

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

PMB 081
Port Vila
Vanuatu

**PUBLIC REPORT
ON THE
USE OF
GOVERNMENT OFFICE
FOR PERSONAL GAIN BY
MR NOEL FAIONALAVE¹**

5 August 2002

9466/2002/08

¹ Former 3rd Political Advisor, Ministry of Trade, Commerce and Industry, 1998/1999

**PUBLIC REPORT ON THE USE OF
GOVERNMENT OFFICE FOR PERSONAL GAIN BY
MR NOEL FAIONALAVE**

SUMMARY

The Ombudsman has decided to issue this public report to illustrate how government officers could misuse a government office or property for personal gain. By doing so, public funds belonging to the people in Vanuatu is misused for personal and private purposes.

Mr. Noel Faionalave was appointed to the position of the 3rd Political Advisor in the Ministry of Trade, Commerce and Industry. His employment was from the beginning of 1998 to November 1999. While holding this position, Mr. Faionalave was found to have used the Government office and/or property for personal and private purposes. He was found to have written a letter to Mr. A in regard to an alleged debt of VT.200,000 that he claimed Mr. A owed to him. Even though this matter was a private issue between Mr. A and Mr. Faionalave, he decided to use Government papers with letter heads and official stamps to write and send a letter to Mr. A about his claim.

After due enquiry, the Ombudsman found that Mr. Faionalave was a leader as prescribed under **S 5 of the Leadership Code Act (LCA)**. As an officer of the Government Ministry and a leader, he was also a public servant, because he does not only lead but he also served the people.

Therefore, being a leader and a public servant, he breached the provisions of the Public Service Act and the Leadership Code Act. **Section 3** of the **LCA** says that a person considered to be a leader must behave honestly and fairly in all official dealings with other people to avoid personal gain. Also, **Section 29 of the LCA** specifies that a leader must abide by the laws provided for by the public service. Therefore, Mr. Faionalave had a duty to abide by the Public Service Act which states in section 34 that, employees in the Public Service must use resources in a lawful and proper manner.

As Mr Faionalave breached the LCA, he is liable to be punished in accordance with Part 6 of the LCA. This is in accordance with section 19 of the LCA which states that any person who does not comply with Part 2, 3 or 4 is guilty of a breach of the Code and is liable to be punished in accordance with Part 6.

During the process of this enquiry, Mr. Faionalave was terminated from his position. However, the Ombudsman decided to put out this report to illustrate to all the public servants and leaders in government and public sector that there are provisions in the Acts of Parliament that forbids all government employees from misuse of position, personal gain and/or misuses of government properties for private purposes.

The Ombudsman therefore recommends and appeals to all Heads of Government Authorities/Departments and the Public Service Commission to ensure that all leaders and public servants in the Public Sector are made aware of their responsibilities and avoid misusing their offices

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1. JURISDICTION

- 1.1 The Constitution, the Ombudsman Act and the Leadership Code Act (LCA) allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. In this public report, the Ombudsman Act and the Leadership Code Act give power to the Ombudsman to inquire into the conduct of Mr. Noel Faionalave for breach of the Leadership Code and the Public Service Act. Mr. Faionalave used a Government office and his position for personal and private purposes. Also, according to a Supreme Court Judgement, holders of public offices such as political advisors are also held as public servants because they serve the people at large and they are paid by public money.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to show how public servants and leaders can use public offices for their own personal gain.
- 2.2 The scope of this inquiry and this paper is to establish the facts about why Mr. Faionalave used his position and a government office for private/personal purposes and to show that his actions are in breach of the Leadership Code and the Public Service Act.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS, REGULATIONS AND RULES

3.1 CONSTITUTION OF THE REPUBLIC OF VANUATU

As Mr Noel Faionalave was holding a position of leadership as the former 3rd Political Advisor in the Ministry of Trade, the Leadership Code under the Constitution applies to him in this report. A full text of the appropriate Article can be viewed in **Appendix 'A'**.

3.2 LEADERSHIP CODE ACT NO. 27 OF 1998

As Mr Faionalave was a leader under section 5 of the Leadership Code Act when this issue was investigated by the Ombudsman, Mr Faionalave may have breached several provisions of the Act. A full text of the provisions that applies to Mr Faionalave in this case can be viewed in **Appendix 'B'**.

3.3 PUBLIC SERVICE ACT NO 11 OF 1998

As Mr Noel Faionalave was a political advisor whose duty was to serve the public at large, he is also deemed to be a public servant (please refer to Finding 2). The Public Service Act therefore applies to him and Mr Faionalave breached a provision of this Act. A full text of this provision can be viewed in **Appendix 'C'**.

4. OUTLINE OF EVENTS

- 4.1 **On 26 May 1999**, Mr. Noel Faionalave wrote a letter to Mr. A concerning a debt of Vt200,000 which he claimed that Mr. A owed him. (The letter had the letterhead of the Ministry of Trade, Commerce and Industry and was sealed with the official stamp. (Copy of the letter is attached as **Appendix 'D'**).

