurred and no Council Minute of any meeting dealing with the policy on advertising prior to 1996 at a time when Councillor Wadsworth was on the Council has been found.

Councillor Wadsworth asserted that it was a meeting "when Council originally set the policy" (Exhibit A, Annexure 4). Councillor Wheeldon also refers to the meeting as a "policy meeting" attended by Mr Harding. (Exhibit J(c)). Mr Hyde claims that he sat next to Councillor Wadsworth at the meeting and it was in the last Council prior to the present Council. (Exhibit J(b)).

The only Council records of Council meetings before 1996 at which a policy on advertising was decided that can be found are the Minutes of the meetings held on 19 September 1990 and 19 June 1991 both of which occurred before Councillor Wadsworth became a Councillor (Exhibit A, Annexures 14, 15).

Mr Harding has consistently denied that he has ever advised Councillor Wadsworth that he did not have a pecuniary interest in relation to the Council's newspaper advertising policy.

The first one to check with Mr Harding was the General Manager. After the Council meeting of 17 April 1996 the General Manager got in touch with Mr Harding to find out whether he had given the advice claimed by Councillor Wadsworth. Later when interviewed by the Department's officers he told them, "Well I subsequently contacted the former General Manager who said to me that he certainly didn't give him that advice - Steve Harding who was the former General Manager told me that he told Councillor Wadsworth that he did have a pecuniary interest, rather than he didn't." (Exhibit A, Annexure 5, pp3.8-4.1; p7.10)

On 28 November 1996 one of the investigators also checked with Mr Harding (Exhibit A, Annexure 18) and received a signed written memorandum from Mr Harding dated 29 November 1996. (Exhibit A, Annexure 19). Mr Harding's memorandum stated that he recalled that after he became Chief Executive Officer of Wentworth Shire Council a number of reviews of Council's policies had been conducted. He said that he was unable then to recall the exact time that the Council's advertising policy was reviewed but believed that it was late 1990 or early 1991. The memorandum stated:

My recollection is that Councillor Wadsworth had sought clarification as to whether he would have a pecuniary interest in the Council's advertising policy and I advised him that, as he worked for the Sunraysia Daily, any impact on the amount paid by Council in relation to advertising to that newspaper could indeed lead to a pecuniary interest on behalf of himself as withdrawal or increase of a large amount of advertising funding by Council could have an impact on staffing levels at the Sunraysia Daily.

The memorandum also stated that whenever he was asked advice on pecuniary interest matters by Councillors at Wentworth he always urged them to err on the side of caution and if in doubt to seek independent legal advice.

The Department's investigators conducted an interview with Mr Harding on 22 January 1997. He was asked whether the information contained in his memorandum of 29 November 1996 was still correct. He affirmed that the advice given to Councillor Wadsworth was as he had stated

in his memorandum but he had since confirmed that the dates of consideration of the Council's advertising policy that he was referring to in the memorandum were 19 September 1990 and 16 (sic) June 1991. He said that he had incorrectly assumed that at that time Councillor Wadsworth was on the Wentworth Council whereas he was not elected until September 1991. He told the investigators that although he could not recall the date, the exact circumstances or whether there was anyone else present at the time, he did recall having had the conversation and the advice that he gave. He said:

I have clear recollection to the advice that I gave Councillor Wadsworth because there was one area where it took a little bit of explaining to let him know that he did have a pecuniary interest and I had to use the example that because of the amount of advertising which I think was in the vicinity of \$30,000 to \$40,000 per annum, that equated roughly to the equivalent of one person's salary, so that if that amount was withdrawn it could impact on a staff cut and that could be him so that there was that type of detail and degree given. It was possibly one of the most obvious pecuniary interest situations I had while I was at Wentworth. (Exhibit A, Annexure 9, pp2.3-3.5)

