

**LOCAL GOVERNMENT PECUNIARY  
INTEREST TRIBUNAL**

PIT NO 1/1997

DIRECTOR-GENERAL, DEPARTMENT OF  
LOCAL GOVERNMENT

RE:: COUNCILLOR DAVID ALLAN YORK,  
BARRABA SHIRE COUNCIL

***STATEMENT OF DECISION***

Dated: 2 October 1997

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RE: COUNCILLOR DAVID ALLAN YORK,  
BARRABA SHIRE COUNCIL

## ***STATEMENT OF DECISION***

### **DIRECTOR-GENERAL'S REPORT**

As required by section 468(1) of the Local Government Act, 1993, the Director-General has presented to the Tribunal a Report of the investigation of a complaint made by the Director-General under section 460 of the Act against Councillor David Allan York of Barraba Shire Council.

The complaint was that Councillor York may have contravened section 451 of the Act by reason of his participation in the consideration and discussion of a matter before the Council at meetings held on 24 January 1996 and 9 February 1996 concerning the future use of the Barraba Post Office building.

On 20 January 1997 the Director-General gave notice under section 465 of his decision to investigate that complaint.

The Tribunal received his Report on 4 September 1997 and, having considered the Report, decided to conduct a hearing into the complaint. The Report is Exhibit A in the proceedings.

## **PROCEDURE**

As it appeared to the Tribunal from the Report that the relevant facts might not be in dispute, a Statement of Prima Facie Facts (Exhibit C) was furnished to the parties on 11 September 1997 for their consideration together with a Notice proposing a course of action by the Tribunal to deal with the matter if the parties were in agreement on the facts (Notice to Parties: Exhibit B. Letters: Exhibits D & E).

The parties have notified the Tribunal that they concur in the Tribunal's statement of facts and the procedure proposed (Director-General, letter 18 September 1997: Exhibit F. Councillor York, letter 22 September 1997: Exhibit G).

In consequence of their concurrence, the Tribunal notified the parties on 24 September 1997 that a hearing would be conducted on Thursday 2 October 1997 at the hearing rooms of the Commercial Tribunal in Sydney. The Notice informed the parties of certain findings which the Tribunal proposed to make at the hearing and invited them to make written submissions on any of the matters to be determined by the Tribunal, including what action, if any, the Tribunal should take under section 482 of the Act on a finding by the Tribunal that the complaint had been proved. The parties were advised that whilst they were at liberty to attend the hearing and make oral submissions it was not necessary for them to attend unless they wished to do so (Exhibits H & J).

On 29 September 1997 the Director-General advised the Tribunal that a representative of his Department would attend the hearing to assist the Tribunal as may be required by the Tribunal but that he declined to make any written or oral submissions on the question of action by the Tribunal under section 482 (Exhibit K).

On 30 September 1997 Councillor York notified the Tribunal that he did not intend to make any submissions and that he would not be attending the hearing. (Exhibit L).

## **THE TRIBUNAL'S FINDINGS**

On the basis of the material contained in the Director-General's Report, the acceptance by the parties of the facts as set forth in the Statement of Prima Facie Facts and the admissions made therein by Councillor York and affirmed by him in his letter to the Tribunal dated 22 September 1997, the Tribunal finds that, on the question whether Councillor York contravened section 451 of the Act in relation to the meetings in question, the material facts and events were as set forth in paragraphs 1 to 9 inclusive of the Statement of Prima Facie Facts. They are to be taken to be incorporated here. A copy of that Statement is annexed to this decision.

As those facts show, the matter before the Council meetings for consideration was whether the Council should seek to acquire by purchase or lease the Barraba Post Office building for the purpose of ensuring that postal services to be provided in the Shire in the future under licence from Australia Post could be provided by the proposed licensee from the existing post office building under some arrangement to be made between the Council and the licensee if the Council acquired the building.

At the time of the meetings Councillor York had been in negotiation with Australia Post's proposed licensee and had agreed to lease to the proposed licensee at the rental of \$100 per week a building owned by Councillor York as an alternative building to the existing post office building in the event that the proposed licensee was unable to come to a satisfactory arrangement with Australia Post for the use of that building.

