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THE HIGH COURT
COMMERCIAL

2008 No. 11 SS

BETWEEN

THE HEALTH SERVICE EXECUTIVE

APPELLANT

AND
THE COMMISSIONERS FOR VALUATION

RESPONDENTS

Judgment of Mr. Justice John MacMenamin dated the 13th day of June, 2008.

Introduction
1. On 22nd January, 2007 the Valuation Tribunal heard evidence and submissions on behalf of the appellant and respondent in an appeal brought before it pursuant to notice of appeal dated 27th September, 2006. The appeal was against a determination of the respondents ("the Commissioners") in relation to offices held by the Health Service Executive ("the HSE") at lot No. 3G/A Castletroy, Ballyvarra, Limerick, in the County of Limerick. The Tribunal issued a written determination on 26th March, 2007, to the effect that the appeal be upheld, and that the subject property be listed as "relevant property", and therefore not rateable. This decision was appealed by the Commissioners to this Court. It now falls for determination in accordance with law. In essence, the Commissioners contended before the Tribunal that the HSE should be identified, not as an (exempt) 'office of State', but rather as a 'semi-State body' liable to rates therefore rendering the subject property rateable.

2. For reasons set out below, the essential issue for determination now is somewhat broader; it is as to the legal status of the HSE itself. Is it, in law, 'the State'; an 'office of State;' or a 'semi-State' body? The answers to these questions determine if its property comes within the terms of exempt, or 'relevant property' within the definitions contained in the Valuation Act 2001 ("the 2001 Act").

3. By virtue of s. 15(3) of that Act it is provided:

> "Subject to section 16, *relevant property*, being a building or part of a building, land or a waterway or a harbour *directly* occupied by *the State* (including any land or building occupied by any Department or *office of State*, the Defence Forces or the Garda Síochána or used as a prison or place of detention), shall not be rateable." (emphases added).

The italicised words are considered specifically in this judgment.

The subject property
4. The property in question comprises of a single storey office acquired by the HSE in 2002. It is located at Plassey Technological Park, one mile east of Limerick city centre. It was inspected by the Revision Officer on 10th May, 2006. A valuation was assessed in the sum of €370. It was deemed rateable by that officer. Areas of the property are used for a very wide range of functions which come under the aegis of the HSE. These are described below. The Valuation Tribunal determined that the HSE was an 'office of State' and therefore that the subject property was not rateable.

Jurisdiction
5. By virtue of s. 39(5) of the 2001 Act, the High Court shall determine *any question or questions of law arising on the case* and shall reverse, affirm or amend the determination in respect of which the case has been stated, or may remit the matter to the Tribunal with the opinion of the court, or make such other order as the court shall think fit.

6. Thus, the remit of this Court is not now confined to a narrow consideration of affirmation or denial of the Tribunal's conclusion. By order of the High Court dated 11th February, 2008 (Kelly J.) the following additional question was identified as one to be considered and determined by the court, that is to say, whether the HSE is in fact 'the State'. This is in addition to a consideration of the correctness of the finding of the Tribunal that the evidence was an 'office of State' as opposed to a 'semi-State body.' That order of Kelly J. was not appealed. Thus, it now falls to this Court to determine these questions as now identified.

Interpretation of the Act of 2001
7. Construction of the terms of the 2001 Act necessitates the application of strict rules of statutory interpretation. These rules require the court to commence with the literal interpretation of the statutory provisions and from there, if, (but only if) the literal words produce a result which is absurd, to then seek the objective intention of the Oireachtas. However, the primary means of ascertaining legislative intent is in the words actually used by the legislature, interpreted literally. Regard may also be had to other provisions of the Act, including its long title.

8. In this case it is also necessary to deal with the principle of statutory interpretation known as '*noscitur a sociis*'. This principle has the effect of allowing for the elaboration of the literal meaning of a word or phrase by process of interpretation of associated or closely linked words in the statute and, in particular by adherence to the principle that the interpretation of general words cannot be read in isolation: that their content derives from their context. Thus, here the Commissioners urge that the subsection, in particular the terms 'the State' or 'office of State', should be interpreted by their association or connection with the words following "the State …" such as Department of State, the Defence Forces, the Garda Síochána, etc.

9. In this process one must recollect that in *Bennion on Statutory Interpretation* 5th Ed., (London, 2008) the author observes that:

> "The drafter may have specified certain terms not so as to give colour to a general phrase but to prevent any doubt as to whether they are included. Viscount Dilhorne said that where an Act defines a thing as including specified matters it is not always right to 'interpret the general words in light of the particular instances given'. He added: 'It is a familiar device of a draftsman to state expressly that certain matters are to be treated as coming within a definition to avoid argument on whether they did or not.' (*IRC v. Parker* [1966] A.C. 141 at 161."