In his statement dated 24 April 1997 (Exhibit M) forwarded to the Director-General in response to Councillor Wadsworth's letter and the statements provided by Councillor Wheeldon and former Councillor Hyde (Exhibit J(a)(b)(c)), Mr Harding reaffirmed his earlier recollections as to the advice he had given Councillor Wadsworth and that he could not recollect the exact time or circumstances except for the fact that it had been a long and difficult discussion with Councillor Wadsworth. He rejected the allegations by Councillor Wheeldon and Mr Hyde as to the advice they claim he had given to Councillor Wadsworth. He pointed out that although Councillor Wheeldon's statement alleged that the discussion in question had taken place at a time that the Sunraysia Daily was the only newspaper receiving local advertising for the Shire, the Council had always advertised in other local newspapers as well during Mr Harding's period of employment at Wentworth Shire Council. The Council's Minutes which are before the

Tribunal support Mr Harding's recollection against that of Councillor Wheeldon. (Exhibit A, Annexures 14, 15, 17)

In responding to Mr Harding's statements of 24 April 1997 Councillor Wadsworth wrote to the Department (Exhibit O(a)) stating that he would like to bring to the Tribunal's notice that "I fully deny the remarks of Mr Stephen Harding, former CEO of the Wentworth Shire. I now consider Mr Harding a hostile witness, because now I believe he has not forgotten his past at Wentworth Shire where myself and ex-Councillor Geoff Hyde and also Councillor Bill Wheeldon spoke out in Council and also publicly about his ability as CEO of the Shire and were probably the reason his contact was never renewed."

Mr Harding's sworn evidence at the hearing affirmed the statements he had previously made on the matter. He confirmed that Mr McMillan telephoned him regarding the claim made by Councillor Wadsworth and that he had told Mr McMillan that he recalled having a conversation with Councillor Wadsworth in which he had advised Councillor Wadsworth that he did have a pecuniary interest: T7/49-T8/9. Although not able to recollect where the discussion had taken place or if it was at a Council meeting he had a clear recollection of Councillor Wadsworth asking his advice as to whether he had a pecuniary interest in "the matter of advertising (policy), while he was employed with the Sunraysia Daily": T8/51-58.

Asked to give some detail of the discussion that had taken place, Mr Harding mentioned a number of aspects of the discussion which would have made it memorable. He said that it was a fairly lengthy discussion because Councillor Wadsworth had a habit of seeking opinions and then when the opinion didn't suit him arguing against it so that when he advised Councillor Wadsworth that he would have a pecuniary interest the discussion became drawn out as Councillor Wadsworth disputed it. He said that when he gave Councillor Wadsworth the example of loss of advertising revenue equivalent to the salary of a staff member, Councillor Wadsworth argued that he had nothing to do with the advertising section of the Sunraysia Daily, that he was in typesetting and they would still need a typesetter even if there was a loss

of revenue: T9/2-46. Mr Harding said that he pointed out to Councillor Wadsworth that, "Even though he was in a different section he was still employed by the Sunraysia Daily and for that reason he would still have a pecuniary interest." T10/43.

Mr Harding's attention was drawn to the fact that there had been a change in the legislation during his time at the Council and after Councillor Wadsworth's election to the Council. He told the Tribunal that although he did not recall the exact time of the conversation he believed that it would have been before the new Act came into force: T13/27.

The new Act was the Local Government Act 1993 which commenced on 1 July 1993 replacing the Local Government Act 1919 in which the relevant provisions were in section 46C. That section contained provisions similar to those in section 451 of the new Act but referred to a member of a Council having "any pecuniary interest, direct or indirect" in any matter with which the Council was concerned. Sub-section (3)(b)(ii) of section 46C provided that for the purposes of the section the person should be regarded as having an indirect pecuniary interest in a matter if the person was in the employment of a person who had a direct or indirect pecuniary interest in the matter under consideration. Mr Harding was asked whether in advising Councillor Wadsworth he had made it clear to him that he could have a pecuniary interest in the matter in question by reason of the fact that his employer had a pecuniary interest in the matter. Mr Harding swore that this is what he had told Councillor Wadsworth at the time. Mr Harding was also asked whether he had shown a copy of the legislation to Councillor Wadsworth and he gave the following evidence:

Q. Did you refer to the provisions of the legislation at all in this conversation?

A. Usually when I was asked or had a disagreement with the Councillor in relation to an interpretation I would actually show him a copy of the legislation. That was my usual practice. Whether I specifically did it in this case I can't recall, but it was a usual practice to refer to the Act.

Q. Do you have a clear recollection of telling him that you considered that he had a pecuniary interest because he was employed by the newspaper?

