

1935

1935

38032/4

KENYA

C0533/455

38032/4

Legislative Council

Position of official members in regard to measures
in which they are pecuniarily interested.

Previous		method	30
15240/28		R 297	1/2
		R. 80	3/2
		R 297	5/2
		M. Flood	13
Subsequent		R 297	
	297		30/12
	M. Flood		2/1/36
	Sir J. Bwala		3/1
	Sir C. B. Atkinson		3/1
	Sir J. Mackay		3/1
	R 298		4/1
	R 297		8/1
	M. Baum		9/1
	R 297		13/1
	R 80		15/1
	R 297		17/1
	C.D. Telo		17/1
	R 297		29/1
	309		29/1
	Mulashin		30

The thing came up in Fiji, but in the opposite direction. In Fiji the Unofficial Members were proposing that the salaries of Officials should be reduced. The Governor saw no reason for this reduction and asked whether he might oppose it with his official majority, referring to paragraph 72 of the Fiji Standing Orders which prevent a member voting on a question in which he had a direct pecuniary interest without the permission of the President. He was informed in reply that, if necessary, he might use the official majority but he must not overlook the fact that formal permission to vote should be given in view of the possibility that the voting might otherwise be challenged. (See 83826 Fiji, No.8).

A similar question had arisen the year before in Hong Kong (72797/30, No.7) and the question was considered whether official members might vote against a reduction of their salary. Mr. Duncan thought that it would be a subject in which Officials had a direct pecuniary interest but Mr. Bushe argued the contrary, saying that "For the Officials to vote upon this report is not to vote upon a subject in which there is a direct personal pecuniary interest and not an interest in common with the rest of His Majesty's subjects. An interest in common with the rest of His Majesty's subjects cannot mean with all His Majesty's subjects even if you confine the phrase to His Majesty's subjects in Hong Kong I

think

think it must mean an interest in common with His Majesty's subjects who are or may be similarly situated; thus, for an Official to vote upon a motion which deals with the salaries of public appointments and applies equally to himself and to anyone else who may hold such an appointment, is on one side of the line whereas for him to vote upon a motion which merely dealt with the salary paid to him as an individual is upon the other." Sir John Risley agreed with Mr. Bushe in thinking that the salary of the office held by Mr. A.B., to be held by him and his successors, is distinguishable from a direct personal interest such as Mr. A.B.'s salary, and apart from that a general revision of public salaries is a matter of State policy within the rule.

The Kenya position is, however, converse, where the motion before the House was not that salaries should be reduced but that an existing reduction by way of salary levy should be maintained. Captain Schwartze argues that since the Officials had a pecuniary interest in putting up their salaries they ought not to have been allowed to vote in favour of putting them down, which they did, and says ^{in his public letter} there can be no doubt whatever that the Governor's ruling was entirely wrong and that the reason given, that it was a taxation measure, was completely irrelevant. There can be no doubt that Captain Schwartze's action in writing to the local paper is gravely improper and I should think it would constitute a breach of privilege of Parliament if done here and the offender would find himself in very hot water before the House.

On

On the general point I think we can tell the Governor at once that it has been ruled on more than one occasion that it is perfectly proper for official members to vote on matters affecting general levies on official salaries even when the vote was given against proposals which would have had the effect of reducing their salaries, it being held that such a question was a general matter of public policy and not one affecting the individuals themselves. All the more, therefore, is it permissible for Officials to vote when the vote is given, as in this instance, for the maintenance of an existing levy. And say that we will consult authority as to whether Captain Schwarze has or has not been guilty of any breach of privilege; and proceed to do so if there is any authority who can be got at in the time.

Since I dictated this I spoke to Mr Roberts - Barry who reminded me of the position of a Legislative Council as regards "privilege" - viz that it hasn't any, as to this see 15240/28 & the papers especially 15174/26

Reference to X 10101/27 shows that an exactly similar case arose in Kenya in 1927 when an elected member questioned the Governor's ruling & wrote to the papers. He got answered by Sir S. Briggs who referred to Parliamentary procedure - which Sir C. Stanley thought unfortunate.

I submit a draft telegram & pass it through Sir H. Buxton.

V.E.G. 729
2.1.36.

AB 3/1

Sir J. Mott

You should see this. I agree with draft telegram, if you wish give the Governor a brief definite line as to his action with regard to Capt. Schwarze's letter, & say as to what he should do say. I think we can have it to him.

W.E.S.
3.1.36

J. Agre. At once
J. Agre
3/1

Noted Buxton
2/1/36

2

To Gov. Kenya Tel. Private & Personal. 3/1/36

By Sir J. Mott 3

25 Jan 1936

Connect up

with 15240/28

@ Annual (Schwarze)

C. J. B. Leg. C. 11

- 1 paper

privileges of official

members in voting on

measures in Lt. they

to Sir J. Byrne - 5/0 - also - 6.1.36

position arising from breach of privilege of Capt. Schwarze - Annual report requires K. B. Buxton

AIR MAIL.
PERSONAL.