Thus the court must look at the words in the subsection to see whether these same words should be interpreted so as to 'give colour' to the general terms 'State' or 'office of State', or so as to prevent doubt as to whether they are included in the definition in s. 15(3) of the Act of 2001.

10. In the interpretation of the valuation or taxation statutes, the court must be cognisant too of the oft-cited observations of

Kennedy C.J. in *Revenue Commissioners v. Doorley* [1933] I.R. 750 at p. 766:

> "Exemption from (that) tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes… The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter."

11. (See also *Keogh v. The Criminal Assets Bureau* [2004] IESC 32, Keane C.J.)

Other relevant provisions of the Act of 2001
12. While the true starting point must be s. 15(3) and Schedule 3 of the 2001 Act, it will be convenient to deal with the general scheme of the Act. The purpose of the Act in its long title is:

> "… to revise the law relating to the valuation of properties for the purposes of the making of rates in relation to them; to make new provision in relation to the categories of properties in respect of which rates may not be made and to provide for related matters."

An issue in interpretation of the relevant provisions

13. In the context of this case, a difficulty derives from the interface between s. 3 (the general interpretation section of the Act); s. 15(3) (already cited) and the Third Schedule of the statute.

By s. 3 "relevant" and *rateable property* is to be construed in accordance with the Third Schedule. (The term "relevant" is therefore used in identification of rateable *and* exempt property). The terms of s. 15(3) which outline categories *not* rateable have been quoted above. The Third Schedule is clearly intended to identify categories which *are* rateable. But remarkably, there is contained within that Third Schedule the following definition of property which *is* rateable:

> (o) " any building or part of a building or lands or waterways or harbours directly occupied by the State, including lands or buildings occupied by any Department or office of State, the Defence Forces or the Garda Síochána or used as a prison or place of detention."

Thus, precisely the same description of property is included in the main text of the Act at s. 15(3) as being 'relevant property' which is *exempt* on the one hand, and on the other in Schedule 3(1)(o) as being 'relevant property' *liable* for rates.

14. Insofar as any ambiguity is created by these apparently conflicting provisions, I consider that by virtue of its context and phraseology, s. 15(3) expresses the true, objective intention of the Oireachtas, that is to say, to recognise an exemption in relation to the categories of land therein described, particularly lands or buildings occupied by a Department or office of State. To conclude otherwise would be absurd. It is clear that s. 15(1) defines rateable property *subject* to subsections (2) (3) (4) and (5) which identifies properties *not* rateable. It provides:

> "15. (1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable."

These subsections include s. 15(3), which exempts the State or an office of State etc. Insofar as other provisions of the Act are concerned, Schedule 4 defines relevant property which is not rateable, and defined as such in s. 15(2), subject to s. 16 and s. 59 which are immaterial here. The context of s. 15(3) and the principle of "*noscitur a sociis*" are determinative of the true interpretation, that is to say, that the exemptions are defined by s. 15(2) and Schedule 4, neither of which is relevant here, s. 15(3) s. 15 (4) and s. 15(5) which are not relevant here.

Exemptions in Schedule 4
15. Paragraph 8 of Schedule 4 deals with exemptions. It contains provision for buildings used by a body for the purposes of caring for sick persons, for the treatment of illnesses or as maternity hospitals which are not for profit or used by:

> "(b) a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer and the care or treatment provided by which is made available to the general public (whether with or without a charge being made therefor)."

Thus hospitals or kindred institutions administered for charitable or public purposes are not rateable.

16. Also exempt by virtue of para. 14 of Schedule 4 are buildings or parts of buildings used for the purposes of caring for the elderly, handicapped or disabled persons subject to the same conditions. Thus, as is pointed out by counsel for the Commissioners Mr. Eoghan Fitzsimons S.C., the Act contains scope for exemption in the case of buildings used for the purposes of care or treatment administered in accordance with those criteria and which may come under the aegis of the HSE. But he submits there is no general exemption for the HSE as a body corporate.

17. The next power of reference in this consideration must be the manner in which 'the State' is recognised or defined in accordance with the provisions of the Constitution of Ireland, statute, and decided authority. The definition of semi-State body and office of State are considered later.

'The State'
18. The concept of the State is not fully defined in the Constitution. In *Comyn v. Attorney General* [1950] I.R. 142, Kingsmill Moore J., then a judge of the High Court observed at pages 158 – 159:

> "Ultimately, the nature and attributes of the State must be found in the wording of the Constitution. The King had been removed from the Constitution, the King formerly so omnipresent in every branch of political activity, the King whose nature as corporation sole had provided the necessary element of continuity. . . This Protean conception had disappeared. Into the vacuum so left some new political conception had to be inserted. The new conception – in reality, a very old conception – was the State. Nowhere in the Constitution is the legal or philosophical nature of the State explained or defined. We are told, indeed, that Ireland is a sovereign, independent, democratic State. We are not told what a State is, but are left to discover this indirectly from the various Articles."

