

Council property sale conducted but complainants not advised about status of their objection petition

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	Anand Satyanand
Case number(s)	A6821
Date	1999

Council resolved to sell property of historic significance and occupants petitioned Council to reverse its decision—Council referred petition to committees for consideration and report but before reports completed, concluded the sale of property—the occupants complained of failure of Council to follow due process (failure to report) but failure did not mean complaint could be sustained—however procedural shortcomings acknowledged by Council and apology extended to complainant

The complainant was one of a number of occupants of a building which a Council had resolved to sell. The occupants petitioned Council to retain the historic building for continued usage as an artistic working environment. In response to the petition Council resolved that it be referred to two committees for consideration and report back to Council.

Before the process was completed, one of the committees to which Council had resolved to refer the petition concluded the sale of the property in proceedings from which the public was excluded. This prompted the complainant to complain about the lack both of due process and procedural fairness on the part of this particular committee. It was the complainant's view that the resolution of Council passed in response to the petition required the reports to be tabled back to Council so that the original submission of the petition could in turn be voted upon. He submitted further that the petition and Council's resolution in response to it ought to have resulted in the sale of the property being deferred until the reporting back process had been completed. He also maintained that some councillors shared in this view.

The investigation found that at no time had the reporting back process been completed. However, this omission did not provide grounds for sustaining the complaint. The decision to sell the property had been approved by way of a resolution of Council passed prior to the resolution in response to the petition. The earlier resolution was not put on hold or in any other way affected by the later resolution. In terms of the standing orders a notice of motion signed by not less than one third of the members of Council seeking the revocation or alteration of the existing resolution to sell, would have been needed to achieve that objective.

Although Council advised that it had attempted to draw this to the complainant's attention, there was substantial doubt as to the efficacy of its efforts in this regard given that there was clear evidence of uncertainty among some councillors, including those of long standing who could be expected to have a well-developed understanding and knowledge of the processes of Council and its standing orders. In acknowledgement of its deficiency in adequately conveying to the complainant how the petition would be addressed in terms of Council process, the Chief Executive provided a written apology to the complainant. A direction was given also that there be a review of the process by which petitioners are informed of how a petition will be dealt with procedurally. Council undertook to complete the reporting back process notwithstanding the sale of the property, the substantial time since the material events and the intervening local body elections which had changed the composition of Council. The Chief Executive agreed that this action would provide a useful opportunity to improve awareness at a political level of the due process issues which the complaint had identified.

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