The Tribunal finds that, by reason of his agreement with the proposed licensee, Councillor York had a reasonable likelihood or expectation of appreciable financial gain or loss according to whether the Council decided to reject or adopt the proposal to purchase or lease the post office building to enable the licensed post office services to be conducted from that building. The Tribunal concludes that Councillor York therefore had a pecuniary interest in the outcome of that matter before the Council within the meaning of

section 442(1) of the Act. The Tribunal further finds that this interest was not so remote or insignificant that it could not reasonably be regarded as likely to influence any decision by Councillor York in relation to the matter: See section 442(2).

The statement of facts contains an account of an announcement made by Councillor York to the meeting of 24 January 1996 concerning his dealings with the proposed licensee. It also describes objections to the proposal before the Council for a possible purchase or lease of the post office building which were expressed by Councillor York at the meeting whilst it was still in progress. In the opinion of the Tribunal, Councillor York's announcement amounted to a disclosure to the meeting of his pecuniary interest in the matter within the meaning of section 451(1) of the Act; but the Tribunal finds that, in expressing to the meeting his objections to the proposal, Councillor York took part in the consideration or discussion of the matter in contravention of section 451(2) of the Act.

With regard to the meeting of 9 February 1996, the facts show that Councillor York was present but failed to make any statement to that meeting disclosing his continuing pecuniary interest and that he spoke and conducted himself at the meeting in a manner which, in the opinion of the Tribunal, amounted to participation in the consideration or discussion of the matter which was before the meeting. The Tribunal finds, therefore, that Councillor York thereby contravened sections 451(1) and (2) at this meeting.

On the above findings, the Tribunal concludes that the complaint against Councillor York has been proved.

## **ACTION BY THE TRIBUNAL**

Section 482(1) of the Act provides as follows:

- "482. (1) The Pecuniary Interest Tribunal may, if it finds a complaint against a councillor is proved:**
- (a) counsel the councillor; or**
  - (b) reprimand the councillor; or**
  - (c) suspend the councillor from civic office for a period not exceeding 2 months; or**

**(d) disqualify the councillor from holding civic office for a period not exceeding 5 years.”**

In the Statement of Prima Facie Facts annexed to this decision, paragraph 10 deals with the motives and explanations for Councillor York's actions. Paragraph 11 sets out facts that relate to Councillor York's attitude to his obligations and to the conduct which is put in question by the complaint. As mentioned earlier, the parties have indicated to the Tribunal their agreement on the facts as stated in these paragraphs.

As the Tribunal has had occasion to point out in a number of previous decisions, the legislation prescribes the conduct required of Councillors and other specified persons where they have a pecuniary interest in a matter before the Council. If a pecuniary interest exists, good motives, convictions about what would best serve the public interest or the absence of dishonest motives do not exonerate those persons from compliance with the legislation or excuse the contravention if they conduct themselves contrary to the restrictions laid down. However, the Tribunal has also pointed out that such matters may be relevant to the question of what sanctions ought to be imposed under the Act when a complaint is proved.

The Tribunal finds that the facts relevant to the question of sanctions in the present case are those set forth in paragraphs 10 and 11 of the annexed Statement of Prima Facie Facts and takes those facts into account here.

The facts show that, although Councillor York would have benefited financially if the postal licensee had been forced, or had come to elect, to take a lease of Councillor York's building because he had not been able to obtain a satisfactory arrangement for occupation of the existing post office building, Councillor York's actions were not initiated or driven by a desire for personal gain. It is apparent from the facts that Councillor York supported the aspirations of the community, his fellow Councillors and the proposed licensee for Barraba's postal services to continue to be provided from its existing post office. His own personal preference was for the existing post

office to be used for the licensed postal services. He also displayed a civic interest in maintaining the character and activities of Barraba's main street where the post office was located, an interest which he had fostered as a main project on the Council for some years. He had offered to rent his own building to the licensee not as a first choice but as a back-up and a lever for the licensee to use in his attempts to negotiate with Australia Post for the post office building. He did not seek to divert the licensee from the licensee's own preference for the post office building.

Whilst Councillor York's objections at the meeting of 24 January 1996 against the Council's giving consideration to its purchasing or leasing the post office building from Australia Post could appear to have been self-serving, in that he would have lost the chance to let his own building if the Council succeeded in acquiring the post office, the Tribunal infers from the facts that his objections were based on civic considerations, namely, that the acquisition would have been commercially and practically unsound for the Council and, therefore, not in the Shire's best interests.