19. Thus in the first instance one must look to the "*nature and attributes*" of the State in the Constitution as guiding factors in the process of interpretation of the State itself. While these are both broad criteria, one turns then to the observation of Maguire C.J., speaking for the Supreme Court, on appeal in *Comyn*:

> "Under our Constitution the State is a juristic person with a capacity to hold property. In the opinion of this Court the State cannot be regarded as a Government Department." [1950] I.R. 142 at 165.

20. It is this particular 'attribute' which is central to this case; in particular *how* the State may 'hold property'. *Comyn* was a case which turned on the issue as to whether compensation for compulsorily acquired mining rights should be assessed non-judicially under the Acquisition of Land (Assessment of Compensation) Act 1919 (as the Government, which had effected the acquisition, claimed) or by a judge of the High Court (as was urged by the plaintiff). The 'Government' had been the acquiring entity. Kingsmill Moore J. had to determine whether acquisition by the Government was tantamount to purchase by 'the State'. He concluded that the State, as a juristic person or entity, had as one of its legal attributes the capacity to hold property. While the acquisition had been by or through the *agency* of 'the Government' such acquisition had, he found, been actually by 'the State' itself. He specifically rejected the contention that because the property had been acquired by 'the Government', a Minister, or by a government department, it had not become the property of the State. Thus *Comyn* is authority for the proposition that the State *can* acquire property through its agents such as the Government or its Ministers or departments. But, of course, this is not determinative. There are other forms of public authority as well as the State. The question remains as to whether the Executive should be seen as 'the State', an office of State or a semi-State body.

21. While Article 10 of the Constitution of Ireland speaks of "property which belongs to the State" and while the State has been judicially recognised in *Comyn* as a "juristic person with a capacity to hold property", the legal owner of State property for ordinary private law purposes or for the purposes of litigation is through a State authority. (See the observations of Walsh J. in *Webb v. Ireland* [1988] I.R. 353, p. 392 that "The effect of the article is that the State is the ultimate owner of all the matters therein mentioned". In general, property rights inhering in the State are exercised under the State Property Act, 1954 through Ministers, or government departments (see *Comyn v. Attorney General* [1950] I.R.142; *Byrne v. Ireland* [1972] I.R. 241).

22. In *Commissioners of Public Works v. Kavanagh* [1962] I.R. 216, the Supreme Court had to consider the question as to whether the Commissioners, who as tenants had been agents of the State, were "tenants" for the purposes of obtaining the benefit of the Landlord and Tenant Act, 1931. The issue there was whether the State was a "person" as this word was used in the relevant part of the Act. Ó Dálaigh J., speaking for the court stated:-

> "*I have said the Commissioners took as agents for the State*. The first lease was made in 1927. The State then was Saorstát Éireann. Comyn's case … is a decision under the Constitution of Ireland. By parity of reasoning I am prepared to hold that Saorstát Éireann was a juristic person capable of holding land. It is enough to refer to Article 11 of the Constitution of Saorstát Éireann and to Article 10.2, of the Constitution of Ireland. When in 1937 Saorstát Éireann was supplanted by the new State under the Constitution of Ireland the Commissioners continued to hold the then current lease *as agents for the State*. … (emphasis added).
>
> In my opinion the word, 'person' should … be construed as not being limited to human persons, and the word is general enough to include the concept, new to our law, of the State as a juristic person….
>
> it is not necessary for me to say whether the State as a juristic person is to be looked upon as an abstract concept or viewed rather as the body of the citizens in a corporate capacity." (pp. 225 – 227)

23. Thus, in *Kavanagh* the rights of the State were recognised as acquired and maintained by and through its agents, the Commissioners of Public Works. (See also *Cork County Council and Burke v. The Commissioners of Public Works* [1945] I.R. 561 where the former Supreme Court upheld a defence that the then general rating enactments did not bind the State).

The Commissioners' Case

24. The main focus of the Commissioners' case was an attack on the Tribunal finding that the HSE was an 'office of State'. The intent of the attack was to demonstrate that the Executive was not an 'office of State' but a semi-State body.

25. The Commissioners argue that it does not necessarily follow that if the HSE is not a government department it must necessarily be an 'office of State' within the meaning of s. 15(3) of the Act of 2001 as the Tribunal found. They submit that the Tribunal failed to give adequate consideration to the possibility of the HSE being properly described as a 'semi-State body' in the Irish administrative context and thus, they say, not within the exempt categories. The Commissioners contend that the HSE is such a body and therefore it is not the State itself.