5
4

RECEIVED
for entry
- 5 FEB 1936
G. O. RUGBY

GOVERNMENT HOUSE,
KENYA,
EAST AFRICA.

15th January, 1936.

My dear Bottomley,

(3)

Very many thanks for your letter of the 6th of January and for all the trouble you took over the Schwartz incident.

Shortly after I wrote to you the Secretariat produced the file dealing with the case of Captain Kenealy and the subsequent action taken thereon.

17 Jan 1936

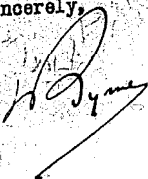
I enclose herewith a cutting from the "East African Standard" containing my statement from the Chair. Francis Scott then rose and made the remarks attributed to him in the cutting but what is not reported is the fact that I immediately asked whether I was to infer that an apology was being offered on behalf of Captain Schwartz. On being informed that an apology was offered I said I would allow the matter to drop.

I entirely agree with you about our "House of Commons" language. I am confidentially informing the

Senior.....

Senior officials who usually speak in Council
instructing them as to their method of address
or of reference in future.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'H. D. Dymally', with a long horizontal flourish extending to the right.

Sir W. C. Bottomley, K.C.M.G., C.B., O.B.E.,
Colonial Office,
Downing Street, S. W. 1.
L O N D O N.

FRIDAY, JAN. 10, 1936

"REGRETTABLE BREACH OF TRADITIONS"

His Excellency on a Challenged Ruling

COUNCIL STATEMENT

Member for Nairobi-South
Withdraws Letter

Before the business of the day was commenced at the adjourned budget session of Legislative Council yesterday morning His Excellency the Governor made the following statement:—

"On December 30 I referred to a letter criticising a ruling of the President of this Council written by the Hon. Captain Schwartz and published by him in the 'East African Standard.'"

"I am now in a position to express my views on this matter and I much regret that owing to his departure for England Captain Schwartz is not present to hear them.

"Before I touch on the propriety of his action I will deal with the ruling itself. Rulings from the Chair generally have to be given forthwith and under our standing Rules and Orders they have, at the time, to be regarded as final. This in my judgment does not debar representations being made to the President after the sitting if there is genuine doubt as to whether the ruling correctly interpreted the Standing Rules and Orders or the usages and practices of the House of Commons. I have known many such cases during the thirteen years in which I have presided over Legislative Councils, and it has been my practice in such cases to make a communication as soon as possible from the Chair either upholding or amending the ruling according to circumstances. In difficult cases I have even referred the matter for advice to the Home authorities.

Established Principle

"This procedure is in accord with the established principle that whatever matter arises concerning either House of Parliament ought to be discussed and adjudged in that House to which it relates and nowhere else. Now when I delivered my ruling on December 10 I had no misgivings as to its correctness but when I saw Captain Schwartz's letter in the public Press I decided that it would be desirable to obtain authoritative advice from home, for his statement, so hastily and so emphatically promulgated outside this Council, that there was no doubt whatever that the ruling from the Chair was entirely wrong" could not be ignored. I have just received a cable informing me that my ruling was perfectly correct.

"Hon. Members are no doubt aware that this Council does not possess the powers and privileges enjoyed by the House of Commons, so no question of dealing with a breach of privilege arises. I must therefore leave it to Hon. Members themselves, as jealous guardians of the rights and privileges of this Honourable Council, to judge as to the propriety of Captain Schwartz's action. In my opinion it was a regrettable breach of British Parliamentary traditions."

The Hon. Lord Francis Scott (Rift Valley) said that, before he had left, Captain Schwartz had asked the speaker to say on his behalf that if the ruling was adverse to him he fully accepted the position and withdrew his letter.

His Excellency said he was very glad to hear this as it ended the matter.

3

Ans. 4

C.O.

Mr. Flood. 6/1

Mr.

Mr.

For Sir C. Bottomley's signature.

Sir C. Parkinson.

Sir G. Tomlinson

X Sir C. Bottomley. X b. f.

Sir J. Shuckburgh

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

(conson)

C.D.
R 6-JAN
D

Downing Street,

6 January, 1936.

My Dear Byrnes...

DRAFT.

Byrnes General

SIR JOSEPH BYRNE, G.C.M.G., K.B.E.,
C.B.

Thank you for your interesting letter of the 22nd of December on the subject of the Estimates. I was able to get off a telegram to you about the points raised by Schwartz. It was rather curious to discover that it had been up before in the case of Captain Kenealy, who got reproved, very properly, by Grigg. A reproof in somewhat similar terms will no doubt be the course that commends itself to you.

At the same time it is possible to carry too far comparisons between the Kenya Legislative Council and the House of

Commons

FURTHER ACTION.

3

C. O.

Ans. 4

Mr. Flood. 6/

Mr.

Mr.

For Sir C. Bottomley's signature.

