

Katie Fielding

County Secretary

WALC

14 January 2022

By email

Dear Katie

Client: Keevil Parish Council: councillor

Our Reference: Wilts 21/257

Thank you for your email of 12 December 2021.

The council entered into an arrangement with a company for the provision of management services for a fee of £1. A resident who had been a councillor up to the elections in May 2021 is a director of the company.

The council wants to know whether or not the appointment of the company was unlawful.

The letter of engagement between the council and the company states that:

“Our services will be provided by {the name of the ex- councillor}”

Appendix 3 to the agreement has a continuity arrangement. It states:

“Should the agreed consultant not be available to undertake or complete this work, then a replacement consultant will be offered. Details pertaining to this project are as follows:

Name	Qualifications & experience	Contact number
[name of alternative consultant]	Experienced book-keeper	*****

The Local Government Act 1972 prohibits councillors from being paid officers of the council and until the end of a 12 month period after they cease to be a councillor (see section 116)

Was the ex-councillor “an officer”?

Section 112 of the 1972 Act states that:

“a local authority shall appoint such officers as they think necessary for the proper discharge by the authority of such of their or another authority’s functions as fall to be discharged by them and the carrying out of any obligations incurred by them in connection with an agreement made by them in pursuance of section 113 below.”

Section 113 deals with working with other local authorities and is therefore not relevant to these circumstances.

I do not think that the ex-councillor is an officer for the purposes of the 1972 Act. He was not appointed by the council in accordance with section 112. The council appointed the company to provide the services as a contractor not an officer. Accordingly, he provides the services that the contractor provides under the contract. And the council has no power to require that he undertakes the work. The agreement permits the company unilaterally to replace him.

I also think that it is relevant to the lawfulness of the council's actions that the token payment was only to ensure the validity of the company's professional indemnity insurance. A council's use of any power must be reasonable. Accordingly, before a council decides whether to appoint a contractor, I think that its deliberations must include taking account of the fiduciary duty that it owes electors/council tax payers. It must balance the interests of council tax payers (who have contributed to the council's income) against the interests of those who would benefit from the council's discretionary expenditure eg an ex-councillor. It seems to me that it would generally be reasonable for the council to agree to pay a small amount to ensure that the services provided by the company are underpinned by legal indemnity insurance. In such circumstances, I do not think that a council would be acting to avoid the prohibition against paid employment contained in section 116 of the 1972 Act.

Yours sincerely

Martin Fine

Solicitor

NALC