



Roinn an Taoisigh
Department of the Taoiseach

17 September 2018

Mr. Kieran Lenihan
Clerk to Public Accounts Committee
Houses of the Oireachtas
Kildare House,
Dublin 2

Dear Mr Lenihan,

I refer to your telephone call and subsequent email in which you indicated the intentions of the Chairman of the Public Accounts Committee with regard to a possible hearing by the Committee in relation to the Office of the President.

I note that the matter has not yet been considered by the Committee. In advance of that consideration, I would make the following observations.

The position with regard to the Office of the President is, of course, unique.

The Office of the President is separate and distinct from other organs of State, such as the Executive (including Government Departments), the Oireachtas and the Judiciary. This is often expressed in terms of the President being "above politics", which is a useful description and I believe widely understood and respected, both by other arms of the State and more importantly by the people.

Of course, the actual legal position is set out in detail in the Constitution.

In my view, your proposal gives rise to a number of issues.

Firstly, and this is a technical point, my role as Accounting Officer for Vote 1 is very different to that of Accounting Officers for other Votes.

Generally speaking, the Secretary General is the Accounting Officer for the Vote(s) and also the administrative Head of the Department. As such, s/he can answer for the actions of the Department. In the case of Vote 1, although I am Accounting Officer, I have no executive or operational responsibility for the Office of the President. That is entirely appropriate, given the constitutional position of the President. My capacity is therefore limited to obtaining assurances that the Office operates properly. I obtain such assurances from direct contact with the Secretary General to the President and from the audit performed by the Comptroller and Auditor General. I have also put in place an Audit Committee and an internal audit function. In this context, the published annual Appropriation Account and the associated Report of the Comptroller and Auditor General are the most important sources of financial information and assurance available to the PAC and the public.

Secondly, and substantively, it is important to respect the constitutional provisions relating to the President, the Government, the Judiciary and the Oireachtas.

To do this properly, full account must be taken of all the relevant provisions of the Constitution and the law.

It is clear that the most important and relevant constitutional provision is Article 13.8.1 which states:

The President shall not be answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions.

I must confess that I am very surprised that you have not made any reference to this Article in your correspondence.

It seems to me that it would be impossible not to breach this constitutional provision were any of the Members of the Public Accounts Committee or public servants to ask or answer questions about the President or his Office in the context of the meeting that you are proposing.

If you have provided the Chairman with advice to the contrary, I would be grateful for a copy so that I can consider it. I would also be grateful for any legal advice that you have received on the matter. On receipt of that, it may be that I would also need to ask for formal advice from the Attorney General.

A third and equally substantive concern relates to the political impartiality of the Civil Service.

It is an inviolable principle that civil servants should not become involved in election campaigns. The fact that the current campaign is unusual, in that a sitting president is seeking re-election, does not affect the principle involved.

I cannot accept your suggestion that the campaigning period has not yet started.

It is absolutely clear that a campaign for the office of the presidency is fully underway.

The polling order was made by the Minister for Housing, Planning and Local Government on August 28th. The nomination process as set out in Article 12 of the Constitution is ongoing. This includes formal meetings of local authorities to consider their possible nominations as well as the public announcement by President Higgins that he will exercise his constitutional right to nominate himself for the position. Members of the Oireachtas have also been considering whether and how to exercise their power of nomination. A number of parties - including Fine Gael, Fianna Fáil, Sinn Féin, the Labour Party and the Social Democrats - have indicated that they will support or nominate specific candidates.

The proposal to hold a public hearing on the account can only involve questions, answers and comments about one of the candidates in the election, ie President Higgins. The tenor and content - whether positive or negative - of any such public discussion is irrelevant.

To summarise, therefore, I believe your proposal appears to be unconstitutional and to undermine the principle of the political impartiality of the Civil Service.

Finally, I would note that of course any issues of public interest relating to the Office of the President, or the performance of President Higgins in office, can and undoubtedly will be the subject of the most rigorous public scrutiny in the context of the election campaign.

I look forward to the Committee's consideration of these issues and to your response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Fraser'.

Martin Fraser
Secretary General to the Government

cc. Clerk of Dáil Eireann
Comptroller & Auditor General
Secretary to President