A. Yes. (T14/43-58)

Whilst he was in the witness box the accounts given by Councillor Wadsworth, Councillor Wheeldon and former Councillor Hyde on the occasion and the advice allegedly given by Mr Harding to Councillor Wadsworth were put specifically to Mr Harding but he adhered to his own recollection: T18/14-T23/33. On the specific allegation that Mr Harding had advised Councillor Wadsworth that he did not have a pecuniary interest in relation to Council's advertising policy, Mr Harding swore, "I am sure that I didn't give that advice.": T21/48.

As well as relying on the advice he alleges he was given by Mr Harding, Councillor Wadsworth also sought to explain his actions on the basis that when he discovered the General Manager had put up a question of the Council's advertising policy for the meeting to be held on 17 April 1996 he started asking questions about his possible pecuniary interest in the matter. In his letter of 11 June 1996 to the Director-General he stated that he had then been advised by other Councillors and ex-Councillors that he had been present "at the setting of the original policy four years prior". He also said that he had contacted the Department of Local Government and had been told that he "Unless I had a direct financial interest or reward I did not have a pecuniary interest." He claims in his letter that he had also contacted other business people for their views and not once did anyone suggest that he had an interest. He said, "My employment is on the night production staff of this paper only and I do not have any dealings with the advertising department or the management of the firm." (Exhibit A, Annexure 4). When interviewed he repeated these claims to the investigators. When he told them he had "contacted the local government people" he was asked to identify the person to whom he spoke. He said, "Oh I've got no idea, I didn't ask names." He told them that he had asked this person about pecuniary interest matters and the person said, "Well usually it's based on the financial gains that you get

out of the thing.” He went on to say, “And I said I’ve got no financial gains out of it so I went ahead with what I did four years ago.” (Exhibit A, Annexure 6, p4.3-4.10)

The Tribunal is not prepared to accept Councillor Wadsworth’s claim that Mr Harding advised him that he would not have a pecuniary interest in the matter of Council's advertising policy. There are a number of reasons. There are unsatisfactory features of the claim itself. The advice is said to have been given not only at a Council meeting but a Council meeting at which its advertising policy was originally decided. The only meetings which could answer that description of which there is any record are the meetings that took place in 1990 and 1991 before Councillor Wadsworth was elected to the Council. Neither Councillor Wadsworth nor his two supporters were able to describe the subject matter of the business before the Council at the time except to say the Sunraysia Daily was the only newspaper advertising the Council's matters at the time of the meeting and the proposal being considered was whether two other newspapers should be allowed to come in and advertise Council's works. (Exhibit A, Annexure 6, p2.4). At the time of the alleged advice Mr Harding was in charge of the Council's administration and he has sworn to the Tribunal that there never was a time when the Sunraysia Daily was the only newspaper receiving Council advertising. Moreover he has sworn that the policy issue before the Council was not the question of advertising in more newspapers, the only issue was whether there should be repeat advertising in the same newspapers because the Council always advertised in more than one: T22/52; T23/19-33. As mentioned earlier, the evidence in the Council Minutes that was before the Tribunal and the evidence of the General Manager supports Mr Harding’s recollections.

There is also to be taken to account that the unsworn assertions by Councillor Wadsworth and his two supporters have to be weighed against the sworn evidence of Mr Harding to the contrary.

Another factor that weighs with the Tribunal is that in the Tribunal's opinion Mr Harding’s evidence is the more credible. The question whether Councillor Wadsworth would have had a pecuniary interest in a decision by

the Council on its newspaper advertising policy, in particular, a decision which could affect the advertising revenue of the Sunraysia Daily newspaper, was straightforward. It involved two simple considerations, namely, whether the Sunraysia Daily stood to gain or lose financially according to the outcome and whether Councillor Wadsworth was an employee of the Sunraysia Daily. From the material before the Tribunal there could only have been an affirmative answer to both questions. In the Tribunal's opinion, the existence of a pecuniary interest in Councillor Wadsworth would have been so clear that it is not credible that Mr Harding or anyone else in his position would have advised Councillor Wadsworth that he did not have a pecuniary interest. As Mr Harding said to the Department's investigators, it was "one of the most obvious pecuniary interest situations" that he had encountered.

