

Appeal No. VA05/3/003

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

FETAC

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Lot No. Block P4B (Floor 2), Boundary Road, North Dock B, North Dock, County Borough of Dublin.

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Joseph Murray - B.L.

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 11TH DAY OF NOVEMBER, 2005

By Notice of Appeal dated the 5th day of July, 2005 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1,042.00 on the above described property.

The Grounds of Appeal are set out in a letter accompanying the Notice of Appeal, a copy of which letter is contained in Appendix 1 to this judgment.

The grounds of appeal as set out on the Notice of Appeal (see Appendix 1 to this judgment) are that in accordance with the Valuation Act 2001 the subject property is exempt from rates and deemed to be not rateable.

The appellant in said notice of appeal reserved the right for their legal team to provide further legal grounds of appeal at hearing.

Section 35 of the Valuation Act, 2001 requires that an appeal to the Tribunal shall specify the grounds on which the appellant relies. The notice of appeal in this case simply indicates that the subject property should be exempt from rates or deemed not rateable. No reason for exemption is advanced. Notwithstanding the absence of any grounds at all, the notice of appeal purports to “reserve the right to provide further legal grounds of appeal at hearing”.

It is quite clear from Section 35 of the Valuation Act, 2001 that clear and detailed grounds be apparent on the Notice of Appeal.

This matter was addressed at the hearing and the members of the Tribunal were of the opinion that the appeal should not be allowed to proceed. However, Counsel for the Commissioner, Mr. James Devlin B.L. reluctantly withdrew his objection and the Tribunal proceeded with the appeal.

The Appeal proceeded by the way of oral hearing held on the 4th day of October, 2005 at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The appellant was represented by Mr. Owen Hickey B.L. instructed by Messrs. Bowler, Geraghty & Co. Solicitors. The respondent was represented by Mr. James Devlin B.L. instructed by the Chief State Solicitor.

The Legal Issue

Evidence for the appellants was given by Mr. Ultan Tuite. No evidence was given by the respondent.

Legal submissions from both sides were heard by the Tribunal. These submissions in writing were lodged with the Tribunal prior to the hearing. The question for decision was “is FETAC an “office of State” within the meaning of Section 15(3) of the Valuation Act, 2001?” In other words is the relevant property directly occupied by the State as an “office of State” within the said Act and accordingly exempt from liability for rates.

The Appellant’s Case

Mr. Ultan Tuite, Director of Services, FETAC referred to the decision of the Tribunal, **VA04/2/038 – Legal Aid Board v Commissioner of Valuation**, wherein the Tribunal enumerated two primary principles in relation to “an office of State” namely:

1. It must be close to the epicentre of government policy.
2. If a body is to qualify as an “office of State” there must be a certain level of integration and control by the State.

He referred to Section 4 of the Qualifications (Education & Training) Act, 1999 setting out the objects of the Act and also to Section 12 which deals with the establishment of FETAC (Further Education and Training Awards Council), Section 13 which deals with members of the council of FETAC as well as Section 14 which deals with the functions of the Council. He also referred to Section 52 which deals with the employees of FETAC.

He stated that the functions of FETAC were very closely associated with the Ministry of Education and Science and with the Ministry of Finance. FETAC is a body corporate set up by the 1999 Act with perpetual succession, an official seal and power to sue and be sued in its corporate name and with the consent of the Minister for Education and Science to acquire, hold and dispose of any property and to employ solicitors. It is a non-profit making body. He further stated that FETAC has responsibility for making awards previously made by Fáilte Ireland (formerly CERT), FÁS, NCVA and Teagasc (up to level 6).

He said that ministerial control was much greater than with other public bodies like Aer Lingus, Aer Rianta etc.

The Council get funding by way of direct grant from the Government through the National Qualification Authority of Ireland, 94% approx. and about 6% from fees approved by the Minister. They must work in consultation with the National Qualification Authority of Ireland to implement Government policy (Section 14(1)(h) of the 1999 Act).

Accounts must be submitted at the end of the financial year to the Comptroller and Auditor General.

All expenses incurred by the Minister in the administration of the Act are paid for out of the funds provided by the Oireachtas.

In cross-examination Mr. Tuite agreed that the Minister cannot give policy directions but stated that there was little that could be done by FETAC without the consent and approval of the Minister. There was no specific section in the Act dealing with policy directions from the Minister. He pointed out that the fundamental objects of the Act they worked under gave the Minister full control and authority over them.

He said that he and his colleagues were not state employees but were employees of FETAC, they were not civil servants. They were public servants in the Public Sector (Section 52 of 1999 Act).

He pointed out that the Chief Executive was a civil servant and that other members of the Council were civil servants and that all members were appointed by and with the consent of the Minister for Education and Science and the Minister for Finance and were paid by them. In cross-examination he reiterated that FETAC acted in partnership with the National Qualifications Authority of Ireland and not under their direct control. He confirmed the evidence already given as to the status of members and that there was no

section in the Act giving the Minister the power to issue directions as to policy. He again pointed out that the fundamental objects of the Act they worked under gave the Minister full control and authority over them.