26. The legal basis of this contention is important. It raises the question of the test which should be applied in determining whether or not a body is 'semi-State' or whether it is in fact 'the State'. This may be a question of law, fact or a mixed question of law and fact. In this case all three arise.

A functional test?

27. The Tribunal concluded that the HSE exercised a "central executive function" within the State. Rather, they submit, the Tribunal was correct in finding that "the function of providing a health service to the public remains a Government function; the *engine* which now powers that function is the HSE". Thus they contend a critical distinction arises between the function of providing a health service to the public (which the Tribunal identified as being a governmental function) and the fact that the HSE is the 'engine' which now powers that function. They submit the 'engine' is not necessarily an "office of State" simply because it is the mechanism through which a health service is provided to the Irish public.

A 'semi-State body'?

28. Relying on a passage in Hogan and Morgan, *Administrative Law in Ireland*, 3rd Ed., (Dublin, 1998) p. 113, the Commissioners say that a semi-State or State sponsored body may discharge specialised central functions sometimes of a governmental nature but which are yet set a distance from the Government and Ministers, this distance being a defining feature of a State sponsored body. The respondents say that 'semi-State' bodies, while receiving finance from the Government, are subject to a lesser degree of control by the responsible Minister and the Dáil than that applicable to the activities of a department of State, and that such a body is usually constituted by its own distinctive statute.

29. Finally, they argue the concept of 'office of State' should be narrowly interpreted in the context of being a "cognate body either within or closely related to a department of State". This may involve a degree of independence from that department. Thus functions,

distance from central government, financial and control; and independence are defining features of a semi-State body.

Similarity in the tests identified
30. While the case was argued from apparently diametrically opposed positions at the outset, ultimately the tests suggested by the Commissioners and by Mr. Bryan Murray S.C., counsel for the HSE, do not differ as much as it might appear.

The HSE (as opposed to the Commissioners) say one must look to a number of features of a public authority (to use a neutral term) to determine its categorisation. These are:

(1) its nature and function;

(2) its proximity to Central Government and Ministerial control;

(3) its finance, control of expenditure, funding, financial and administrative accountability;

(4) its staffing arrangements and functions.

I accept these as being useful indicia. When analysed, these are a succinct redefinition of the criteria identified by the Commissioners. I do not consider the term 'semi-State' body at all helpful. It has no statutory definition at all. It is a vague and amorphous term redolent of distinctions sought to be made, devoid of evidential or legal basis.

31. Elsewhere, in some other context, controversy might have arisen in how these identified criteria apply. But in fact here there was little debate as to the legal position of the HSE and its relationship to central government. There could not be. It is defined in statute law. I do not consider that any areas of distinction identified and referred to make a difference to the outcome of the case. In truth, the Commissioners' argument appeared to be more as to the definition and nature of 'the State' than as to the true nature of the HSE. I will return to this later.

32. It is now necessary to consider the various facets of the HSE's structure and organisation; to assess the extent to which these activities fall within the "nature or attributes" of the State; in particular with regard to the four criteria just mentioned. These are largely matters of law, to be determined in accordance with s. 39(5) of the Act of 2001, which provides that the court must intervene, if there be error in the Tribunal's decision.

The Health Act 2004

(1) Nature and function of HSE
33. The establishing Act of the HSE is the Health Act 2004. As outlined in the preamble to the Act, its purpose was truly radical. It was to abolish each of the Health Boards established under the Health Act 1970, and certain other bodies; to provide for the transfer of the functions of those dissolved bodies and their employees to the HSE; to establish mechanisms for involving public representatives, users of health and personal social services; and other members of the public in matters relating to those services; to establish a statutory framework for handling certain complaints relating to health and personal social services and to establish mechanisms for the future dissolution of other health bodies for the transfer of their functions and employees to the HSE.

34. Some indication of the range and scope of the Act of 2004 is to be gleaned from Schedule 3, which deals, *inter alia*, with the transfer of functions from other bodies to the HSE. This Schedule contains references to no less than 65 statutes or categories of statute. It is no exaggeration to state that these touch on the entire range of activities formerly dealt with by many statutory bodies in the health field.

Definition
35. The Executive is defined as a body corporate with perpetual succession and seal which may sue and be sued, and acquire, hold and dispose of land or other kinds of property (s. 6(1)(2)). But as seen earlier, whether the public authority holding property is a body corporate does not detract from or determine whether the property is held by the State. This may be done through agents of the State such as government departments or the Commissioner of Public Works.