Section 483 of the Act provides that a finding of the Pecuniary Interest Tribunal is to be made on the balance of probabilities. On the evidence before the Tribunal it is far more probable Mr Harding told Councillor Wadsworth that he did have a pecuniary interest in the matter than that he would have advised him that he did not. The Tribunal therefore does not accept Councillor Wadsworth's explanation whereby he seeks to attribute his actions to advice given to him by Mr Harding.

The Tribunal also is not prepared to deal with the matter on the basis that Councillor Wadsworth had been advised by an officer of the Department of Local Government prior to the meeting on 17 April 1996 that he would not have a pecuniary interest in the matter of Council's advertising policy that was to come before the meeting on that date. Firstly, Councillor Wadsworth does not state the facts that he put to the departmental officer that led to the alleged advice. Secondly, the existence of his pecuniary interest in the matter coming before the meeting was so clear that if the relevant facts had been properly put before an officer of the Department, it is not credible that the officer would have given the inadequate and loose form of advice attributed to the officer by Councillor Wadsworth or that the officer would not have advised him immediately that, under the Act, as an employee of a person with a pecuniary interest, he would have had a pecuniary interest in

the matter and been required by the Act to declare his interest and refrain from participation.

Resisting Adversaries on the Council

In addition to his allegations that the General Manager in bringing the Council's advertising policy up to the meeting for decision was siding with the Mayor and becoming political and that the General Manager's recommendation to the meeting was not driven by considerations of the costs of advertising, Councillor Wadsworth told the investigators that he believed that the General Manager's statement in his report that he and Councillor Wheeldon had pecuniary interest in the matter were vamped up because "there was a vendetta out against Bill (Wheeldon) and myself." (Exhibit A, Annexure 6, p8.6). To substantiate this suggestion he later told the investigators that he believed there was a vendetta in the Council against him because after his re-election in September 1995 he was proposing to oppose Councillor McKinnon for the office of Mayor and Councillor Nunan warned him that he was "Going to be very sorry and my political career is down the chute." Councillor Wadsworth went on to say that since then Council business had been conducted on a personal basis, not on the merits, and he had got to the stage where he was certainly not going to run again. (Exhibit A, Annexure 6, p15).

When the existence of Councillor Wadsworth's pecuniary interest was so plain to see, for Councillor Wadsworth to resort to suggestions that the General Manager and other Councillors had ulterior or improper motives for raising the matter appears as a somewhat desperate attempt at self-justification for his breach of the law. The suggestions are obviously not relevant on the question whether a breach occurred and, in the Tribunal's view, have no merit as a justification for the conduct of Councillor Wadsworth which is the subject of the present complaints.

Councillor Wadsworth sought to cast a similar slur upon the motives of Mr Harding by informing the Department of Local Government that he considered Mr Harding a "hostile witness" because criticisms by himself, ex-

Councillor Hyde and Councillor Wheeldon of Mr Harding's ability as Chief Executive Officer of the Shire "were probably the reason his contract was never renewed," the obvious implication of this remark being that, in denying their allegations about the advice he had given, he was motivated by spite or revenge and therefore should not be accepted as a truthful witness.

However, the Tribunal cannot be expected to give weight or credence to such an implication when Councillor Wadsworth has declined the opportunity of cross-examining Mr Harding, giving sworn evidence or calling Councillor Wheeldon or Mr Hyde as witnesses at the hearing. As well, he has chosen to avoid being himself open to cross-examination on his allegations. In the Tribunal's view Councillor Wadsworth's unsupported imputations against the veracity of Mr Harding as a witness should be disregarded.

Ignorance

Councillor Wadsworth professed to the investigators that, in addition to his having been influenced by the advice given to him by others, his contravention of the Act was to be explained on the ground of his ignorance of the legislation.

In speaking of his reaction to Councillor Nunan's point of order at the Council meeting on 17 April 1996, Councillor Wadsworth, after referring to the policy meeting at which he alleged Mr Harding had advised him that he did not have a pecuniary interest, said to the investigators:

And also after speaking to Councillor Hyde and a couple of other people about pecuniary interest matters - I couldn't think where I had a pecuniary interest - oh you know I knew I was close - I must admit I knew I was fairly close to being borderline I suppose, but if I was there for the first one, how can I have - and my interpretation of the pecuniary interest Act was unless I can get a financial gain from it, or benefit, there wasn't a pecuniary interest.

