

RE ELECTION PETITION RE THE INDIVIDUAL VOTERS' ROLL

FRANCES ISABELLA MOORE

v

GEORGE MICHAEL LOBER

Supreme Court Apia
26 April; 10 May 1979
Nicholson CJ

ELECTIONS (Corrupt practices) - Treating - s 97(1)(b) of the Electoral Act 1963 - Delivery by candidate of large quantities of beer and foodstuffs for distribution to the people present at a campaign meeting and their families - Quantities exceeding the bounds of mere light refreshment for consumption at a meeting - Inference that they were given by the candidate "for the purpose of corruptly procuring himself to be elected".

PETITION for a declaration that the election of the respondent was void.

Chief Returning Officer joined as second respondent.
Petition granted.

Mrs Drake for petitioner.
Va'ai for respondent.

Cur adv vult

NICHOLSON CJ. As a result of the Western Samoan General Elections held on 24th February, 1979 the official results were declared on the Individual Voters' Roll on 9th March, 1979 as follows:-

Ronald Berking		293
George Lober		381
Frances Moore		103
Georgina Moore		158
Peter Paul		257
Patrick Ryan		<u>178</u>
Total	=	1,370 Valid Votes
		13 Informal Votes

Messrs Lober and Berking were declared to be the winning candidates for the two seats available for Individual Voters.

The petitioner, Frances Moore, has petitioned for the avoidance of the election of Mr Lober upon the grounds that he was guilty of the corrupt practice of treating in terms of section 97 of the Electoral Act 1963, on several occasions during the Election campaign. A further allegation of procurement under section 99 of the Act was withdrawn.

The first occasion relates to a meeting held at the house of one Sonny Ah Nee at Aleisa East on 10th February, 1979 which was addressed

by George Lober. The petitioner says she was present at that meeting and saw a small truck parked at the house loaded with an estimated 4 kegs of beef, 2 kegs of beer and 4 cartons of tinned meat. The truck was one which she had habitually seen Mr Lober driving. She left before this food was distributed, but received information later that it had been distributed among those at the meeting. The Pulenu'u for the area, Falana'i Feti Harder who was called by the respondent confirmed that he had asked Mr Lober to "feed the village" at his meeting, and as a result Mr Lober produced beer, soft drinks, kegs of beef and cartons of canned meat, which the Pulenu'u distributed to all the people of the village after the meeting.

Tony Howman gave evidence of another meeting of Mr Lober's which he attended at Aleisa School grounds about one week before the Election. He said Mr Lober arrived with a number of supporters and a truck loaded with 10 kegs of beef, with beer, and cartons of camp pie. After Mr Lober's speech the beer was given out and the foodstuffs were distributed according to a list of the Aleisa families. Mr Howman said his own family received part of these foodstuffs. Again, on the eve of Election Day there was evidence that Mr Lober came to a School House at Aleisa for about a quarter of an hour and distributed bottles of beer among persons gathered there in expectation of his arrival. Some drank the beer on the spot and others took it away.

Mr Lober did not give evidence and does not appear to dispute the evidence of distribution of foodstuffs and liquor since his own witness, Falana'i Feti Harder, confirmed the allegation that Mr Lober distributed food at his suggestion.

There was passing reference in the evidence to other candidates offering refreshments and food at their meetings but no sufficient evidence to warrant my considering any report of corrupt practice on their part. In particular there was evidence from Mrs Frances Moore herself that she served home-made cordial and home-made sandwiches by way of refreshment at her meetings. This was on a small scale and clearly intended for consumption at the meeting. I reject any suggestion that such light refreshment could be said to have been given with intent to induce voters to favour her at the Election.

In Mr Lober's case the situation is different, I find. On two occasions during the campaign substantial quantities of foodstuffs were distributed at his meetings, far beyond the category of light refreshment and, given the circumstances of an imminent Election, I infer that he provided these foodstuffs himself for the persons gathered there and their families for the purpose of corruptly procuring himself to be elected in terms of section 97(b) of the Electoral Act 1963. As to the distribution of beer on the eve of the Election, the circumstances are extremely suspicious, but there is no evidence of the quantity of beer distributed, and I am unable to satisfy myself that Mr Lober went beyond the bounds of mere light refreshment at his meeting on that occasion. I declare Mr Lober's election void in the circumstances in terms of section 112 of the Act and I will report to the Honourable the Speaker of the House accordingly.

I award costs of \$75.00 to the petitioner against the respondent.