



**Tribunal of Inquiry
Into Certain Planning Matters and Payments**

Appointed by Instrument of The Minister for the Environment
and Local Government dated the 4th day of November 1997
as amended by Instrument dated the 15th day of July 1998

**DECISION RE FURTHER CROSS EXAMINATION OF JAMES
GOGARTY ON BEHALF OF JMSE / MURPHY INTERESTS**

OF

**THE SOLE MEMBER
Mr. JUSTICE FEARGUS M. FLOOD**

Thursday 22nd April 1999

**FURTHER CROSS EXAMINATION OF JAMES
GOGARTY ON BEHALF OF JMSE / MURPHY
INTERESTS**

Counsel on behalf of JMSE yesterday furnished transcript references and subsequently furnished a written memorandum setting out the matters intended to be covered. By reference to this document the issues are

1.A.

The evidence in relation to the handwritten list of addresses for the Murphy's the original of which was furnished by the Baileys to the Tribunal. This is dealt with in Mr. Allen's cross examination of Mr. Gogarty between pages 13 and 15 in volume 33. This is a new matter raised in cross examination. Mr. Gogarty has stated the document in question was prepared for a specific purpose, mainly to assist in effecting service of his High Court proceedings on Joseph Murphy Junior whom he believed was evading service.

Replies to questions 14 to 19 at page 15

Mr. Bailey's account is that he was given the document by Mr. Gogarty on the 6th June 1997 at Mr. Gogarty's home. Both Tom Bailey and Michael Bailey being present.

Volume 32 pages 57 and 58 Question 197 to 200 and question 206

In Volume 33 page 20 the venue for this meeting was changed from Clontarf to Sutton, in response to questions 43, 44 and the date was changed from the 6th June 1997 to the 1st June 1996. At question 52 Mr. Gogarty says that a meeting took place between Michael Bailey and himself in Sutton Castle Hotel in August 1996, this appears at volume 33 page 22 question 56.

Comment On balance limited further cross examination in this regard to deal with how the original hand written document came into the possession of Mr Bailey and to allow for reference to the appearance entered in the High Court proceedings on behalf of Joseph Murphy Junior will be permitted.

1.B. The visit by Mr. Bailey to the Home of Mr. Gogarty. Reference volume page 33 page 26. The fact of such a meeting is denied by Mr. Gogarty

Comment. I will allow limited further questions in this matter in order to explore any possible relationship between Mr Gogarty and the Baileys.

1.C.

The allegation by Mr. Bailey that he discussed with Mr. Gogarty alone the proposals for the sale of the lands referred to in the letter of the 8th June 1989. Reference volume 34 pages 1 and 2 .

Comment: The contention that Bailey met Gogarty only in respect of negotiations of the sale of lands is not new. It was so stated in Mr. Bailey's own statement of evidence circulated to all parties including JMSE on the 11th January 1999. Paragraph 17 of this statement and paragraph 43 of Mr. Gogarty's affidavit of the 12th October 1998 circulated to all parties including JMSE on the 20th October 1998.

Paragraph 43 states that several meetings took place with Frank Reynolds and Joseph Murphy Junior with Michael Bailey. There was therefore a clear issue as to whether or not persons other than Mr. Bailey had attended these meetings prior to any cross examination of Mr. Gogarty by Mr. Allen.

Since it would appear that this is not in any sense new evidence nor is it a matter which could not have been anticipated had consideration of these statements taken place there would not appear to be a basis upon which re-examination of Mr. Gogarty should be permitted on this point. On the broader issue as to whether any evidence might usefully be elicited by this cross examination it is difficult to see how this could happen given that Mr. Gogarty has given one account of events and Mr. Bailey has given another account of events. Mr. Joseph Murphy Junior's account of event presumably accords with Mr. Bailey's account of events but unless there is evidence to either establish Mr. Bailey's account of events or disprove Mr. Gogarty's account of events which has not already been put there is no purpose in further cross examination. I will not allow further cross examination on this topic.

1.D.

The allegation by Mr. Bailey that Mr. Gogarty sought and obtained a finders fee in relation to the sale of those lands, Reference Volume 34 page 25, The allegation that there was a finders fee is new to JMSE. It was not referred to Mr. Bailey's statement of the 11th January 1999.

Comment: I will permit limited further cross examination in relation to this issue.

2.A.

The suggested introduction by Mr. Redmond of Mr. Bailey to Mr. Gogarty, reference Volume 35 page 16.

Comment: This is not new evidence. Mr. Bailey's statement of the 11th January 1999 at paragraph 10 sets out the Bailey account of the introduction by Mr. Redmond of Mr. Bailey to Mr. Gogarty. Mr. Gogarty's account is contained in his affidavit of the 12th October 1998 at paragraph 28. The disparity between these accounts does not arise as a result of new evidence. The difference between the respective accounts was evident since January and prior to cross examination of Mr. Gogarty by Mr. Cooney in the first instance. On the broad issue one must ask what purpose could be served by cross examination where there are two clearly opposed accounts of what took place by a person who apparently not privy to the introduction according to themselves. I will not permit any further cross examination on this issue.

2.B.

The question posed by the Chairman in relation to a relationship between Mr. Gogarty, Redmond and Bailey. Reference Volume 35 page 28. This evidence is concerned with a query raised by the Sole Member as to whether the person referred to in the attendance prepared by Mr. McArdle and the person described as being "useful to Jim" was Mr. George Redmond. The response to this is not clear or readily comprehensible.