Councillor York's conduct at the meeting of 9 February 1996 was capable of being seen as an attempt to serve his own interests by sabotaging the efforts then being made by the Council to procure, by reason and negotiation with Australia Post's representatives who were at the meeting, some arrangement by which the post office building might be retained for the postal services; but, on the facts, the Tribunal accepts that his conduct was induced by anger and frustration at what he perceived to be intransigence on the part of Australia Post.

The Tribunal accepts that Councillor York's offer to the proposed licensee after that meeting to reduce the rent to \$80 per week if the licensee were to take a lease of Councillor York's building was an attempt by Councillor York to improve the licensee's bargaining power with Australia Post rather than an attempt to woo the licensee away from the post office building.



In considering sanctions for conduct in contravention of the Act, possible public perceptions of the motives for the conduct in question are, in the opinion of the Tribunal, not to be overlooked. The public, especially the local community, will naturally tend to make its own judgement about motives for conduct and, if unaware of all the facts, may get it wrong. If Councillor York had prospects of leasing his own building to the licensee if the use of the post office could not be procured by the Council, the public could be forgiven for concluding that he was, or may have been, serving his own interests in opposing the Council's efforts. In either case, public confidence in the performance by Councillors of their civic duties could thus be undermined. Councillor York should have been aware of this at the time. It is to his credit that he afterwards acknowledged that his conduct had not presented a favourable image of the behaviour of Councillors in the performance of their public duties. He himself said that he considered that his conduct had been "wrong". He expressed regret and apologised to the Mayor for his actions. He expressed the same attitude to the Department's investigators when interviewed and has since repeated that attitude to this Tribunal.

In the Tribunal's view, another matter for consideration is that Councillor York was at all times completely open with his fellow Councillors about the dealings he was having at the time with the proposed licensee. He made no attempt to conceal the possibility of his having a pecuniary interest in the matter and made a point of mentioning the fact at the outset of the first Council meeting called to consider the possibility of Council acquiring the post office. He also co-operated fully with the Department's investigation and frankly answered all questions about his conduct and motives that were put to him.

Finally, the Tribunal takes into account Councillor York's long period of service, 16 to 17 years, on the Council.

## **CONCLUSION**

For the foregoing reasons, the Tribunal does not consider that the public interest requires in the present case the sanction of disqualification or suspension from civic office for which the legislation provides. Counselling by the Tribunal is not appropriate here because it is clear that Councillor York was well aware of his statutory obligations in regard to pecuniary interests although he slipped in his performance of them on this occasion. The Tribunal considers that, in all the circumstances, disapproval of Councillor York's contraventions would be sufficiently expressed by a reprimand.

## **ORDER OF THE TRIBUNAL**

The Tribunal orders that Councillor David Allan York of Barraba Shire Council be and he is hereby reprimanded for his contraventions of section 451 of the Local Government Act, 1993 by his participation in matters relating to the Barraba Post Office building whilst having a pecuniary interest in such matters at meetings of the Council on 24 January and 9 February 1996.

The Tribunal's Order will be furnished to Councillor York, the Director-General and the Barraba Shire Council forthwith.

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

## **SCHEDULE**

Statement of Prima Face Facts provided by the Tribunal to the parties on 11 September 1997 and attached hereto as an appendix to this Statement of Decision.

Dated: 2 October 1997



**K J HOLLAND Q.C.**  
**Pecuniary Interest Tribunal**

# **LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL**

PIT NO 1/1997

DIRECTOR GENERAL, DEPARTMENT OF  
LOCAL GOVERNMENT & CO-OPERATIVES

RE: COUNCILLOR DAVID ALLAN YORK,  
BARRABA SHIRE 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 York it appears to the Tribunal that the following facts would be likely to be established at a hearing:

1. In the period October/November 1995 there had been correspondence between Australia Post and the Council and very much concern shown in the local community on a proposal by Australia Post to discontinue the provision of postal services to the Shire and call for tenders from persons willing to provide such services under licence from Australia Post. There was apprehension as to whether Barraba would finish up with a postal service and whether it would continue to be conducted from the existing post office building which was in Queen Street, the town's main street: (Mayor Close, interview T11/517-536, Report Annexure 9.)
2. On 29 November 1995 at an ordinary meeting of the Council attended by all Councillors and members of the public the Council was addressed by Cliff Hoey, the Area Manager for Australia Post. Mr Hoey told the meeting that tenders had been called and were currently being considered for the operation of a licensed agency. He said that existing staff would be retained at the post office until February 1996

when it was anticipated that the new postal arrangements would be in place.