He was then asked whether he was aware of the section which imputes or gives him a pecuniary interest in a matter if his employer has a pecuniary interest. (Exhibit A, Annexure 6, p7.3). His reply suggested that he had only become aware of that section when one of the investigators had brought it to

his notice on the phone. He added, "I am not one to go and read the Act. I know one of the Councillors, Councillor Nunan seems to be every time we mention something he goes through a book, but I don't think he doesn't know himself anyway." (Exhibit A, Annexure 6, p7.8). He was then asked to say how he would go about determining whether or not he had a pecuniary interest in a matter that came before the Council. He answered:

Well until I spoke to Glenn (one of the investigating officers) on the phone about bringing up my employer now becomes like if he can get a benefit out of it, or I can receive a direct benefit, that's what I thought, but because I have no relationship with any of the other staff on a daily basis or a weekly basis or whatever nor do I have anything to do with decisions made at the firm at all. I am no foreman, I am no - I am just an employee who does what he's told. And have no influence on any the decisions that Sunraysia Daily makes, I didn't think I had an interest at all that way. (Exhibit A, Annexure 6, pp7.10-8.3)

Councillor Wadsworth also suggested that, if he had been in error because he had not been well informed on the subject, the General Manager was to blame. He said, "I suppose if you're going to blame someone, I suppose you've got to blame the General Manager for not informing us." (Exhibit A, Annexure 6, p8.3-8.5; p14.9)

Councillor Cannizzo told the investigators that he believed that the Council had been provided with sufficient information for all the Councillors to be aware of what their obligations were under the Act and that the Department's circulars to Council on pecuniary interest came through at various times. Councillor Cannizzo expressed the view, "So there's no reason that a Councillor doesn't know, or doesn't think or thinks he doesn't know." (Exhibit A, Annexure 8, p3.8-4.1)

In his interview Councillor Wadsworth did not suggest that circulars providing information was not distributed to Councillors but he indicated that he didn't read them. He said that he supposed he should but that over the last 12 months he had been unhappy with what was going on in the Council and "I suppose I have neglected a little bit in my Council responsibilities." It

was in this context that he made the remark that the General Manager had to be blamed for not informing Councillors of their obligations. (Exhibit A, Annexure 6, p14.8).

Although Councillor Wadsworth's remark about blaming the General Manager was no doubt intended to be general it failed to acknowledge the particular efforts made by the General Manager to bring home to Councillor Wadsworth the existence of his pecuniary interest in the matter which was to be debated at the meeting of 17 April 1996.

On the subject of Councillor Wadsworth's knowledge of his position with regard to Council's advertising policy as a result of his being employed by the Sunraysia Daily, it is to be recalled that at Council's meeting of 17 January 1996, when Councillor Wheeldon questioned why the Council had not been advertising in the Sunraysia Daily, Councillor Wadsworth immediately declared an interest and left the room. It may be inferred that Councillor Wadsworth was aware of the inconsistency of his conduct on that occasion with his directly opposite conduct at the meeting of 17 April 1996 because in his letter of explanation to the Director-General dated 11 June 1996, Councillor Wadsworth said, "The reason was that at the time I forgot about being present at the setting of the original policy." (Exhibit A, Annexure 4).

When asked by the investigators why he had declared a pecuniary interest at the Council meeting in January, Councillor Wadsworth replied:

Well it was a spur of the moment. Bill brought it up - Bill was cranky and I could see that on his face and he said he's not going to let them get away with that sort of thing and he brought it up and straight away because I forgot about this original policy thing, is just a spur of the moment type thing - I got up and declared a pecuniary interest straight away - and left the room. In hindsight I believe I should have stayed there maybe - I don't know. But on a spur of the moment thing I declared because of the paper. (Exhibit A, Annexure 6, p6.1)

The words "because of the paper" signify a recognition by Councillor Wadsworth at that time that his position as an employee of the Sunraysia

Daily gave him a pecuniary interest in a matter in which his employer clearly had a pecuniary interest, namely, a reduction by the Council of the amount of Council advertising in the newspaper owned by his employer. As indicated earlier, Councillor Wadsworth claims that he was afterwards persuaded by advice of other Councillors to the contrary of his own knowledge and instinctive assessment of his position that, because of his employment, he would have a pecuniary interest in matters affecting the Council's advertising policy in relation to the Sunraysia Daily.

