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LR 550

BETWEEN      THE COMMISSIONER OF INLAND REVENUE

Appellant

A N D      MUNICIPAL ASSOCIATION OF NEW ZEALAND INCORPORATED,  
of Wellington, Body  
Corporate

Respondent

Coram:              Cooke P.  
                         Somers J.  
                         Casey J.

Hearing:            10 November 1987

Counsel:           E. Aspey for Appellant  
                         D.J.S. Laing for Respondent

Judgment:         10 November 1987

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JUDGMENT OF COOKE P.

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This tax case, an appeal from a decision of Jeffries J. on a case stated under s.33 of the Income Tax Act 1976, raises a short point. It is whether the Municipal Association of New Zealand Incorporated is exempt from income tax by virtue of the provisions of s.61(2) of that Act.

The case relates to investment income of the Association derived from the investment of levies or subscriptions from its members. Section 61(2) includes among the incomes exempt from tax 'The income ... of a

local authority'. The current definition of a local authority in that Act is:

"Local authority" means a local authority within the meaning of the Local Government Act 1974 and any Harbour Board, Hospital Board, Education Board, or other incorporated instrument of local government in New Zealand, whether possessing rating powers or not'.

That definition in s.2 is as substituted by the Local Government Amendment Act 1979. The previous definition read:

"Local authority" means a borough, county, and other body corporate possessing rating powers in New Zealand, and any Harbour Board, Hospital Board, Education Board, or other incorporated instrument of local government in New Zealand, whether possessing rating powers or not.

As the case stated covers several years, both definitions happen to be relevant for the present purposes, but there is no material difference between them. Each contains the crucial expression 'other incorporated instrument of local government in New Zealand'.

The Municipal Association has been a part of what may very broadly be called the local government scene in New Zealand for many years, going back to before the turn of the century. The collected opinions of counsel who have advised the Association from time to time over the years, beginning with Mr T.F. Martin, are generally familiar to practitioners in this field. The Association appears to have begun life as an unincorporated association. It was directly incorporated by statute in 1932, but the constituting

statute material for the purposes of this case is the Municipal Association Act 1939. Section 2(3) thereof stated:

The general functions of the Association shall be to watch over and protect the interests, rights, and privileges of its members; to take action in relation to any subject, or legislation, affecting any of its members; to procure legal opinions [or to prosecute or defend test cases or engage in any other legal proceedings in respect of] matters of general interest to its members; and generally to promote the efficient carrying out of local government so far as it affects the corporations referred to in the next succeeding section.

The words about 'test cases' and 'legal proceedings' were inserted by legislation in 1941.

By s.3 sundry Councils there specified were given the option of from time to time becoming members or resigning from membership of the Association in accordance with its rules. That 1939 Act was repealed from 1 November 1985 by the Local Government Amendment Act 1985, s.38. Thereby the Municipal Association and the corresponding Counties Association are given 'power to transfer to any society incorporated under the Incorporated Societies Act 1908 their assets, rights, and liabilities'. That change, however, was made after the years with which the present case is concerned. The rules of the Municipal Association, both before 1980 (when the 1979 legislation already mentioned came into force) and from that time onwards, in substance reproduced the important language of s.2(3) of the 1939 Act and need not now be recited.

Formerly the Association was evidently content to pay income tax on its investment income, but, possibly because the amount had grown, a different stance came to be taken. On 9 May 1983 the Association wrote to the District Commissioner of the Inland Revenue Department, Masterton, putting forward a claim for exemption and enclosing in support an opinion obtained from counsel. This persuaded the Masterton office of the Inland Revenue Department, as appears from a letter of 11 May 1983, but that result was short-lived. On 22 November 1983 a letter from the Regional Solicitor, confirming a previous telephone conversation, set out the Department's reasoning for the view that the Association's income was not exempt from tax. So in effect the District Office was overruled. Subsequently the case stated was arranged.

Jeffries J. acceded to the claim for exemption. The central part of his reasoning, in a judgment which like the one now being delivered was oral, appears in these words:

Any rule of statutory interpretation must give way to the plain meaning of the word used in the statute. The central word in those few words is 'instrument'. The Court must accept that the word was deliberately chosen by Parliament and it is a word in the context with a wide meaning. In that definition I think its true meaning is one who, or that which, is made a means or agency. In that connotation we speak of a person being instrumental in achieving an end, or promoting an object. I think it can fairly be stated the Municipal Association is an instrument for promoting local government. The detailed argument of Mr Aspey on behalf of the Commissioner is that the Municipal Association is not directly engaged in local government in the sense that it governs, or administers, some local area but is a representative

body for those local authorities which perform that task. I think that the argument might have succeeded if instead of the word 'instrument' Parliament had used again in the definition the word 'authority', or repeated the words 'other body corporate' from the prior definition of local authority before it was amended. By using the word 'instrument' I think Parliament intended to include such a body as the Municipal Association because its function is a means or agency of local government.