The Council indicated strongly to Mr Hoey that the existing Post Office building should remain as the outlet for postal services and that Australia Post should seriously consider a realistic reserve price for the sale of the building.

The Council resolved to hold its next meeting on 24 January 1996: (Council Minutes, Report Annexure 12)

3. On 10 January 1996 Councillor Ben Charles Gardiner wrote to Mr Brett Anthony Stonestreet, the Council's General Manager, to give notice of a number of matters which he desired to have discussed at the forthcoming meeting on 24 January 1996. One such matter was the Barraba Post Office. On that matter the letter stated that the licence tender had been awarded to Mr Graeme Roberts but his tender was insufficient for the purchase of the building and the post office proposed to lease the building to Mr Roberts for an annual rent of \$17,000 which Mr Roberts considered to be totally beyond the affordable scope of the postal licence and that Mr Roberts' intention was to move the post office business to another building in the main street.

The letter stated that Councillor Gardiner would like the Council to consider making an offer of \$100,000 for the purchase of the building with a view to renting part of the building to Mr Roberts for rental of \$120.00 a week (\$6,240.00 per annum) to enable Mr Roberts to retain the postal services at the existing post office building. The letter further proposed that the feasibility of using the remainder of the building for other purposes be investigated and reported to Council at the next meeting and stressed that expedition was essential because Mr Roberts would be taking steps to move the facility in the near future. Councillor Gardiner stated that he believed that there was widespread community support for the retention of the existing postal site: (Report, Annexure 13).

4. Sometime prior to the Council meeting of 24 January 1996 Mr Graeme Roberts approached Councillor York to discuss the possibility of leasing from Councillor York premises owned by him.

The property was at 75 Queen Street. It had been vacant for about two years except for an area which Councillor York was permitting the Salvation Army to use as a store area for a small remuneration. It would have required alteration for the installation of post office boxes and other facilities for use as a post office.

In approaching Councillor York Mr Roberts was exploring the availability of an alternative location to the post office building owned by Australia Post because he believed that both the purchase price and the lease rental proposed by Australia Post exceeded what he could afford and were unrealistic compared with similar property in Barraba.

They discussed the suitability of Councillor York's building and the costs of alterations if Mr Roberts were to use it as a post office and Councillor York advised him that the premises were available for lease for that purpose and proposed a rental of \$100 per week.

At the time of this discussion Mr Roberts was desirous and hopeful of being able to continue postal services in the existing post office and was only investigating alternative premises in case he was unable to come to a satisfactory arrangement with Australia Post. Councillor York's view was that the post office service should ideally remain in the existing post office building. He intimated this to Mr Roberts and did nothing to seek to persuade or influence Mr Roberts against that objective.

They agreed at that time that if Mr Roberts could not obtain the post office building then Councillor York's building would be available at \$100.00 per week. Their discussion went no further than that at that time:

(Statement by Graeme Roberts, Report Annexure 5; Interview 6 January 1997, Report Annexure 11, T2/80; T3/105. Letter 23 July, 1996 Councillor York to Director-General, Report Annexure 4,

Councillor York interview 6 June 1997, Report Annexure 8, T3/105-108; T3/105-118; T10/514-T11/524).

5. On 24 January 1996 there was an Ordinary Council meeting beginning with a meeting of the Council sitting as a Committee of the Whole at 4.30 p.m. and continuing as an open meeting of the Council at 5.45 p.m.