Mr. Hickey B.L. in his submissions set out that FETAC had satisfied 11 out of 13 factors considered in the **VA04/2/038 – Legal Aid Board**. These are referred to in his written submission at Appendix 2 to this judgment. The two, he said, that required explanation were (i) on page 4 of his submission in relation to the Minister’s power to issue general directions as to policy and (iv) on page 4 of his submission concerning the status of employment of the employees of FETAC. He submitted that Ministerial policy is carried out by FETAC and is channelled through the National Qualifications Authority of Ireland and the Chief Executive of FETAC and certain members of staff are civil servants appointed by the Minister. He maintained that such difference in status as there may be between the staff of FETAC and the staff of the **Legal Aid Board** is not such as to render FETAC not an office of State.

In conclusion he referred to a case wherein the Commissioner of Valuation had determined that the Health & Safety Authority is an office of State within the meaning of Section 15 (3) of the Valuation Act, 2001 and that this determination of the respondent gives effect to the principles laid down by the Valuation Tribunal in the **Legal Aid Board** case. He further maintained that all of the principles which apply to the Health & Safety Authority which goes to its status as an “office of State” apply precisely to FETAC. This was not contested by Counsel for the Commissioner of Valuation.

Mr. James Devlin B.L. for the Commissioner of Valuation agreed that there were 13 factors in the **Legal Aid Board** case and that the appellants were lacking in relation to 2 of these factors. The 1999 Act does not confer the status of civil servants on the staff of FETAC. In the **Legal Aid Board** case the civil servant status was a matter which weighed strongly with the Tribunal. He stressed the importance of the members of the Board being civil servants pointing out that it established a strong bond between the Minister and civil servants. There was an absence of this bond in this case. He also stated

that there was no power in the Act for the Minister to issue general directions. In addition, he said, not all of the members of the Council are appointed by the Minister and this demonstrated independence from the State. He also added that the statute delegates a considerable degree of independence from the Minister in relation to awards. Mr. Devlin's submission is at Appendix 3 to this judgment.

Findings

The Further Education and Training Awards Council (FETAC) is a separate legal corporation with perpetual succession, established under part III of the Qualifications (Education and Training) Act 1999. It has power to sue and be sued in its corporate name. For convenience sake we shall refer to FETAC as "the Council".

The Tribunal finds that there is a very strong degree of Ministerial control. The Act does not give the Minister power to issue general directives as regards the functioning of the Council. However, the Minister for Education and Science has to be consulted in respect of its functions and nearly everything carried out by Council is under the authority and with the consent of the Minister for Education and Science and/or the Minister for Finance. The power of the Council to enter into contracts (other than everyday business contracts), to employ solicitors, to sell and buy property, to collect fees, shall have the consent and authority of the Minister. It was given in evidence that all debts of the Council are the ultimate responsibility of the Minister.

The majority of the members of the Board are appointed by the Minister for a certain period and are paid under the control of the Minister for Education and Science and the Minister for Finance. The Council shall appoint a chairperson and chief executive with Ministerial consent. The Minister has in fact power to remove the chairperson from office. The Minister can make regulations for the purposes of nominations to the Council. Also where the Council appoints employees and fixes remuneration it does so with Ministerial consent.

All accounts of the Council shall be submitted to the Comptroller and Auditor General and the audit and report shall be sent to the Minister and copies shall be laid before each House of the Oireachtas. Other state bodies of a commercial nature are not obliged to do this. Reports on the operations of the Council shall be sent to the Minister and a copy of such reports shall be laid before each House of the Oireachtas.

All expenses incurred by the Minister in the administration of the Act are paid out of funds provided by the Oireachtas. The Council, being a non commercial body, gets Government funding through the National Qualification Authority of Ireland up to about 94% and the remaining 6% from fees with the consent of the Minister.

Apart from Government Ministers who are part of both the legislative and executive organs of State, the principle of the separation of powers applies to the Council. No member of the Council can be on the Council and be a member of either House of the Oireachtas at the same time. This indicates in our view that the Council is part of, or an extension of, the executive arm of State under the Minister.

The chief executive of the Council is a civil servant as are other members of the Council. Employees may be termed “public sector employees”. The important matter is that members and employees of the Council, irrespective of their classification, are appointed and regulated by public law and for the most part involving Ministerial consent.

Further the Council is regulated by the Ethics in Public Office Act, 1995 and the Standards in Public Office Act, 2001. The Council is a “Public Body” under the meaning of the 1st Schedule of the 1995 Act and is listed as such in Appendix 4 to the Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001 (Third Edition).

The modus operandi of the Council, unlike that of other state bodies of a commercial nature, is closely linked to the three organs of state, the executive, the legislature and the Comptroller and Auditor General. This clearly indicates a very high degree of integration

and control by the state, particularly as regards funding, accountability and appointments to the Council. With respect to its functions the Minister has to be consulted on policies and criteria for further education and training awards and this indicates that its functions are close to the epicentre of government business. In fact the Council is a body acting “pro bono publico” in the interests of the state in setting and maintaining educational standards for a wide sector of society which includes industry, agriculture, trade, tourism, the professions and the public service.

Determination

In view of the aforementioned the Tribunal concludes the Further Education and Training Awards Council is an “office of State” within the meaning of section 15(3) of the Valuation Act 2001 and is accordingly exempt from paying rates.