The question is one of the natural and ordinary meaning of words. The Regional Solicitor's letter and the argument presented in both Courts on behalf of the Commissioner have made some play with the ejusdem generis rule, but this need not be invoked. In ordinary English an instrument of local government is a means or agency of local government: that which carries out part of the work or discharges some of the responsibilities of local government. In my opinion, a person who promotes local government is not necessarily within that concept. It might be said that from time to time counsel advising, or public relations consultants even, promote local government. Nevertheless in no ordinary sense are they instruments of local government. Nor is a central body which watches over the interests of local government bodies - another expression used by the Judge and, indeed, appearing in s.2(3) itself. The Municipal Association does no local government work. It has no local government responsibilities. It does have various powers of appointment or nomination under a range of statutes. Often it is consulted or makes submissions as representing local authorities. In the words of the constituting statute, it

promotes the efficient carrying out of local government so far as it affects the corporations referred to in s.3. But it has no administrative authority itself. In the ordinary use of words in the English language that, in my opinion, is fatal to the claim to be a instrument of local government.

To bring such an Association within the New Zealand exemption, it would be necessary to extend that exemption in some such way as appears in the corresponding English statute. See 23 Halsbury's Laws of England, 4th ed. para. 845:

A local authority or local authority association is exempt from all charge to income tax in respect of its income and from corporation tax, and neither body falls within the meaning of 'company' for tax purposes.

The definition of 'local authority association' for that purpose is quoted in the same volume, para. 1, note 15. It means:

...any incorporated or unincorporated association of which all the constituent members are local authorities, groups of local authorities or local authority associations and which has for its object or primary object the protection and furtherance of the interests in general of local authorities or any description of local authorities; and for this purpose, if a member of an association is a representative of or appointed by any authority, group of authorities or association, that authority, group or association (and not he) is to be treated as a constituent member of the association...

and the statutory references are there given.

Evidently the kind of body referred to into the English legislation is broadly the equivalent of the

Municipal Association of New Zealand. Be that as it may, on the simple meaning of the New Zealand statute it seems to me plain, with great respect to the judgment under appeal and the opinion of counsel furnished earlier by the Association, that the Association is not an instrument of local government in New Zealand. Accordingly in my view the appeal must succeed.

The Court being unanimous, the appeal must be allowed and the answer No substituted for that given in the High Court.

The order for costs in the High Court will be vacated. Leave is reserved to the Commissioner to apply in writing for costs to this Court.

*R. B. Cooke P.*

Solicitors:

Crown Law Office, Wellington, for Appellant  
Brandon Brookfield, Wellington, for Respondent

LR550

BETWEEN

THE COMMISSIONER OF  
INLAND REVENUE

Appellant

A N D

MUNICIPAL ASSOCIATION  
OF NEW ZEALAND INC.

Respondent

Coram: Cooke P  
Somers J  
Casey J

Hearing: 10 November 1987

Counsel: E Aspey for Appellant  
D J S Laing for Respondent

Judgment: 10 November 1987

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JUDGMENT OF CASEY J

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I also agree that the appeal should be allowed. In distilling his submissions to us Mr Laing said that the meaning of the word "instrument" must be found from its context of local government, and he urged us to regard "local government" as used in a very broad sense so that it could encompass those functions of the Association in which local authorities have a common interest, and its general function of serving its members.

In the view which I share with the other Members of the Court, the answer to the questions raised in this appeal can be found in the ordinary dictionary meaning of the words discussed, without recourse to any extraneous aids. They



serve only to effect an artificial extension of that plain meaning in the direction which Mr Laing would like to see taken in order to cover the activities of the Association he represents. The ordinary meaning of "to govern" is to direct or control the actions and affairs of people; to administer, manage or order. (Shorter Oxford Dictionary). "Instrument" is also defined as "A thing with or through which something is done or effected." The concept of the instrument being the agency by or through which a result is achieved seems to be at the core of that meaning. It necessarily implies that "instrument of local government" used here means nothing more than the means or agency whereby the functions of local government are exercised.

Jeffries J found that the Association was an instrument for promoting local government. No doubt its objects and obvious aims are to serve and promote the interests of its members. But it is clear to me that in doing so it cannot be regarded in any sense as acting, or as having the power to act, as an agency carrying out the functions of local government in its own right or as entrusted by its members. I am reinforced in my view by Mr Laing's information that this expression first appeared in the 1916 predecessor to the present Act ((s.84), in the definition of local authority, and at the same time "public authority" was also defined as including "every incorporated Department or instrument of the Executive Government of New Zealand."

Its continued use in that context is entirely consistent with the use of the expression in the present legislation in its ordinary natural meaning as an agency or means of carrying out the functions of local government. I therefore agree that in extending it to include the promotion of local government the Judge, with respect, departed from that meaning to an extent going beyond anything required by the context.

*M. G. Casey J.*

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JUDGMENT OF SOMERS J.

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I agree that this appeal should be allowed for the reasons given by the President and add only a few words because we are differing from Jeffries J.

The issue is whether the Municipal Association was, at the relevant times, an 'incorporated instrument of local government in New Zealand' within the meaning of those words in section 2 of the Income Tax Act 1976. Such an instrument is, in my view, intended to refer to an agency for, or means of, conducting local government or some aspect of it.

The Association had no power or right to exercise any of the functions or powers of any of its members derived by them under the Local Government Act 1974 and did not ever do so. Nor could it act as the agent for, or as an arm of any local authority in the exercise of the powers or authorities conferred on such a local authority under that Act. The Association could not, therefore, be described as an instrument of any particular local authority.

Mr Laing told us that he could not point to anything undertaken by the Association which could fairly be called local government. I have no doubt this is right. The Association was not itself an independent instrument of local government.

Accordingly, I too would allow the appeal.



Solicitors  
Crown Law Office, Wellington for Appellant  
Brandon Brookfield, Wellington, for Respondents