In the course of the meeting as a Committee of the Whole the General Manager gave a briefing to the Council of the background and Councillor Gardiner's letter of 10 January 1996 was tabled. At that point Councillor York informed the Council that Mr Roberts had made an approach to him on the possibility of using Councillor York's premises as a post office and that he did not know whether he should declare a pecuniary interest in the matter because of that approach. The Councillors and Council staff at the meeting indicated to Councillor York that they did not think he had to declare a pecuniary interest at that stage because the matter was being raised only for general discussion with no intention to consider or pass any resolutions one way or the other on Councillor Gardiner's suggestion that the Council purchase or lease the building from Australia Post: (Mayor Close Interview, Report Annexure 9, T2/103-T3/107; T3/128-134, 145-148. General Manager Stonestreet Interview, Report Annexure 7, T2/75-104; T3/125-138, T4/167-189; T6/309, Councillor York's letter to the Director-General, Report Annexure 4)

Following Councillor York's statement, the meeting continued with a general discussion of the question whether Council should consider purchasing or leasing the post office building from Australia Post with Councillor York refraining from participating until towards the very end of the discussion when he interposed by expressing concern that Council would consider purchasing the building because it would be purchasing a "white elephant" and would have to subsidise the building in order to retain it: (Mayor Close Interview, Report Annexure 9, T4/203; General Manager Interview, Report Annexure 7, T4/194;

Councillor Gardiner Interview 5 June 1997, Report Annexure 10, T3/112; Councillor York letter to Director-General, Report Annexure 4)

At the conclusion of the Committee of the Whole meeting it was resolved to make the following recommendation to the Council:

**“It was recommended that the General Manager seek urgent discussions with the Manager of Property Services Australia Post at a special Council Meeting at Barraba as soon as possible.**

**Discussions to consider the future use of the Post Office building and possible purchase or lease by Council.”**: Council Minutes,

Report Annexure 14, Minutes of the Committee of the Whole, Item 3.

At the Council meeting which followed the Committee of the Whole, Councillor Gardiner’s letter was merely “noted”: (Council Minutes, Annexure 14, Item 32)

6. Councillor York’s statement to the meeting concerning Mr Robert’s approach to him was not recorded by the Council’s staff in the Council Minutes as a declaration of a pecuniary interest in the matter because it was considered that, at the time he made the statement, the substance of Councillor Gardiner’s proposal had not been brought forward to the Council for deliberation or decision and that the statement by Councillor York only foreshadowed a possible future interest that he might have in the matter: (General Manager Interview, Report Annexure 7, T4/160). However, Councillor Gardiner considered that Councillor York, in making his statement, was in fact disclosing to the meeting a pecuniary interest in the matter. He also considered that in disclosing his interest and refraining from participation in the discussion for as long as he did so, Councillor York was acting correctly: (Councillor Gardiner’s letter to Mayor Close, Report Annexure 2; Interview, Report Annexure 10, T3/112-114, 127-148).
7. A special meeting of the Council to deal with the future use of the Barraba Post Office was convened for 9 February 1996. It was to be addressed by a representative of Australia Post. Becoming aware of this, Mr Roberts wrote a letter to the Council dated 7 February 1996 in



which he gave an account of his dealings with Australia Post and his efforts to obtain a suitable building in which to provide postal services. The letter said that he had tendered \$50,000 for the post office building and had been told by Australia Post the reserve price on the building was \$180,000. His letter stated that he had based his price on the market at Barraba for other buildings recently sold and considered that the price sought by Australia Post was unrealistic. He had therefore inquired about leasing the building. This was acceptable to Australia Post but a rental of \$1,700 per month or \$425.00 per week was sought. The letter said that as he expected to earn about \$400.00 before rent, the rent sought by Australia Post was prohibitive. The letter said that he would be willing to pay \$120.00 per week for a portion of the post office building which he had discussed with Councillor Gardiner. The letter also said that he had the option of leasing another building for \$100.00 per week but this building was not preferred by him because it would cost him around \$20,000 to fit-out and the most suitable building for the business, and for the town, was the existing post office. The letter concluded by asking the Council to request Australia Post to offer him a reasonable lease at least until Australia Post auctioned the post office building: (Report Annexure 3)

8. On 9 February 1996 the special meeting of Council took place commencing at 11.30 a.m. with the press and public excluded. Councillor York was present, Mr Bruce Richards, the State Manager Property, Northern Division Australia Post and Mr Cliff Hoey were in attendance on behalf of Australia Post. The General Manager introduced the subject and explained the Council's concern at the possible relocation of postal services away from the existing post office building. Councillors present raised a number of points recorded in the Minutes including the desirability of retaining the existing post office for postal services, asserting that the purchase price and rent sought by Australia Post were unrealistic in the present Barraba real estate market and requesting Mr Richards to negotiate a 12 month lease with the licensee at a lease cost that he

could afford thereby giving Australia Post sufficient time to reassess its options to sell or lease the building.