In the light of his own explanation for his conduct at the meeting of 17 January 1996, the Tribunal does not accept that Councillor Wadsworth was not aware at the time of the meeting on 17 April 1996 that, if the Sunraysia Daily had a pecuniary interest in the matter before the Council, he was deemed to have a pecuniary interest in that matter by virtue of the fact that the Sunraysia Daily was his employer.

CONCLUSION - REASONS

After careful consideration the Tribunal has decided that, in the light of its findings, a period of disqualification from civic office should be imposed on Councillor Wadsworth for his contravention of the legislation. In the Tribunal's opinion, the other options provided by section 482(1), counselling, reprimand or suspension from office for two months, would not in this case adequately serve the public interest in having the pecuniary interest provisions of the Act enforced by the Tribunal.

In the circumstances in which it occurred the Tribunal must regard Councillor Wadsworth's contravention as a serious breach of his legal obligations as a Councillor. There was a clear case on simple facts of a Councillor having a pecuniary interest in a matter before the Council in respect of which his pecuniary interest and duty to abstain had been forcefully brought to his attention both before and at the meeting, yet in an apparently blatant disregard of the law, he refused to acknowledge his pecuniary interest and persisted in participating in the matter. There are two aspects of principal concern to the Tribunal. One is the public interest in the

matter. The other is Councillor Wadsworth's fitness to hold the office of Councillor.

One of the objects of the legislation is the promotion of public confidence in the conduct of local government affairs by seeking to ensure that decisions will not be or appear to be based upon or influenced by the financial interests of the persons making them. For this purpose the legislation has stipulated that in certain specified circumstances a Councillor will be deemed to have a pecuniary interest if associated in a particular way with another person who has a pecuniary interest in a matter. The association of employee and employer is one of them. In the interests of certainty and avoidance of debate about whether, in such a case, the employee may or may not be influenced by the association, the Act simply directs that, for the purposes of the legislation, the employee is then "taken to have a pecuniary interest in the matter," thus putting beyond speculation the question whether the employee's decision might have been influenced by his employer's interests. Against this background, plain to see, Councillor Wadsworth's failure to comply with the law was calculated to undermine the public confidence in the exercise of powers in local government which the Act seeks to achieve.

The question of an elected Councillor's fitness to hold the office of Councillor is not one lightly to be considered and the Tribunal always hesitates to conclude that disqualification is called for in any case. However, there are elements of Councillor Wadsworth's conduct and attitude to his obligations as a Councillor in relation to pecuniary interests which call for a sanction which demonstrates that they are not acceptable in a Councillor. Firstly, Councillors are to be expected to take the trouble to acquaint themselves properly and adequately with their legal obligations as Councillors, particularly in respect to pecuniary interests. Councillor Wadsworth is by profession a printer and has shown by his correspondence with the Department and the Tribunal that he suffers from no reading or comprehension disability. A cursory reading of the pecuniary interest provisions of the Local Government Act, 1919 or 1993, would have

acquainted him at least with the obligations of a Councillor that arise from an employee/employer relationship such as existed here, yet, when asked by the investigators if he was aware of the section, his only explanation was to say, "I am not one to go and read the Acts" and to then go on to denigrate a fellow Councillor for doing so. There were other sources of information available to him such as Departmental publications but he indicated to the investigators that he was not in the habit of reading them although he "supposed" that he should.

Councillor Wadsworth told the investigators that his interpretation of the Act was that unless he got a financial gain there wasn't a pecuniary interest. If he had read the Act he could not possibly have come to that conclusion. If he meant to convey that he had arrived at that interpretation as a result of advice he had been given, the Tribunal has rejected his claim that such advice came from Mr Harding and has found it highly improbable that, properly informed by Councillor Wadsworth of the facts, a departmental officer could have given such advice. This leaves only advice from the Councillors and other persons he says he consulted. To accept and act on such advice without having read the Act or other relevant publications or sought advice from an informed and competent source, such as an independent legal adviser, and to have disregarded the views of the Council's General Manager was simply irresponsible. He would have been bound to reject advice that he did not have a pecuniary interest if he had taken the trouble to properly inform himself of his obligations. A Councillor who fails to perform obligations in relation to pecuniary interests cannot expect to be excused from the consequences by the kind of deliberate ignorance and selective acceptance of advice which Councillor Wadsworth displayed in this case.

