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Caiafa booted off council. Riley back

06 Apr 2017



By Shane Scanlan

A judge has removed City of Melbourne councillor and Queen Victoria Market trader Michael Caiafa and replaced him with former Team Doyle councillor Susan Riley.

On March 14, Justice Greg Garde removed Mr Caiafa, simultaneously acknowledging that he had done nothing wrong and even suggesting that the council cover his legal costs.

Justice Garde said: "His conduct has been exemplary. He has done all that an elected councillor can do since he was declared elected. His position is affected by the actions of another candidate over whom he had no control, and for whom he has no responsibility."

Justice Garde acted on the suggestion of the Victorian Electoral Commission (VEC), which appealed an early decision of the Municipal Electoral Tribunal (MET) dealing with the disqualification of successful candidate Brooke Wandin.

Ms Wandin was declared elected in the October 22, 2016 council election but was later found to be incorrectly enrolled.

On December 5, MET Magistrate Michael Smith ordered a "countback" of votes, which would likely have preserved Cr Caiafa's position but added Ms Wandin's running mate Nic Frances Gilley to the council.

But the VEC successfully appealed to the Victorian Civil and Administrative Tribunal (VCAT) where Justice Garde ordered a "recount". Mr Frances Gilley was also successful using this method of counting and had now become a councillor. He and Susan Riley were sworn in on March 21.

Explaining his decision, Justice Garde said: "Exercise of a discretion often involves competing factors. Each must be given the weight considered appropriate. Whilst acknowledging the effect of the ineligibility of Ms Wandin on the other candidates, particularly Mr Caiafa, the tribunal must ensure that effect is given as far as possible to the votes of the electors as cast in the ballot."

"This duty is at the heart of the democratic system of local government. It is the factor that deserves greatest weight in the exercise of the Tribunal's discretion."

Justice Garde went on to say: "While the tribunal undoubtedly has power to declare unelected a candidate who was elected and who is qualified to be elected, and has acted properly, it is a power to be approached cautiously and only exercised where necessary."

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“No previous instance of such a nature in the case of a multi-member electorate was cited to the tribunal. Nonetheless I am satisfied that it is necessary in this case to give effect to the votes and preferences cast in the ballot, as determined on the recount. There is no alternative if the two candidates who were elected on the recount are to serve on the council.”

Justice Garde’s action grants Lord Mayor Robert Doyle a majority of councillors in the 11-member chamber.

Cr Doyle had been critical of Magistrate Smith’s decision and had publicly advocated for the methodology championed by the VEC. Cr Doyle admits to spoking with VEC Commissioner Warwick Gately on two occasions but both men deny any influence was brought to bear on the VEC’s decision to appeal the matter to VCAT.

Mr Caiafa told Southbank Local News he considered his legal options and determined it was too hard to appeal Justice Garde’s decision to the Supreme Court.

“I greatly appreciate the comments and the overwhelming support shown to me from other councillors, council staff and members of the public,” he said.

“Obviously, the outcome is terribly disappointing for me. Despite this disappointment and my great desire to continue in my role as councillor for the remaining three and a half years of the term, I do not wish to cause more uncertainty and interruption to the work of the council by pursuing any appeals against the VCAT decision.”

“I remain passionate about the Queen Victoria Market and, while I am not able to serve out my time as an elected councillor, I want to continue to serve the people of Melbourne and all those who wish to see the market thrive and develop long into the future.”

“I would welcome the opportunity to continue to work with the council to achieve that outcome.”

Cr Jackie Watts told Southbank Local News the decision was further evidence of the need to reform the municipal electoral system.

“It’s most unjust and is very concerning that our democracy has malfunctioned to this extent,” she said.

Cr Watts has written to the VEC with 32 questions arising from the conduct of the October 22 election.

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