The Minutes record that Mr Richards told the meeting that it was his duty to realise the best return he could for the post office facility: (Council Minutes, Report Annexure 15).

In addressing the meeting Mr Richards appeared to be unresponsive to the Council's desire to retain the postal service in the existing post office building or to the Council's request that Australia Post be realistic on the real estate and lease values of the building so that retention of the building might be achieved. He had indicated to the meeting that Australia Post expected to obtain a higher rent than other landlords in Barraba were then receiving. Believing that the building was being exorbitantly priced by Australia Post, Councillors gained the impression that Mr Richards was being intransigent and that Australia Post was unwilling to enter into serious negotiations at values that might permit the Council to negotiate a purchase or lease of the building. There was a general feeling of frustration at the attitude of Australia Post: (Mayor Close Interview, Report Annexure 9, T5/215; Councillor Gardiner Interview, Report Annexure 10, T5/227-230; T7/304-315; Councillor York's letter to the Director-General, Report Appendix 4).

Councillor York remained present throughout this stage of the meeting but kept silent until, having become extremely annoyed with the attitude of Australia Post, he rose and, in a fit of anger, expressed his displeasure to Mr Richards and Mr Hoey, declared that he was leaving the meeting and going to negotiate a deal with Mr Roberts for Mr Roberts to take over his own building, and walked out of the meeting: (Councillor York's letter to Director-General, Report Annexure 4; Mayor Close Interview, Report Annexure 9, T5/246; General Manager Interview, Report Annexure 7, T7/323, 346-350; Councillor Gardiner Interview, Report Annexure 10, T4/127; T7/321-328; Councillor York Interview, Report Annexure 8, T6/308-T7/328).

The Council's Minutes record that Councillor York vacated the Chamber at 12.16 p.m. The meeting continued until 1.18 p.m. (Council Minutes, Report Annexure 15).

9. On leaving the meeting, Councillor York telephoned Mr Roberts. He told Mr Roberts that he had just left Council's special meeting, Australia Post was being unreasonable and he was unhappy with the discussions between the Council and Australia Post. He told Mr Roberts that Australia Post was not being realistic and said that if Mr Roberts was still interested in his building he was willing to lease it to him and would reduce the rent from the \$100.00 per week previously mentioned to \$80.00 per week. (Graeme Roberts' Statement, Report Annexure 5, para. 9; Interview, Report Annexure 11, T3/124; Councillor York's letter to Director-General, Report Annexure 4; Interview, Report Annexure 8, T7/332-343; T10/503).

Mr Roberts decided to wait and see what transpired with Australia Post. He considered that Councillor York's offer of a lease of his building at \$80.00 per week was made to provide him with a real alternative if the negotiations with Australia Post didn't get anywhere: (Mr Roberts Interview, Report Annexure 11, T3/141).

Mr Roberts subsequently took a lease of the post office building from Australia Post for one year at \$150.00 per week although he considered that the building was excessive for the postal service requirements: (Graeme Roberts' Statement, Report Annexure 5, para. 8).

10. Councillor York's motives and the explanation for his actions are as follows:
  - (a) Councillor York strongly believed in maintaining the character of Barraba's main street, its building and activities. He considered that it was "not a bad looking little main street for a small town." It was one of his main projects on the Council. He was a member of the Council's "Main Street Committee" and served as its Chairman and Vice-Chairman for many years. He was very concerned at the prospect of

the postal service being withdrawn from the post office building because of what he considered to be Australia Post's extravagant demands, unwillingness to negotiate reasonable terms with Mr Roberts and unsympathetic attitude to the aspirations of the community and the Council for Barraba to keep its post office: (Councillor York Interview, Report Annexure 8, T14/698-794; T6/307-T7/322).