- 4.2 **On 1st June 1999**, Mr. A lodged this complaint to the Ombudsman. He claimed that Mr. Faionalave used Government stationary for his personal and private purposes.
- 4.3 **On 13th July 1999**, the Ombudsman commenced an enquiry into the matter.
- 4.4 **On 19th July 1999**, we received a response from the former Minister of Trade, Commerce and Industry, Honorable Willie Jimmy. Hon Jimmy indicated that all employees in his Ministry, including Mr Faionalave, were warned about misuse and abuse of government facilities which may cause criticism by the public. All staff were requested to cooperate, respect and observe the rules, policy and laws at all times during their term of employment with the Ministry (copy of this response is attached as **Appendix 'E'**)
- 4.5 We received no response to our enquiry from Mr. Faionalave. However, when we pursued on for him to respond to our enquiry, we were informed that he was terminated from his position. The reason for his termination was due to other reasons and not specifically as a result of this enquiry.

5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 On 21 August 2000, a Working Paper was issued by the Ombudsman to those who were implicated in this report as an opportunity for them to respond to its contents.
- 5.2 On 29 January 2001, the Ombudsman received a response from Mr Noel Faionalave. Mr Faionalave advised that he used the Ministry of Trade letter-head so that Mr A was aware that he was working at that department. He was writing for an amount of money that he believes Mr A owes him, he did not use the letterhead with the intention of pressuring Mr A to give that money.
- 5.3 He also used his title in that letter to show that he holds that position at that time.

Mr Faionalave also claimed that it is outlined in an amendment of the Government Act that the 3rd Political Advisor's (PA) work is to be involved in politics on behalf of the Minister in his or her constituency. The 3rd PA is a constituency liaison. Due to this section of the Government Act, Mr Faionalave believes that he has not breached the Leadership Code Act.

- 5.4 We have since reviewed the Government Act which Section 18 states that political advisors are to provide political advice to their Minister and to act as a liaison on the Minister's behalf. Mr Faionalave's claim that he has not breached the Leadership Code cannot be legally sustained because even though he is carrying out political work for the Minister, he is still a leader under the Leadership Code and must therefore conduct himself in a way that is lawful and proper and as established in the Code.
- 5.5 Mr Faionalave also stated that he is not the only public servant that uses government paper for private purposes. It is the same as other civil servants who use plain white paper but because he used a government letterhead which is why he was investigated. Our advice here would be that public servants should use government property with care and not to misuse them to the extent where even official government letter-heads and stamps are used for private matters.

6. FINDINGS

Finding 1: MR NOEL FAIONALAVE BREACHED THE LEADERSHIP CODE ACT

- 6.1 The following is a list of the breaches of the Leadership Code Act (and where applicable, the Constitution) for which the Ombudsman has found evidence. The breaches arise from the misuse of Government letterhead and office facilities.

Section	Provision	Penalty
Section 13(1)(b)	A leader must comply with and observe the law and the fundamental principles of leadership contained in Article 66 of the Constitution.	A fine not exceeding Vt 2 million.
Section 28	A leader acting in his or her capacity as a Leader who fails to abide by enactment that imposes on the leader a duty, obligation, or responsibility is in breach of this Code.	A fine not exceeding Vt 2 million.
Section 29(a)	A Leader who fails to abide by the provisions of An Act that provides for public service is in breach of this Code.	A fine not exceeding Vt 2 million.

Finding 2: MR NOEL FAIONALAVE BREACHED THE PUBLIC SERVICE ACT

- 6.2 According to a court precedent, *Virelala et al (Air Vanuatu) v Ombudsman Civil Case No.4 of 1997* in the Supreme Court it was decided that holders of public offices which include political advisors are considered as public servants because they serve the public at large and are paid by the public money. Section 34 of the Public Service Act states that every employee must in the course of their employment in the Public Service use resources in a lawful and proper manner. This section also states that employees must not make improper use of his status, power or authority in order to gain or seek to gain a benefit or advantage for himself.

It is therefore found that, Mr. Faionalave acted contrary to the provisions of section 34 of the Public Service Act.

7. RECOMMENDATIONS

The Ombudsman makes the following recommendations:

Recommendation 1: The Public Prosecutor to consider this report in relation to breaches of the Leadership Code Act.

Recommendation 2: That, all heads of Government Authorities including the Public Service Commission to send regular reminders and notices to all employees in the public sector to observe and follow the rule of law that provides for the public service.

Recommendation 3: That, the Government, State Law Office and the Public Service Commission review the Public Service Act and impose stricter provisions for disciplining and penalizing public employees who disregard and fail to observe the rule of law.

Dated the 5th day of **August 2002**.



Hannington G. ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A. Constitution
- B. Leadership Code Act
- C. Public Service Act
- D. Copy of Mr. Faionalave's letter to Mr. A.
- E. Copy of the letter of response from the former Minister of Trade,
Hon Willy Jimmy

Appendix 'A'

CONSTITUTION OF THE REPUBLIC OF VANUATU

CONDUCT OF LEADERS

Art 66.(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to-

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) demean his office or position;
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

(2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub-article (1).

