

Local Authority fails to follow legislative procedures when setting fee for dog registration

Legislation	Ombudsmen Act 1975, Dog Control Act 1996, Local Government Act 1974
Agency	Local authority
Ombudsman	Anand Satyanand
Case number(s)	A6925
Date	1999

Local Authority imposes Dog Control Fees by resolution of Committee—there is a requirement for resolution of territorial authority to take particular matters to be taken into account under the Dog Control Act 1996, s 37 and Local Government Act 1974, s 114Q—Council failed to follow legislative procedures when setting registration fees

Whilst investigating a complaint about the unreasonable decision of a District Council to increase its dog control fees, a number of procedural issues came to light which were investigated. The original complaint was directed at a 36 per cent increase in what the Council described as its ‘responsible dog ownership fee’, one element of the dog control fees it had fixed under the *Dog Control Act 1996* (the Act). On the other hand, the ‘standard annual registration fee’ and the fee for ‘dangerous dogs, classified owners’ had been increased by 25 per cent. The only reason for the increase indicated in the staff report recommending it to the Council was expressed: ‘*The increase in the proposed fees reflects the difficulty in recovering infringement fees for dog control*’. It was argued that the effect of increasing the responsible dog ownership fee amounted to penalising responsible dog owners for the failures of others to pay their fees.

Like any operation involving recovery of costs, the budget for the Council’s dog control operations would need to take account of the level of default in payment of the fees. This was a matter that the Council could consider relevant in terms of section 37(4) of the Act. To the extent that ‘*the difficulty in recovering infringement fees*’ mentioned in the report related to bad or irrecoverable debt, and that the Council had thus taken bad debt provisioning into account in arriving at its dog control fees, the Ombudsman concluded its decision was not unreasonable.

However, the investigation disclosed a number of points which required consideration. The first related to procedural matters under sections 10 and 37 of the Act. Section 10 requires territorial local authorities to have a dog control policy, including details of their policy in relation to dog control fees. The policy must be adopted in accordance with the *'special consultative procedure'* under section 716A of the *Local Government Act 1974* and may be amended in like manner. That procedure provides for public participation in the decision-making process, and requires the final decision to be 'made at a meeting of the local authority'. As to the actual fees, s 37(1) of the *Dog Control Act* provides: *'The dog control fees payable to a territorial authority shall be those reasonable fees prescribed by resolution of that authority for the registration and control of dogs under this Act.'*

In this case, both the Council's dog control policy and its dog control fees had been determined by resolutions passed by one of its committees and had not been referred at any stage to a meeting of the full Council. The Council maintained that, under section 114Q of *Local Government Act*, it had the right to delegate to its committees any power exercisable by the Council, unless the delegation was specifically prohibited by section 114Q or otherwise. It took the view that section 114Q did not expressly prohibit the delegation of the power to pass Council resolutions. On that basis, it contended that its dog control policy and fees had been validly fixed by the committee acting under delegated authority. In addition, the Council said that its approach reflected a common practice among local authorities to delegate to committees the power to make decisions including special orders, for which the relevant legislation referred to exercise of the power by resolution of the Council. The Council's solicitors confirmed this approach in relation to the fixing of the fees.

The Ombudsman concluded that nevertheless, the practice of the fees being prescribed by a committee, however widespread, appeared to be inconsistent with the legislation, which specified that the fees be prescribed *'by resolution of the [territorial] authority'*, and therefore to be contrary to law. This view was supported by independent legal advice obtained by Local Government New Zealand.

The remaining two points concerned the matters to be taken into account by the Council in fixing its dog control fees, the manner in which those matters were to be placed before or made known to the Council and the reasonableness of the differential increases that had been imposed. Legislation determined that the Council should have regard to the relative costs of the registration and control of dogs in the various categories of dogs described in the Act. The Ombudsman's investigation disclosed that no actual data about the costs of registration and control of dogs had been before the committee when it fixed the fees, increasing some of them in differing proportions. The Council contended that the members of the committee were well versed in such matters, through receiving regular reports and being involved in regular financial, budget and other similar discussions in relation to the Council's dog control operations.

However, in order to *'have regard to the relative costs of the registration and control of dogs in the various categories'* the Council needed to have before it actual information as to such relative costs. In the absence of evidence that information about the costs of the registration and control of dogs in the categories mentioned, and information justifying both the proposed increases in the fees and the proposed differential between them had been before the committee in making its decision, it did not seem that *'genuine attention and thought, and such*

weight' as the Council thought appropriate could have been given to the relevant issues, nor could a rational decision have been made. In the circumstances, the view was formed that the decision-making process did not appear to have complied with the statutory requirements.

The Council took steps to remedy the procedural deficiencies which had been identified. It also conveyed an apology to the complainant for any difficulties he may have experienced and advised him of the steps it was taking for setting the subsequent year's fees. This was accepted by the complainant as a suitable outcome and it was not considered necessary to make any recommendation.

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