(b) Although, when approached by Mr Roberts, he offered to rent him his own building for \$100.00 per week, Councillor York did not consider that the building was suitable for the postal service, maintained his preference for the town's postal service to be provided from the existing post office building, offered his building only as an alternative if Mr Roberts should fail to obtain the post office and made no attempt to persuade or influence Mr Roberts to prefer Councillor York's building: (Interview (above) T3/108-112)

(c) At the Council meeting on 24 January 1996 he was unsure whether he would have a pecuniary interest at that stage of the matter with no deal having been concluded with Mr Roberts, Mr Roberts looking at other alternatives, and the matter being before the Council only for discussion. Therefore, he did not formally declare a pecuniary interest at the meeting but at the outset informed the meeting of Mr Roberts' approach to him so as to raise the question. When the other Councillors reaction seemed to him to be that they did not think that he had a pecuniary interest at that time, he stayed at the meeting but took no part in the discussion except at the end when he expressed his opposition to the Council purchasing the building because he believed it would be a bad business proposition for the Council: (Councillor York Interview, Report Annexure 8, T2/80-103; T3/128-132, 136; T8/396-406).

(d) He had given thought to whether it was appropriate for him to be present at the special meeting on 9 February 1996 but he attended the meeting because of his interest in keeping Mr Roberts in the post office building: (Interview (above) T4/164-169).

(e) The reason for his angry outburst and sudden departure from the meeting with the announcement that he was going to make his own deal with Mr Roberts, was to put pressure on Australia Post by expressing his disgust with its attitude and by seeking to improve Mr Roberts' bargaining power by reducing the proposed rent of his building to \$80.00 per week and putting Mr Roberts in a position to say to Australia Post, "Look I've got a better offer": (Interview (above) T9/457-463; T10/478).

His offer to lease his building to Mr Roberts at a reduced rent continued to be made as an alternative if Mr Roberts failed to get the post office and was not intended to persuade Mr Roberts to change that preference. Councillor York would have "panicked" if Mr Roberts had accepted his offer on 9 February 1996 because of the problems he would have had to face in altering his own building to make it suitable for postal services: (Interview (above) T7/335-363).

(f) Mayor Close considered that Councillor York's behaviour on 9 February 1996 was just an angry response to the attitude of Australia Post: (Interview, Report Annexure 9, T14/675). The General Manager considered that Councillor York's actions were done with the intent of exerting pressure on Australia Post in order to secure the post office building for Barraba's postal services: (Interview, Report Annexure 7, T10/467, 476; T12/587). Councillor Gardiner considered that Councillor York acted with intent to put pressure on Australia Post because he believed that the Council had no hope of negotiating with Australia Post and hoped that the Council might succeed under the pressure of alternative accommodation being provided to Mr Roberts: (Interview, Report Annexure 10, T7/324-331; T11/521-545). Councillor Gardiner also considered that Councillor York's purpose was not profit-seeking but to ensure that a postal service was established for Barraba: (Interview (above) T513-515).

11. The facts relative to Councillor York's attitude to his obligations and his conduct in question are as follows:

- (a) The Mayor, Councillor Close was concerned and embarrassed by Councillor York's outburst at the meeting of 9 February 1996 and his subsequent approach to Mr Roberts. She called him into her office and told him so. He agreed with her criticism of his behaviour and "he sincerely apologised": (Mayor Close Interview, Report Annexure 9, T6/288, 295). Their discussion on this occasion was about "unacceptable behaviour" not breaches of the legislation: (Interview (above) T7/348-356). She told Councillor York that she was referring the matter to the Department of Local Government. He thought about his position and took the attitude, "I knew I was wrong and that was it.": (Councillor York Interview, Report Annexure 8, T9/428-430).
- (b) Councillor York's view of his approach to Mr Roberts after leaving the meeting of 9 February 1996 is that it was "a stupid thing to do, I know, but it was in the heat of the moment and I've regretted that ever since I did it.": (Interview (above) T7/328-330). After having done it he realised that his conduct was made worse by the fact that it was a closed meeting and the information he had obtained at the meeting and passed on to Mr Roberts was confidential: (Interview (above) T10/481-484).
- (c) Councillor York acknowledged that his conduct was not good for the image of the Council and his apparent conflicting roles on the question of a purchase of the post office building by the Council made for a poor public perception, for which his only explanation was that it "all happened in the heat of moment, with frustration.": (Interview (above), T8/385-394).
- (d) Councillor York's general attitude was: "All I can say is that I'm sorry it happened. I was wrong. I'm not trying to get out of anything, I was wrong. I did the wrong thing, I did the wrong thing by Council, and my position. I've been on there what, 16 - 17 years, and it's the first time I've done the wrong thing, I believe.": (Interview (above), T14/695-698).



11 September 1997