Councillor Wadsworth's reaction in declaring a pecuniary interest and withdrawing from the meeting of 17 January 1996 is difficult to explain unless, in fact, he was aware of his legal obligations as an employee of the Sunraysia Daily to abstain from participating on questions of the Council's advertising policy or practices. If he was aware of his obligations his later professions of

ignorance are false and it is more likely than not that he has deliberately chosen to blame the advice of others for a course of action which he was determined to follow knowing that it was or might be a contravention of the Act. In the Tribunal's opinion, such conduct is not worthy of a Councillor and is made worse by Councillor Wadsworth's attempts to justify himself by attributing improper motives to the General Manager and other Councillors for raising the issue of his pecuniary interest and afterwards, when he ignored their objections, pursuing the present complaints against him. The inescapable conclusion in this case is that Councillor Wadsworth has brought these proceedings upon himself and has done so by conduct demonstrating his present unfitness for the office of Councillor.

ORDER

The Tribunal's Order is as follows:

The Local Government Pecuniary Interest Tribunal **HAVING FOUND** that complaints against Councillor Raymond Wadsworth of Wentworth Shire Council that he had a pecuniary interest in a matter before a meeting of the Council on 17 April 1996, being consideration of the Council's policy on Council advertising in local newspapers, and, in contravention of section 451 of the Local Government Act, 1993, failed to disclose such interest to the meeting, took part in the consideration and discussion of and voted on the matter have been proved **NOW ORDERS** pursuant to section 482(1) of the Act that Councillor Raymond Wadsworth be and he is hereby disqualified from holding civic office for a period of two years from the date of this Order.

FURTHER MATTERS

Reference was made at the hearing to section 276(2) of the Local Government Act 1993. (T33/33-36/38). That section provides that a person who vacates the office of councillor by disqualification may not be elected to civic office in the same area, and may not hold or act in a civic office in the same area, until the first ordinary election after the person ceases to be disqualified. Sections 234(c) and 275(1)(g) appear to apply section 276(2) to

the case of a councillor disqualified by order of this Tribunal under section 482(1). Assuming that to be the case, an order disqualifying a Councillor under section 482(1) would operate to preclude re-election in the same area until the next ordinary election even if the period of disqualification expired before then. Of course, if the period of disqualification expired after the next election it would preclude re-election till the next election after that unless there was an earlier by-election. This may not have been the intended result of a disqualification by this Tribunal for a specified period under section 482 but section 276(2) would seem to have that incidental effect. In the present case the Tribunal has considered it proper to assess the period of disqualification for Councillor Wadsworth's contravention by reference to the maximum period of five years and so as to reflect the Tribunal's view of the seriousness of the contravention in comparison to a worst case scenario. The next ordinary Council election will be in September 1999 and the disqualification period will expire in May 1999 so that Councillor Wadsworth will not be ineligible for re-election to the Council in 1999 if he wishes to stand. The Tribunal has treated that situation as an incidental result but not as one by which the Tribunal should measure the appropriate period of disqualification in this case.

The Tribunal desires to record that in dealing with these complaints the Tribunal has paid regard only to matters concerning Councillor Wadsworth that have been referred to in the Statement of Decision. If he had attended the hearing other matters may have been pursued but as he elected not to appear they have been disregarded by the Tribunal.

The Tribunal's order will be furnished to Councillor Wadsworth, the Director-General and the Wentworth Shire Council forthwith.

Copies of the Tribunal's Statement of Decision will be provided to Councillor Wadsworth, Councillors Nunan and Cannizzo and the Director-General in accordance with section 484(1). Pursuant to section 484(3)

copies will also be provided to the Wentworth Shire Council and such other persons as the Tribunal thinks fit.

DATED: 21 May 1997



K J HOLLAND Q.C.
Pecuniary Interest Tribunal