

Members present

Hon Andrew McGechan (President)
Acting Chief Judge Wilson Isaac – *ex officio* (Maori Land Court)
Ms Belinda Clark (Secretary for Justice)

Dated: 15 October 2008

Decision Number: 2008-37

Initiated by

HON DAVID BENSON-POPE

In relation to

Annual return of party donations

ACT NEW ZEALAND

Findings and Determination

Free office space to the value of approximately \$20,000 per year provided to ACT New Zealand up until 2005 was a party donation and was not included in ACT's annual returns of donations for the relevant years. ACT is required to file amended returns for the relevant years.

Provision of free office space for the purposes of an out of Parliament office was a party donation for the purposes of section 214F of the Electoral Act 1993. The section 226 time limit for potential prosecutions has expired. Rectification of the public record is of principal concern.

This headnote does not form part of the decision.

Subject

Office space was provided free-of-charge to ACT New Zealand by Sir Robert Jones for a number of years, at a value of approximately \$20,000 per annum. The arrangement ceased in 2005.

The annual returns of donations for ACT New Zealand for 2005 and prior years do not record any donation from Sir Robert Jones or associated business entities.

Issues raised

The Electoral Commission considered whether a return was filed that was false in any material particular and, if so, what action might be appropriate in light of the statutory timeframe for potential prosecutions having expired.

Electoral Act 1993

Section 214F of the Electoral Act (the Act) defines party donation to include a donation of money, the equivalent of money, or goods and services, received by the party where the value of the donation exceeds \$10,000.

Section 214G of the Act requires party secretaries to file a return of donations each year, on a form provided by the Electoral Commission, which sets out the name and address of each person who made a donation and the amount of the donation as well as the details of anonymous donations.

Section 214G(4) sets out the levels of offence which are committed if a return is filed that false in any material particular, unless the party secretary proves that he or she had no intention to mis-state the facts and took all reasonable steps to ensure the return was accurate. The time limit for prosecutions of such offences is 6 months from the date the offence was committed (section 226).

Section 214J obliged the Electoral Commission to maintain a record of all party donations and to make that record available for public inspection. The obligation continues under the Electoral Finance Act.

Comments from ACT New Zealand

The Party Secretary acknowledges that the office space was provided “for an Out of Parliament office” used for the Wellington-based list MPs to carry out their constituency work and that the office staff and equipment were funded by Parliamentary Services out of the budget provided for the list MPs.

The Secretary states that the party did not use the office for campaigning or other party purposes, as the party obtained another office for those purposes.

The Secretary claims that the party did not benefit from the provision of the office space and therefore did not need to declare it.

Electoral Commission's Determination

The Electoral Commission has considered the requirements of the Electoral Act along with the items listed as exhibits (below).

Section 214F of the Act defines party donation to include a donation of money, the equivalent of money, or goods and services, received by or on behalf of a party registered under the Act and which has a value in excess of \$10,000. The Electoral Commission has considered the issues raised by the Party Secretary and concludes that:

- ACT New Zealand is a party registered under the Electoral Act
- the Electoral Act does not distinguish between donations to different divisions of a registered party
- the information provided indicates that the office space was donated to ACT New Zealand.

As a result, on the basis of the information provided it is the view of the Electoral Commission that the provision of free office space was a party donation to ACT New Zealand within the meaning of section 214F of the Act which ought to have been included in the Party's annual return of donations for the years in which it was received and had a value in excess of \$10,000.

The Electoral Commission notes that the time limit for prosecuting any potential offence in respect of the years 2005 and prior has expired. Under such circumstances, and in light of the Commission's responsibility under section 5(b) to supervise political parties' compliance with the financial disclosure requirements of the Act, the Commission considers the matter of principal interest is ensuring the accuracy of the public record of political parties' donations. Therefore the Commission requires ACT New Zealand to file amended annual returns of party donations, accompanied by auditor's reports, for the years in which the party received the provision of free office space valued at more than \$10,000.

For the above reasons it is the view of the Electoral Commission that:

- **the provision of free office space for the purposes of an out of Parliament office was a party donation to ACT New Zealand for the purposes of section 214F of the Electoral Act 1993**

- **ACT New Zealand is required to file amended annual returns of party donations, accompanied by auditor's reports, for the years in which the party received the provision of free office space valued at more than \$10,000**

Signed for and on behalf of the Electoral Commission



Dr Helena Catt
Chief Executive and Commissioner
New Zealand Electoral Commission

23 October 2008

Exhibits

The following items were received and considered by the Electoral Commission when it determined this matter:

1. letter 10 September 2008 from David Benson-Pope, with copy of letter 8 December 2005 from Sir Robert Jones attached
2. letter 16 September 2008 to David Benson-Pope
3. letter 23 September 2008 to the Party Secretary for ACT
4. letter 2 October 2008 from the Party Secretary for ACT