Comment: This is a matter which can be clarified by Mr. Redmond. However, since there is a general request to cross examine Mr. Gogarty on the matters arising from the statement of Mr. Denis McArdle which was circulated on the last day of cross examination it would be fair to allow for this whole area to be the subject of further cross examination.

3.A.

The new evidence of Mr. Gogarty to the effect that when he arrived at the JMSE premises in Santry on the 8th June 1989 Frank Reynolds and Michael Bailey were already there and had discussed the contents of that letter and that Mr. Bailey had by then written on the letter in handwriting, Reference Volume 33, page 34 et. seq.

Comment: although the evidence does not appear to state that Michael Bailey was on the premises, I will allow limited further cross examination to clear up any ambiguity on this matter.

3.B.

The new evidence of Mr. Gogarty to the effect that the handwritten calculations of the letter of 8th June 1989 contain an error and that this error in some way explains how the price for the lands which was initially agreed at 2.4 million was subsequently reduced to 2.3 million, Reference Volume 33 page 34 et. seq.

Comment: The evidence contained in page 35 and 36 does not seek to explain how the price for the lands was initially agreed at 2.4 million and subsequently reduced to 2.3 million. The evidence makes the point that a total of 2.908 million was calculated on the basis of 686 acres of land being sold whereas there was in fact according to Gogarty 706 acres and therefore the value of the lands ought to have been increased proportionately.

The hand-written additions to the letter which are agreed to be those prepared by Mr. Bailey were evidenced on the

copy of the letter of the 8th June 1989 which was exhibited in the affidavit of James Gogarty of the 12th October 1998 and it was open to Mr. Cooney to cross examine on the meaning of those additions at the time of his initial cross examination. However, there may well be an ambiguity and I will allow limited further questions to explore the possible relationship between references to 2.3 million, 2.4 million, 2.9 million and 3 million.

3.C.

The new allegation from Mr. Gogarty to the effect that the Murphy's retained the original of the letter of the 8th June 1989. Reference Volume 33 page 62.

Comment: It is questionable as to whether this could be called new evidence. Mr. Gogarty in his affidavit of the 12th October 1998 stated that he had been given the original or a photocopy of the original of the letter. See paragraph 48. If there was an issue as to what became of the original letter Mr. Gogarty's statement to the effect that he was unclear as to whether he had received the original or a photocopy from Mr. Reynolds flagged the issue as to what had become of the original. However if some evidence is to be put in relation to the whereabouts of the original it should be allowed.

4.A.

The suggestion that there may have been an insurance claim in relation to the window in Mr. Gogarty's house through which a bullet was allegedly shot Reference Volume 33 page 24.

Comment: The fact of there having been an insurance claim is a new issue. It would be difficult to argue that JMSE did not have the right to explore that suggestion by cross examination e.g. to identify the insurance company involved and the manner in which the claim was dealt with etc.

4.B.

The suggestion that Mr. Bailey never met Mr. Murphy Junior until 1992 Reference Volume 35 page 14.

Comment: This is not new evidence. Mr. Cooney put to Mr. Gogarty in cross examination in Volume 25, page 3 question 13 that the first time that Mr. Joseph Murphy Junior had ever met with Michael Bailey was in the course of the arbitration proceedings which took place three years later in 1992. Mr. Gogarty responded to that query. The fact that Mr. Bailey will agree with Mr. Murphy's account

doesn't entitle Mr. Cooney to reexamine solely on that basis.

4.C.

The suggestion that Mr. Gogarty engaged in the shredding of documents Reference Volume 36 page 38

Comment: This reference is erroneous. It may be intended to refer to page 44 where Mr. Leonard cross examined Mr. Gogarty about the shredding process referred to in his draft affidavit. At answer 172 Mr. Gogarty stated that he shredded a lot of documents He started shredding whatever documents he had. He couldn't tell which particular ones but he shredded a fair amount. In response to query 173 he stated that he could well have shredded some of the small diaries referred to earlier. If JMSE are unaware of the fact that the shredding of these documents took place it is difficult to see how it could be relevant but on balance they should be allowed to cross examine.

4.D.

The involvement of Mr. Gogarty in the sale of the Forrest Road Lands by reference to the attendance of Mr. McArdle reference Volume 35 page 36. It is agreed that this is a matter where the statement of Mr. McArdle was provided on or about the day upon which Mr. Cooney's cross examination concluded and in those circumstances re-examination on that issue should be allowed.

4. E.

The new evidence of Mr. Gogarty in relation to the source of his information regarding the rezoning of approximately 450 acres of the land =, the subject matter of the Tribunal of Inquiry reference Volume 13 page 67 et. seq. This is not new evidence and Mr. Cooney cross examined extensively on this issue. This appears from volume 26 page 24 to 29 inclusive and questions 176 & 219. It is correct to say that the account given by Mr. Gogarty in response to the queries put by Mr. Cooney is different from that given by Mr. Gogarty to Mr. Allen and this is a matter which will be dealt with on re-examination of Mr. Gogarty by Counsel on behalf of the Tribunal. Counsel for the Tribunal will put to Mr. Gogarty any inconsistency which may appear in his evidence to date. It is not appropriate however that this be dealt with by way of cross

examination by Counsel for any individual party represented. Mr. Cooney has put the matter to Mr. Gogarty and has received a comprehensive response, whether it be true or otherwise is a matter for the Tribunal. I will not permit further cross examination on this matter.