36. The object of the Executive is defined in the statute. It is "to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public" (s. 7(1)). It is to manage and deliver or arrange to be delivered on its behalf, health and personal social services in accordance with the Act; to integrate the delivery of health and personal social services; to facilitate the education and training of students in the areas of medicine, nursing and other health areas; and provide advice to the Minister in relation to its functions as the Minister may request (s. 7(4)). In performing its functions it is to have regard to services provided by voluntary bodies and other bodies ancillary to the Executive; and the need for co-operation and co-ordination with other public authorities, if the performance of their functions affects or could affect the health of the public (s. 7(5)(a) and (b)). In particular it shall have regard to the policies and objectives of the Government or any Minister of the Government to the extent that these policies may effect or relate to the functions of the Executive (s. 7(5) (c)). To this end it may engage, commission, undertake or collaborate in research projects relating to health and personal social services. (See generally s. 7.) In short its function is to determine in accordance with government policy the manner, and actual implementation of health policy and health services.

37. Section 7(5) (b) is of assistance in that it identifies as one of its functions the need to co-operate and co-ordinate its activities with *other public authorities* if the performance of their functions affects or could affects the health of the public. Thus, by necessary implication, by the use of the term 'other', the Executive is to be seen as a 'public authority' itself. The term 'public authority' has a wide range of meanings in the interpretation section of the 2004 Act (s. 2(2)). These include a Minister of the Government, the Commissioners of Public Works in Ireland, a local authority, a harbour authority, a board or other body established by or under statute, a company in which all the shares are held by or on behalf of the Minister of the Government or cognate bodies. There is a considerable, though not total overlap between those bodies defined as 'public authorities' by virtue of s. 2 of the Health Act 2004, and those identified as exempt under s. 15(3) of the Valuation Act 2001.

38. Further facets of the functions of certain HSE officials (adduced in evidence in the Tribunal) are also indicative in microcosm of the vast range of activities carried out by that body. The reserved functions of the local health office manager for the North Tipperary and East Limerick Region (that is in the subject premises area) were identified as including: authority to sign, execute and perform contracts for the General Medical Services Scheme; childhood immunisation; dental treatment services; aural services; and ophthalmic and pharmacy services. They comprised additionally of the appointment of authorised officers for the community pharmacist; the inspection, taking charge and managing of nursing homes; the administration of Food Standards Regulations, the

Tobacco Regulations, the Poisons Act, and the power to prosecute under the Health Acts, including legislation with regard to the sale of tobacco. This truly formidable array of functions and activities must now be considered in the light of the other criteria as identified.

(2) Control and integration
Here, as in the previous test, the question is whether the body or authority performs a 'core' (as opposed to peripheral) function of government. This issue of law is easily determined.

39. By reference again to s. 7(5)(c) of the Act of 2004, the Executive is mandated to discharge its function by very close reference to government policy. This general requirement is supplemented in a particularly important way by s. 10 of the Act of 2001. This latter provision allows for directions from the Minister in the following terms:

> "1) The Minister may issue general written *directions* to the Executive—
>
> (a) for *any purpose relating to this Act* or any other enactment, and
>
> (b) *concerning any matter or thing referred to in this* Act as specified or to be specified, or as determined or to be determined …….
>
> (4) *The Minister may, by written direction, amend or revoke any direction issued by the Minister under this Act.*
>
> (5) The Executive *shall comply* with a direction issued by the Minister under this Act.
>
> (6) The Minister shall ensure that, within 21 days after issuing a direction under subsection (1) or (4), a copy of the direction is laid before both Houses of the Oireachtas." (Emphasis added)

40. The emphasised terms are clear indicia of the extent of direct central control. They are not mere guidelines or a general policy remit, on a core issue of government, found in the case of many semi-State bodies. They are indicia of a high level of integration between policy formulation, control and performance. The suggestion of a statutory dichotomy between the *provision* of a health service and the *'engine'* which provides that service is, I find, entirely artificial, and demonstrably so when the Act of 2004 is analysed.

41. The fallacy of this distinction is further shown by the provision for the appointment of the Board by the Minister for Health (s. 11). Section 13 empowers the Minister to remove at any time an appointed Board member for a range of reasons. Section 14 allows for the removal of *all* the members of the board by the Minister for reasons including failure to comply with a Ministerial direction or requirement, or where the Minister is satisfied that the Board's functions are not being performed effectively. Additionally, the Minister may appoint an independent review into the Board's actions under 14 (2) (a). The terms of appointment of the chief executive are approved by the Minister 17 (5) (b), the general functions of the Executive are performed by its chief executive under s (18) (1) (a).

42. Cumulatively, these provisions demonstrate a very high degree of central control which the Minister may exercise upon the HSE. Its statutory functions are by no means removed from or independent of Government. The opposite is the case. They go to its core function. The Executive is to operate under tight ministerial control albeit its functions are to be performed through the board and chief executive. It is now necessary to consider the third test.

