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Communications on this subject should
be addressed to

THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

Our Ref: 400/83/308

23 March 1984

Andrew Turnbull Esq
Prime Minister's Office
10 Downing Street
LONDON S W 1

Dear Andrew,

LIVERPOOL

*letter
date 5/3*

As we agreed, I enclose a copy of a revised text of a draft Answer which the Attorney General might give to a written Question in the House, setting out the duties and obligations of Councillors and the sanctions to be incurred if they are not fulfilled.

The text has been revised to take account of the current situation in Liverpool and to clarify the legal position of a Conservative Group who vote against an extravagant rate.

I am copying this letter to the Private Secretaries to the Secretaries of State for Environment, Home Office, Education & Science, Defence, Health & Social Security, Trade & Industry, Scotland, Wales, Transport, to the Private Secretaries to the Lord President, Chancellor of the Exchequer, Chief Secretary, Treasury and to Richard Hatfield and Mr Buckley in the Cabinet Office.

Yours sincerely,

D J Serjeant
D J SERJEANT

CONFIDENTIAL

DRAFT/STATEMENT

It is the personal and individual responsibility of every member of every local authority to do all that is within his power to ensure that his authority complies with the law.

A local authority by law owes a fiduciary duty to its ratepayers. This includes a duty to expend monies with thrift.

In addition, under section 2 of the General Rate Act 1967, it is the legal duty of every authority which is a rating authority to make a rate which is sufficient, together with its other sources of income, to meet its estimated expenditure. If an authority makes an inadequate rate or fails to make any rate at all it is in ~~the~~ breach of that duty.

If an authority makes a rate in order to finance an extravagant expenditure it is in breach of the fiduciary duty I have described.

It is the personal responsibility of every member of a local authority to oppose any measures which contravene these principles. Failure to do so (including, for example, abstaining or being wilfully absent from a vote) is a breach of the member's own legal duty.

It is the duty of every rating authority, bearing ^e these principles in mind, to make a proper rate. It is equally the duty of every member of every authority to do all within his power to ensure that a proper rate is made.

The Local Government Finance Act 1982 sets out the consequences which follow where a member has not acted in accordance with his duty. I will summarise them for convenience.

If a local authority engages in unlawful expenditure, every member of the authority who was responsible for incurring it or who authorised it may, if the Auditor makes an application to the Court for that purpose, be personally ordered to repay the whole or part of it. Where more than one member is so concerned, each of them may be personally liable for the whole of the repayment. If the expenditure in question exceeds £2,000, such a member may also find himself disqualified from membership of any local authority for such period as the Court may order.

Moreover, if a loss or deficiency is incurred by a local authority and it is caused by the wilful misconduct of a member of the authority, the District Auditor is obliged, of his own motion, to certify that the sum in question is due from that member. The member (or each member if there is more than one involved) is then personally liable to repay that sum. If the amount certified exceeds £2,000, the member or members in question are automatically disqualified from membership of any local authority for a period of 5 years. Failure to vote in accordance with the principles I have summarised could well be regarded as such wilful misconduct. It obviously follows that members who vote against unlawful measures of the kind I have described will have acted in accordance with their duty and will not be liable to surcharge.

I also draw attention to the fact that the protection from personal legal liability which a member of a local authority ordinarily enjoys by virtue of section 265 of the Public Health Act, 1875, as amended, in respect of things done by the local authority concerned, or by him in his capacity as a member of that authority, subsists only to the extent that what was done was done in good faith for the purpose of executing the relevant statutory provisions. Conduct by a local authority or by its members which constitutes a breach of their legal duties as I have described them could operate to deprive the members in question of this protection from personal liability.

This statement is intended to be by way of general guidance and assistance to local authorities and their members. It necessarily cannot deal with the decisions of individual authorities. I would advise any local authority or member in doubt as to the lawfulness of any action to take legal advice which can apply these well-established principles to the specific issue which falls for decision.

20 MAR 1984



Regional Policy

Pt 4

Liverpool.