



caving about you & your environment

15 September 1999

Mr Kevin Brady
Assistant Auditor-General
Office of the Controller and Auditor-General
P O Box 3928
WELLINGTON

Dear Kevin

Local Government Act : Reappointment of Chief Executives

I received your note on the above subject and I have to say it does not excite me a lot – or may be it does!

Clearly, the Crown Law Office has expressed an opinion which you cannot ignore. I think we all recognise that the opinion does not reflect the original intent of the legislation. We all trust that this “error” will be rectified at the earliest opportunity. However, in the meantime there are a whole host of issues which worry me intensely as I suspect they should you.

You note in your correspondence of 7 September that “it would appear that existing contracts entered without public notification are illegal”. There needs to be some clarification on whether they appear to be illegal or whether they are illegal and your note is ambivalent. My most significant concern is that if the contracts are illegal then there is potential to challenge all the decisions, delegations, authorities to act etc. from the time they became illegal to date, until a legal remedy is applied. I recognise that you are trying to be helpful by suggesting that “we will not be taking any action in respect of them” but I suspect that you should and with some expedition.

There could be some Councillors, for whatever reason, who may choose to use this situation for the purposes of political advantage and generally cause mayhem in an otherwise pretty well regulated environment. This is something which should concern all affected authorities and in particular, the Office of the Controller and Auditor-General.

You also note that “we appreciate there are a number of policy issues that surround this matter” – this is, perhaps, the under-statement of the year. You offer to provide

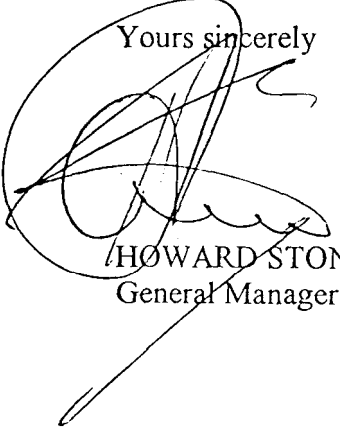
any assistance or further advice. Well I guess the purpose of this letter is to ask for whatever substantive help you can provide with regard to action which the Office of the Controller and Auditor-General would be prepared to unequivocally support in addressing this contractual issue.

Until I am advised by you to the contrary, it is my intention to seek legal advice, not only on the matter of the status of the contract which quite clearly affects both me and the Council but probably more importantly, the implications for decision-making under delegation, given the legal relationship set between the Council, the Chief Executive, and the rest of the employees. Without this legal advice I am unable to, in turn, advise the Council on the current status and risks it may be incurring.

It may be that I am being somewhat paranoid but I believe this latest Crown Law opinion has the potential to be a real major problem for Local Government unless it is very quickly rectified and I know that your office will do its best to ensure that such rectification is undertaken promptly.

I look forward to your response and advice.

Yours sincerely



HOWARD STONE
General Manager



caring about you & your environment

15 September 1999

Carol Stigley
Chief Executive
Local Government New Zealand
P O Box 1214
WELLINGTON

Dear Carol

Local Government Act : Reappointment of Chief Executives

At our meeting (Regional Council CEOs' Group) yesterday, we discussed the above subject. You indicated that Local Government New Zealand had written to the Minister taking him up on his promise to expedite a legal resolution to this thorny problem. The promptness with which this has happened is commendable.

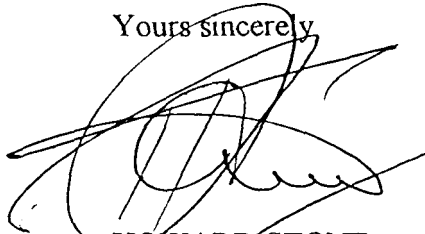
However, notwithstanding all CEOs and Councils having a personal interest in getting this matter fixed, there are, to my mind, some potential difficulties of a much more significant nature if, as the Auditor General suggests, existing contracts entered into are illegal. In particular, I am concerned about the legal implications of the formal relationship of delegated power to act between a Council and its CEO, and also between the Chief Executive and the rest of the staff. If the contracts are illegal, and they have been written under the auspices of the Local Government Act, this seems to imply that the powers vested in the Chief Executive under that Act have also been illegally provided for. If this is the case, then not only does immediate future decision-making become problematic, but probably the last five years for some of us could be challenged by those who had an inclination to do so.

Now I may be over-reacting somewhat but it seems to me that nobody knows the real answer to the question and it may be that Local Government New Zealand should, very quickly, obtain a further opinion on the effect of contract illegality right across the board so that Local Government Authorities in New Zealand can be advised as to their current position and what remedies they may need to apply.

It seems that we have a legal hiccup which “has the potential, like bird strike, to bring down a 747”. I think it is vital that Local Government New Zealand positively seeks Central Government’s position on this matter, if only to get their attention and share the problem.

I am attaching a copy of a note I sent to Kevin Brady on the same issue so that you can see that I am inviting others to take action along with Local Government New Zealand.

Yours sincerely



HOWARD STONE
General Manager