



To His Excellency the Governor of Sint Maarten
drs. E.B. Holiday
Falcon Drive # 3
Harbour View
Sint Maarten

RvA No. SM-03/15 DIV

Subject: Request for advice pursuant to Article 3, second paragraph, of the National Ordinance on the Promotion of Integrity of Ministers.

Advice: With reference to your request dated December 23, 2015 for the opinion of the Council of Advice (hereinafter: the Council) on the abovementioned subject and the discussion thereof at the meeting of the Council on January 5, 2016, and the adoption thereof at the meeting of the Council on January 5, 2016, the Council informs you as follows.

Under article 3, first paragraph, of the National Ordinance on the Promotion of Integrity of Ministers, the prime minister decides which business interests and other ancillary positions and activities of the ministers are undesirable with a view to a proper performance of the duties as a minister or the preservation of the impartiality and independence or the confidence therein. Regarding the decision to be made, the prime minister will seek the advice of the Council and the General Audit Chamber as well.

With regards to the prime minister, Article 3, sixth paragraph, indicates that the Council of Advice decides which business interests, other positions and ancillary activities are undesirable. The advice of the General Audit Chamber will be sought for this.

1. General comments

a. Substantive requirements for the written statements

Under Article 2, first paragraph, of the National Ordinance on the Promotion of Integrity of Ministers, each minister is obligated to submit a written statement to the prime minister within thirty days after acceptance of the office. The written statement must contain the business interests, assets, other ancillary positions and activities and the income or benefits from same of the minister and his spouse or partner and the business interests and other assets of



the minor children.¹ Assets are defined as immovable property, movable property, rights that can be measured in terms of money, liabilities and debts. For movable assets not exceeding a threshold value of NAf. 20,000, no statement needs to be made. Assets not situated in Sint Maarten should also be specified, as well as shares in an undivided estate or legacy. The financial and business interests of minor children should be stated because of parental authority and thus the control of the minister over these business and financial interests. The minister is responsible for the accuracy of what is written in the statement.

Based on the statements, the prime minister will decide which business interests, other ancillary positions and activities of the ministers are undesirable with a view to a proper performance of the duties as a minister or the preservation of impartiality and independence or the confidence therein. Under Articles 4 and 5, interim changes to the business interests, other ancillary positions and activities should be communicated immediately each time to the prime minister by written notice. After having been processed, the written statements will be filed with the Registrar of the Joint Court of Justice.

b. The purpose of the statements

The purpose of the written statements is to promote the integrity of ministers by avoiding undesirable ancillary positions and activities and business interests of ministers, on the one hand, and, on the other hand, by preventing unjust enrichment. In this context, the Council refers to a passage from the report “Doing the right things right”².

“The statements concerning the listing of the assets at the beginning and at the end of the term of office serve as benchmarks that may be used as evidence for the criminal-law proceedings in case of a (later) suspicion against the (former) minister”.

Therefore, it is important to fill out the statements in good faith.

Ensuring the integrity is considered a sufficiently compelling interest to justify restrictions on the right to privacy, as the

¹ A minister is considered to have a partner, if the minister has shared a joint household with someone for at least one consecutive year.

² *Doing the right things right*, final report of the Ethical Public Governance Committee, Philipsburg, Sint Maarten, July 12, 2014, recommendation 2.6.



democratic state is not credible without an ethical public administration. In connection with the aim of preventing unjust enrichment, the Public Prosecution Service is entitled under certain circumstances to inspect the statements concerning the assets of a minister and his family members filed with the Registrar of the Joint Court of Justice.³

c. Assessment by the Council

When assessing whether there are undesirable interests, the Council will examine the written statements for compatibility with *inter alia* Articles 34 and 35 of the Constitution. Articles 34 and 35 of the Constitution explicitly prohibit a number of positions and interests for ministers. Depending on the circumstances of the case, relations other than those mentioned in these Articles may also be undesirable with a view to the impartiality and independence of the minister or the confidence therein. Whenever an administrator does not only perform his public duties as an administrator, but also holds or has other positions or interests, there may be a risk of a conflict of interests. The Explanatory Memorandum to the National Ordinance on the Promotion of Integrity of Ministers states that the decision-making process and decisions of a political office holder may not be influenced by personal interests; furthermore, the appearance of such influence should be avoided. In addition, the office of minister is so demanding and important that the office requires the full commitment of the minister. Therefore, the minister should also give up his other positions and ancillary activities that are undesirable with a view to a proper performance of the duties as a minister.