(3) Control of expenditure and source of funding
43. The Act of 2004 provides that the chief executive officer is to be the accounting officer within the terms of the Comptroller and Auditor General Acts 1866 to 1998, (s. 20). Section 21 provides that the chief executive shall, subject to certain conditions, attend before Oireachtas Committees. The accounting officer is appointed by the Minister for Finance as are the accounting officers for government departments. As the accounting officer, the chief executive officer must also report to the Dáil via the Public Accounts Committee (s. 21). As established before the Valuation Tribunal; the Chief Executive as accounting officer and the HSE itself, are subject to all of the procedures of government accounting. Expenditure of money is subject to the approval of the Minister for Finance. The Department of Finance normally gives general sanction to expend monies but reserves its position with regard to any particular category of expenditure.

Central Funds
44. One turns to a critical issue, that is source of funding.

Central Government funding is provided for under the Appropriation Act of each year. This Act appropriates to the proper supply, services and purposes sums granted by the Central Fund. The HSE is one of forty public State bodies or authorities identified in the Appropriation Act 2006, along with twelve government departments, the Defence Forces, An Garda Síochána, the Prison Service and twenty-three other bodies which receive appropriations directly.

45. While this must be seen as within the critical 'litmus tests', it is nonetheless a highly significant indicator as to the status of a State authority and its relationship with Central Government. Each of the bodies identified in the Schedule to the Act are entirely integral to the functions of the State or an office of State. No 'semi-State' body is identified in the Schedule. It has not been suggested that any body identified in the Schedule is treated as anything other than the 'State' or an 'office of State' for rating purposes.

Issues of fact
46. Article 28.4 of the Constitution of Ireland directs the Government to prepare Estimates of the Receipts and Estimates of the Expenditure of "the State". The sum voted to the HSE in the book of Estimates in 2006 was one quarter of the total vote passed through the Oireachtas in that year. In that same book of Estimates, (part of the evidence before the Tribunal) it was provided that the HSE was to be the beneficiary of a vote of almost €9.5 billion. This was by some distance the largest sum voted to any State entity; the next highest vote being allocated to the Department of Education; and thereafter, the Department of Social and Family Affairs. These two Government departments are self-evidently and by definition, parts of the central core functions of government.

47. The Department of Health and Children itself has a vote of €209 million. Thus the expenditure of the HSE is approximately fifty times that of the Department which controls its functions. Here, the position of the HSE is fundamentally at variance with that of the health boards, which did not have such a separate vote.

48. The Executive is, in this and many other aspects of its administration, akin to the administration of the Courts Service which, too, has a separate vote, and its own chief executive officer who is also accounting officer in the same manner as the chief executive of the HSE.

49. Additionally, as established before the Tribunal, certain taxes which are collected by the Government are passed directly to the HSE. For example, excise duties on tobacco and health contributions from self-employed persons are so allocated. The HSE is entirely dependent on the State for funding.

Further aspects of control

50. Major capital expenditure requires prior written ministerial permission under s. 34 of the Health Act 2004. Section 36 of the same Act requires the HSE to keep proper accounts which are required to be submitted to the Comptroller and Auditor General as well as the relevant Minister. The terms on which the HSE can expend monies are carefully circumscribed. It is provided at s. 34:-

> "The Executive shall not, without the prior written permission of the Minister, enter into an agreement or arrangement or otherwise commit itself in respect of capital spending on an undertaking if the total amount spent on the undertaking would exceed an amount that may be specified from time to time by the Minister with the consent of the Minister for Finance."

51. In addition to the appropriation account, the annual financial statements (by virtue of s. 36 of the Act of 2004) must be submitted to the Comptroller and Auditor General. A further important facet of financial control is that every month the Comptroller and Auditor General approves the issue of monies to government departments from the Exchequer. This regime of approval, otherwise unique to government departments, is also a facet of the HSE. Section 37 requires that an annual report is also published on the performance of its functions during the year. That report is to be delivered to the Minister.

52. A consideration of the remaining twenty-three bodies dealt with in the estimates shows that they are bodies which are immediately identifiable as 'bodies of the State' or 'offices of State'. They include the Attorney General, Director of Public Prosecutions, the Comptroller and Auditor General, the Valuation Office and the President. While in certain cases such offices are independent of ministerial control, they are nonetheless an integral part of the control mechanisms interwoven into the fabric of the State itself. This position is entirely distinct from the relative peripherality of semi-State bodies, whose functions do not lie at the core of government activity.

53. A helpful illustration of precisely these distinctions can be found in the recent judgment in *Personal Injuries Assessment Board v. Commissioners of Valuation* the High Court completed May 2008, McCarthy J. The references contained in that judgment to the determination of the Valuation Tribunal in the 'HSE case' are, of course, to be seen in the context of the issue determined by the Tribunal, that is to say the distinction between a 'semi-State' body and an office of State. The Tribunal found the HSE fell within the latter category. This is not the central question now of this case, that is whether the HSE is the 'State' itself.