Appendix 'B'

LEADERSHIP CODE ACT NO. 27 OF 1998

PART 1 - PRELIMINARY

SUMMARY OF OBLIGATIONS IMPOSED ON LEADERS BY CHAPTER 10 OF THE CONSTITUTION.

S 2. (2) Article 66 also provides that, in particular, a leader must not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub-article 66 (1).

LEADERS BEHAVIOR

- s.3 A leader holds a position of influence and authority in the community.
A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behavior that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership.

LEADERS

- s. 5. In addition to the leaders referred to in Article 67 of the Constitution, the following are declared to be leaders:

- (d) political advisors to a Minister

DUTIES OF LEADERS

- s.13. (1) A leader must:

- (a) comply with and observe the law
(b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution

PART 3 – BREACHES OF LEADERSHIP CODE

BREACH OF LEADERSHIP CODE

- s. 19 A person who does not comply with Part 2, 3 or 4 is guilty of a breach of this Code and is liable to punishment in accordance with Part 6.

SPECIFIC PROVISIONS

- s. 29 Without limiting the generality of section 28 a leader who fails to abide by the provisions of an Act that provides for:

- (a) the public service

PART 5 – INVESTIGATION AND PROSECUTION OF LEADERS

ROLE OF THE OMBUDSMAN

- s. 34. (1) The Ombudsman must investigate and report on the conduct of a leader (other than the President):

- (a) if the Ombudsman receives a complaint from a person that a leader has breach
t h i s C o d e .

Appendix 'C'

PUBLIC SERVICE ACT NO. 11 OF 1998

EMPLOYEES OBLIGATIONS

34. (1) Every employee, Director-General, Director or Senior administrator (as the case may be) must in the course of his or her employment in the Public Service:-
- (j) use resources and public money in a lawful and proper manner.

GOUVERNEMENT DE
LA REPUBLIQUE DE VANUATU
**MINISTÈRE DES AFFAIRES
DU COMMERCE, TRADE ET
DE L'INDUSTRIE**

*Sac Postal Confidentiel 056
Port Vila, Vanuatu*



GOVERNMENT OF
THE REPUBLIC OF VANUATU
**MINISTRY OF TRADE,
COMMERCE AND
INDUSTRY**

*Private Mail Bag 056
Port Vila, Vanuatu*

26th May, 1999
*Telephone (678) 25675
Fax (678) 25677*

RE: OUTSTANDING OF PAYMENT OF 200.000VT

Mi write long yu about mentioned ia istap antap.

Long 1992 yu bin pem out graon blong papa blong mi long No. 2 eria long wan amount blong 3.300.000VT bae cost blong land ia 3.500.000VT mo yu kat outstanding blong pem mi long 200.000VT we I stap yet blong yu pem mi.

Long conversation blong yumitu long telephone long 26/5/99 se yu talem se mi kat outstanding long yu se yu pem loa blong pusum ol pipol we oli stap long land.

Mi sori blong talem taem yu pem land finish mi nomo kat rait blong toktok wetem ol pipol we oli stap long land from mi mi nomo owner blong land. Land I blong yu mo yu now yu owner blong land.

Yu no traem blong stap confusem mi. Mi kivim kasem end blong 31/5/99 blong pem mi long 200.000VT we I stap outstanding long land istap. Sipos no bai mi tekem iko long naraway mo fasin.

Mi hope blong yu kam lukim mi blong yumitu I stretem aot long gud fasin mo gud faith bifo 31/5/99.

Thank yu long cooperation blong yu.

Yours sincerely,

Noel Faionalave
Third Political Advisor
Ministry of Trade, Tourism and Business Development



cc: George Kerby - Lands Department

GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU

BUREAU DU
VICE PREMIER MINISTRE
MINISTRE DU COMMERCE
ET DU
DEVELOPPEMENT DES ENTREPRISES



Appendix
GOVERNMENT
OF THE
REPUBLIC OF VANUATU

OFFICE OF THE
DEPUTY PRIME MINISTER
MINISTER OF TRADE
AND
BUSINESS DEVELOPMENT

Our ref: MTTBD/201/5/WJ/jn

16th July, 1999

Mr. Alfred B. Maho,
Director of Leadership Code,
Ombudsman's Office,
PORT VILA.

Dear Ombudsman,

Your letter Ref. 5344/9466/L14/nf 13/7/99

In respond to your letter referred to above, I wish to inform you that Mr. Noel Faionalave is a grown up matured person and can answer for himself to your concern.

All employees including Noel Faionalave had been warned about mal-practice habit and abuse of government facilities which could cause criticisms by the public to this Ministry. All staff are requested to cooperate and respect the rules at all times, during their term of employment with the Ministry.

I have no further comments.

Yours sincerely,

Hon. Willie JIMMY TAPANGA
Deputy Prime Minister and
Minister of Trade, Tourism and Business Development