For its advice, the Council will rely on the information provided in the written statements. It is presumed that these statements are filled out in good faith. In order to offer a careful advice and decision-making, Article 2 of the National Ordinance on the Promotion of Integrity of Ministers requires that the statements are filled out accurately, completely and clearly in accordance with the model of the written statements as laid down in the annex to the National Decree containing the Model Written Statement Ministers.

³ Article 10 of the National Ordinance on the Promotion of Integrity of Ministers.



The Council also emphasizes that, regarding the interests of the ministers (except for the prime minister), the Council only plays an advisory role.⁴ Based on Article 3, first paragraph, of the National Ordinance on the Promotion of Integrity of Ministers, the decision on the undesirability of business interests, other positions and ancillary activities is made by the prime minister. As a result of this decision, the minister concerned is obligated, based on Article 3, third paragraph, of the National Ordinance on the Promotion of Integrity of Ministers, to take the necessary measures regarding asset management or to give up other positions or ancillary activities. If the minister fails to do so, the prime minister is obligated to report this to Parliament. As the minister is politically accountable to Parliament, Parliament may call the minister to account in such cases, based on its monitoring task. As a High Council of State, the Council also ensures the confidentiality of the statements, and both the Council members and the secretariat of the Council of Advice fulfill the obligation of confidentiality as stated in Article 13 of the National Ordinance on the Promotion of Integrity of Ministers.

2. Opinion regarding the financial and business interests

Based on the statements provided to the Council, the Council reports that one minister could be considered to hold an undesirable participation within the meaning of Article 35, third paragraph, of the Constitution. This minister has stated that his wife owns a company. Based on Article 35, third paragraph, of the Constitution, ministers may not directly or indirectly participate in, or be a director or supervisory director of any company domiciled or active in Sint Maarten. The holding of shares in a corporation is not considered a participation in a company, unless the person concerned holds 25% of the shares together with his relatives by consanguinity or affinity up to the second degree.

The statement of the minister concerned does not show the size of the shareholding, nor whether the minister is married in community of property. If it concerns a marriage in community of property, the minister participates in a company through his wife, according to 1:94, first paragraph, of the Civil Code of Sint Maarten. The Council is of the opinion that the minister does not comply with Article 35, third paragraph, of the Constitution, if the minister is married in community of property, and the

⁴ Under Article 3, sixth paragraph, the Council of Advice only plays a decisive role as regards the statement of the prime minister.



shareholding in the company is equal to or greater than 25%. If this is the case, the Council advises the prime minister to urge the minister concerned to take the necessary measures regarding his asset management.

As regards the other ministers, their partners or spouses and minor children, the Council did not find any possibly undesirable business interests, other positions and ancillary activities, in the written statements. However, the Council notes that the financial and business interests of a spouse with whom no joint household is shared should also be specified. In addition, the Council noticed that the place of birth and the address of the minister and the name of the wife are missing in some statements. The Council also advises to type the statements for reasons of clarity.

The Council's decision on the business interests, ancillary positions and activities of the prime minister will follow after the Council has received the advice of the General Audit Chamber in this regard. The request for advice to the General Audit Chamber by letter dated December 31, 2015 (number RvA No. VV/220) was received by the General Audit Chamber on January 4, 2016. The General Audit Chamber will issue its advice to the Council within the statutory period of two weeks.

3. Recommendations

Finally, the Council is of the opinion that a lack of clarity exists in the procedure as described in the National Ordinance on the Promotion of Integrity of Ministers. Thus, administrative and procedural rules regarding the transmission of written statements between the prime minister, the General Audit Chamber and the Council of Advice are lacking. Furthermore, there is no explicit obligation to decide within a certain period and to inform the minister concerned or the prime minister of the decision made. By defining this in a clear manner, the process can be completed expeditiously, and the right to privacy of the ministers can be better guaranteed. The Council asks that attention be paid to this.

The Council also deems it desirable to adjust the questions on the model of the written statements in such a way that the financial and business interests are reported as accurately and completely as possible. Furthermore, the National Ordinance on the Promotion of Integrity of Ministers contains an incorrect reference in Article 7. This Article refers to Article 3, fifth paragraph, second sentence, while the fifth paragraph of Article 3 only



contains one sentence. The Council advises to correct the National Ordinance on the Promotion of Integrity of Ministers and the National Decree containing the Model Written Statement Ministers insofar as the aforementioned non-exhaustive points are concerned and to check them for any other lack of clarity.

4. Conclusion

The Council advises the prime minister to take into account the comments in this advice.

Thus adopted at the meeting of the Council of January 5, 2016.

The Secretary

[was signed:]

Mr. *mr.* A.G. Baly

The Vice-Chair

[was signed:]

Ms. *mr. drs.* M.C.C. Brooks-Salmon