54. Many of the authorities cited to this Court, therefore, were not cited on the distinct issue before McCarthy J. The idea that a core function of the State itself or an office of State, could be the determination of assessment awards in personal injury cases would raise a separation of powers paradox; such a function could constitutionally never be one of central government. The fact that the HSE is a distinct legal entity is no more germane than that a Minister is a corporation, save that a minister or a department of state are, nonetheless, 'the State' as defined and recognised. The fact that an entity is legally distinct from the State is not dispositive of the issue here. The State acquires, holds and disposes of land generally not via the State but generally through a corporation sole, a minister, a department of state, or through a statutory body such as the Commission of Public Works. The issue of vicarious liability is not helpful or determinative either on the facts relevant in this case. The approval of McCarthy J. in the PIAB case is clearly predicated on his primary findings as to its function; so very different in nature from the HSE.

55. Further evidence of close governmental control can be seen from provision for an annual corporate plan to be submitted for the Minister's approval. Section 29 of the Act of 2004 states that:

> (3) "The corporate plan must be prepared in a form and manner in accordance with any directions issued by the Minister and must specify—
>
> (a) the key objectives of the Executive for the 3 year period concerned and the strategies for achieving those objectives,
>
> (b) the manner in which the Executive proposes to measure its achievement of those objectives, and
>
> (c) the uses for which the Executive proposes to apply its resources.
>
> (4) In preparing the corporate plan, the Executive shall have regard to the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the Executive.
>
> (5) Within 3 months after receiving a corporate plan, the Minister shall—
>
> (a) approve the plan, or
>
> (b) if the plan is not amended in accordance with any directions that may be issued by the Minister to the Executive, refuse to approve the plan.
>
> (6) An approved corporate plan may be amended by the Minister at any time or may be amended by the Executive, but in the latter case only after—
>
> (a) the Executive submits the proposed amendment to the Minister for approval, and
>
> (b) the amendment is approved by the Minister."

56. Section 30 allows for the laying of this plan before the Oireachtas. Additionally, the Executive is also required, pursuant to s. 31 of the Act of 2004, to submit a service plan for the Minister's approval giving detailed information of the type and volume of health and social services to be provided by the HSE, indicating any capital plans proposed by the Executive. These indicia are again indicative of a high degree of integration between corporate planning, (subject to Ministerial direction) and expenditure.

Staffing arrangements and funding
57. The chief executive officer of the HSE is recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004. By virtue of s. 17 of the Health Act 2004, the terms and conditions of this appointment require the approval of the Minister, together with that of the Minister for Finance (s. 17(5)). He is precluded in the course of any appearance before an Oireachtas Committee from commenting on the merits of government policy (s. 21(8)). His position is therefore akin to the Secretary General of a government department.

58. Other employees of the HSE must also be recruited in accordance with the Public Service Management (Recruitment and Appointments) Act 2004 (s. 22). The Minister's approval (together with that of the Minister for Finance) is also required for their terms and conditions (s. 22(4)) of the Health Act 2004. Their superannuation scheme must be laid before each House of the Oireachtas and is subject to annulment by either House (ss. 23(7) and (8)) of the Health Act 2004. Each of these features is indicative of its status as being highly akin to a government department.

A Semi State Body?
59. One turns again then to the indicia of a 'semi-State body' as previously outlined. These were in summary: (i) removed or distanced from central government, (ii) lesser degree of control of employees holding non civil service status and devolution of functions.

60. I find that a consideration of the establishing statute of the HSE demonstrates that, as a matter of law and fact, it is not a 'semi-State body' however defined. It is impossible to state that its functions are peripheral from the central activities of Government. They are at its epicentre. Furthermore, the Executive has features which are otherwise unique to governmental departments or bodies which are very closely integrated into the process of government. Whether or not some of those statutory authorities are 'independent' in their functions such as the Attorney General or the Director of Public Prosecutions is not material; what is essential is the degree of integration of such authorities to the core functions of government, to be determined and identified in accordance with the definition of "the State," on decided authority and in accordance with the statutory provisions of the Health Act of 2004.

Noscitur a sociis
61. In fact, the interpretative principle *noscitur a sociis*, seen now in the factual context, demonstrates precisely the close kinship of the HSE with the other bodies which are identified as being exempt under s. 15(3) of the Act of 2001, that is to say, departments or offices of State, the Defence Forces and the Garda Síochána or the Prison Service. They are not distinct: they are alike. They are cognate. The kinship of the exempt category is illustrated by a consideration of the terms "… the State including any land or building occupied by any department or office of State … etc."

