

## COMMISSION OF INQUIRY AND TAUVAGA (TOFILAU), IN RE

Supreme Court Apia  
28 November 1973  
Donne CJ

COMMISSIONS OF INQUIRY (Function and procedure) - Commissions of Inquiry Act 1964 - Purpose of such commissions confined to investigating and reporting - Power to make their own rules of procedure - Principles of natural justice to be observed: vide Jellicoe v Haselden (1902) 22 NZLR 343, 358 as cited in In re the Royal Commission to Inquire into and Report upon State Services in New Zealand [1962] NZLR 96.

MOTION to determine a point of law pursuant to s 13 of the Commissions of Inquiry Act 1964.

DONNE CJ. This is a reference on point of law to the Court under Section 13 of the Commissions of Inquiry Act 1964. The Chairman of the Public Service Commission pursuant to Section 27 of the Samoa Amendment Act, 1949 by Warrant of Appointment instituted a Commission of Inquiry into the conduct of Mr Tofilau Tauvaga in relation to an incident concerning a Deputy President of the Land and Titles Court at Tuasivi. The Warrant was issued on the 24th October, 1973. The Inquiry was duly commenced and is partly heard, but in the course of hearing it has been ascertained that the probable date of the alleged conduct was not that stated in the Warrant, namely, the 24th day of May, 1973 but rather the 14th day of May, 1973, and the point referred to me is whether the Commission of Inquiry has power to change or amend any dates or typographical errors contained in the Notice to the said Tofilau Tauvaga and to make a decision and directions in respect of the same. I am further advised that Mr Tofilau Tauvaga received five days' notice only of the Inquiry instead of his period of not less than seven days specified in Section 27(2) of the Samoa Amendment Act, 1949 and it has been suggested that that point be also covered in this reference in order that this question of irregularity be the subject of a decision.

A Commission of Inquiry under the Act is a statutory body which is bound in its conduct by the provisions of the Act, which in itself is based principally upon the Commissions of Inquiry Act 1908 of New Zealand. It is therefore helpful to look to cases which had been considered by the New Zealand Courts in respect to the New Zealand enactment. I find much assistance from the case of Jellicoe v. Haselden (1902) 22 N.Z.L.R. 343, the case in which Mr Justice Williams made certain observations which were cited by the Court of Appeal in In re the Royal Commission to Inquire into and Report upon State Services in New Zealand [1962] N.Z.L.R. 96: see Judgment of North J. at p. 108. In Jellicoe's case at p. 358 Williams J. said:-

Our Legislation authorises such Commissioners to summon witnesses and to administer oaths. If witnesses refuse to attend or to answer they are punishable not by the Commissioners but by the ordinary Courts of justice. The Commissioners, however, need not examine witnesses on oath, nor are they bound by any rules of evidence. They have no power to commit for contempt. They are subject to no rules of procedure. They can sit with open or closed doors. They may hear counsel or not, as they please.

They do not take the judicial oath which all judicial officers from Judges of the Supreme Court to Justices of the Peace are obliged to take. The purpose for which they are appointed is for the purpose of reporting only. They have by statute a power of adjudicating in one solitary particular - they can order that the whole or any part of the cost of the inquiry shall be paid by any of the parties to the inquiry.

Now that observation of Williams J. appears to be apposite insofar as the consideration of our Act is concerned. See also the Judgment of North J. in the Court of Appeal case, supra, at p. 109 (lines 28 to 36). Clearly, there are no rules of procedure specified in the Act and consequently the Commission would appear to be free to make its own rules. Clearly too, the purpose of the Commission is, as stated in Jellicoe's case, for the purpose of reporting only, and in this case the Commission is to report to the Public Service Commission. Its report binds no one. It is not appointed for the purpose of adjudicating upon any issue which may concern the Public Service Commission on the one hand and Mr Tofilau Tauvaga on the other. As it has been said the only power of adjudication given to it under the Act is that of the awarding of costs which is contained in Section 16.

Consequently, I have come to the conclusion that the Commission of Inquiry should report as it is required to do on the alleged conduct of Mr Tofilau Tauvaga, and if such conduct did occur but not on the date mentioned in the Warrant, it is competent for the Commission to report that the conduct in relation to the Deputy President of the Land and Titles Court occurred on some other date. Similarly, I have come to the conclusion that the procedural difficulty in which the Commission finds itself in relation to the short notice, given to Mr Tofilau Tauvaga could be remedied by allowing that gentleman further time for the preparation of his case if indeed he so requires. It may be considered, however, that failure to make any preliminary objection as to late service at the beginning of the hearing of the Commission would preclude further time being allowed for preparation. Nevertheless, at all times the principles of natural justice must be observed, and if it is considered that Mr Tofilau Tauvaga has been prejudiced by shortness of time it would be proper for the Commission to give him ample opportunity to prepare this case in reply.

The answer, therefore, to the motion before me is that there are no rules of procedure binding the Commission of Inquiry and, consequently, there is power for the Commission to make its own rules of procedure and to conduct the Inquiry in accordance with the Warrant issued to it by the Chairman of the Public Service Commission on the 24th October, 1973.