62. I find that the very process of categorisation engaged in by the Commissioners in seeking to establish that the HSE is a 'semi-State' body in fact inexorably leads to the precisely contrary conclusion; that in fact the HSE is 'the State' itself. I do not understand there to be any dispute on the matters of law discussed. While a distinction can undoubtedly be made between the legal position of the HSE and certain other independent authorities or offices also integral to the State, I am not persuaded that these are material.

'Office of State'?
63. By virtue of the conclusion that the HSE is 'the State' as defined for the purposes of the Act of 2001, I find the HSE is not an 'office of State'. I do not find it necessary, therefore, to consider in detail what might constitute an office of State. Some offices that have been cited to me to be examples e.g. the office of the Tanaiste, are undoubtedly at the core of government and come within the criteria. Others, even if independent in operation, are integral parts of central government. There may be other bodies constituted by statute which, by reference to the identified criteria, do not either constitute the State or an 'office of State'. Whether the terms "State", "office of State" or "semi-State body" can now satisfactorily define or describe all the vast range of statutory bodies or authorities now in existence must be seriously doubted. Certainly, the term semi-State body, absent a statutory definition, is not helpful in an area of law where taxonomy is at a premium.

64. I find the State exercises its central functions in providing for a health service through the HSE (which for this purpose may hold property as the State itself). The HSE thus surmounts the identified thresholds of State and governmental function, accountability and integration. It is therefore, for the purposes of the Act of 2001 'the State' itself. It follows, therefore, that insofar as the Tribunal found that the HSE was an 'office of State', such determination was incorrect in that respect.

65. In the consideration of these issues, I would add it has not been necessary for the court to proceed beyond the text of the statute. However, if any issue of ambiguity had arisen, it is important to recollect that, as and from 1989, property held by the health boards was held not rateable by reason of a decision of the Valuation Tribunal (chaired by Mr. Hugh O'Flaherty S.C. as he then was) in the case of the *Eastern Health Board, Appellant v. The Commissioners of Valuation*,

Respondent (Appeal No. VA 88/0/381). That decision hinged on the question as to whether property was being used for "public purposes". It is noteworthy that, in the course of its illuminating determination, the Tribunal dealt specifically with the extent of, and expansion of, the scope of the modern State. The Tribunal concluded that health board property was deemed to be non-rateable. Such a finding carried with it a consequence for this case. It is that both lands and properties held by the HSE, as successor in title to the health boards, were, until the introduction of the Act of 2001, non-rateable. If it were thought that such properties were now to be rateable, such an interpretation of the section would constitute a new imposition. As was pointed out by Henchy J. speaking for the Supreme Court in the *Inspector of Taxes v. Kiernan* [1981] I.R. 117 at p. 122:

> "If a word or expression is used in a statute creating a penal or taxation liability, and if there is looseness or ambiguity attaching to it, the word should be construed strictly *so as to prevent the fresh imposition of liability from being created unfairly by the use of oblique or slack language*".

66. Where a word or expression is to create a liability, it is to be construed strictly, in the case of a rating statute, as in the case of a Revenue statute (see *Slattery v. Flynn* [2003] I.L.R.M. 450.

67. Prior to the Act of 2001, s. 63 of the Poor Relief (Ireland) Act 1838 set out the hereditaments which were to be treated as rateable. It is notable that that provision contained an exemption for rates for property "dedicated to or used for Public Purposes". The broad ambit of that provision can be seen reflected in the decision of the Tribunal in *Eastern Health Board v. Commissioners for*

Valuation. While that Victorian statutory provision has now been repealed, it is still possible to discern some similar lineaments of exemption in s. 15(3) of the Act of 2001 and Schedule 4, that is to say, an exemption in the case of some certain categories of hereditaments for public purposes. Were the objective intention of the Oireachtas to depart from a pre-existent regime of exemption, such an intent would surely require clear statutory expression.

68. For the purposes of the hearing in this case, stated pursuant to s. 39(5) of the Act of 2001, I conclude: that the Tribunal was not correct in concluding that the HSE was an "office of State" but rather was, for the purposes of the exempting provision, to be identified as "the State". This decision of the court does not alter the substantive conclusion of the Valuation Tribunal that is to say that the subject lands should be exempt pursuant to s. 15(3) of the Act of 2001.

69. At the outset of this case I remarked on its most obvious incongruity: that it consists in the pursuit by the Commissioners (themselves a statutory authority) of another statutory authority which also derives its funding from the State itself. I have been informed that this is a test case; there may be others. I raise the question of whether such issues, insofar as they concern 'emanations of the State' generally, could not be determined by some means other than complex, and perhaps costly, hearings before the valuation Tribunal, followed by way of case stated before this Court. One would have thought more direct (and economic) means are available to the State to determine such issues conclusively.