Sir C. Parkinson.

Sir G. Tomlinson

Downing Street,

6 January, 1936.

X Sir C. Bottomley. X b. i. f.

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.
(conson)

C.D.
R 6-JAN
D

Sy. Dec. Byrne

DRAFT.

Major General

SIR JOSEPH BYRNE, G.C.M.G., K.B.E.,
O.B.

Thank you for your

interesting letter of the 22nd of

December on the subject of the

Estimates. I was able to get off

a telegram to you about the points

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rather curious to discover that it

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Captain Kenealy, who got reproved,

very properly, by Grigg. A reproof

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itself to you.

At the same time it is

possible to carry too far

comparisons between the Kenya

Legislative Council and the House of

Commons.

FURTHER ACTION.

Commons. As you no doubt know, a Colonial Legislative Council has no inherent privilege or powers of dealing with matters of privilege except in so far as they may be expressly conferred upon it. An Ordinance was prepared and sent home in Grigg's despatch No.786 of the 8th of December 1927 purporting to confer powers and privileges on the Legislative Council on the analogy of the House of Commons, and the general constitutional position was dealt with at some length in Mr. Amery's despatch No.144 of the 22nd of February 1928. That despatch still holds, and we feel here that it is perhaps unfortunate that in the Kenya Legislative Council language should be so frequently used which is only appropriate to the House of Commons. It is perhaps too late to stop it now but the practice of talking about "this Honourable House" or even "this House", and above all of talking about "this side of the House" is to be deprecated, whether done by Unofficials or Officials, but especially in the case of the latter. A Colonial

Legislative

C. O.

Mr.
Mr.
Mr.

Sir C. Parkinson.
Sir G. Tomlinson
Sir C. Bottomley.
Sir J. Shuckburgh
Permt. U.S. of S.
Privy. U.S. of S.
Secretary of State.

Legislative Council is not a parliament and should not be treated as such.

YOURS SINCERELY

(Signed) W. O. BOTTOMLEY.

DRAFT.

FURTHER ACTION.

C. O.

3-8032/35

2

Mr. ~~Hend~~ 2/36

Mr. H. Bude 3/1

Mr.

Sir C. Parkinson

Sir G. Tomkinson

X Sir C. Bottomley 3/1

Sir J. Stuckburgh

+ Royal U.S. of S. 3/1 *At 10/16*

Party U.S. of S.

Secretary of State

G. D.
17 JAN
1936

*Letter sent
4.30 PM
3/1/36
G.H.*

*Printing Personal Following from
Bottomley begins:*

Your letter 22 December. It has

*repeatedly been ruled that official
members may vote on matters
affecting a salary generally as being
a matter of public policy even when
official vote is being used against
proposal to impose salary levy.
Your ruling therefore perfectly correct.*

*As to Schweitzer's letter see similar
your case in despatch NO 1086 of
31 December 1926. ~~see~~*

*xx You should however be careful not
to refer to Parliamentary privilege
as Kenya Legislative Council does not
possess it, see S. of P. despatch NO 144
of 22 February 1928 ends.*

DRAFT.

*code tel +
conv*

Governor

Nairobi

*1010/27
Kny*

*15240/26
Kny*

FURTHER ACTION.



PERSONAL & PRIVATE.

GOVERNMENT HOUSE,
KENYA.

EAST AFRICA.

22nd December, 1955

RECEIVED
for entry
C. O. REGY

My dear Bottomley,

In continuation of my letter of the 7th December the following further developments may be of interest to you.

As arranged Legislative Council met on the 19th after the adjournment granted to enable the Standing Finance Committee to examine the Estimates. Their work was accomplished without undue delay and the galley proofs were ready for final approval on the morning of the 19th.

There was nothing very controversial in the report and on most matters of detail there appeared to be unanimity. My programme was to lay the report on the morning of the 23rd and after the 4 days notice to move its adoption on the 27th. This would leave us the 27th, 28th, 30th and 31st to get the Appropriation Bill through -- ample time as the principles had been thrashed out ad nauseam in the course of the lengthy speeches already...

*unrevised
and
(change
submit)*

(3)

already made by each and every elected member. However, this was not to be. Francis Scott and Co., kicked up a row and stated that they would not sit on the 27th and 28th and moreover that they would have to take time to prepare a minority report. When I insisted on the necessity for getting the Budget through before the end of the year they put forward a compromise which I accepted. This we passed all the taxation measures on Friday. When the non-native Poll Tax Bill and the Traders Licenses resolution came up (i.e., the Alternative Taxes) all European Elected members walked (or rather slunk) out of the House. They seemed to be rather ashamed of themselves and so is the Country.

On the 30th they have agreed to let the Association Bill, based on the main report of the Standing Finance Committee, go through so we will be comfortably provided for during 1936. The Pin Report will not, in my opinion, be ready in sufficient time to make any material alteration in this provisional Budget.

Now here comes the amusing part of the compromise. The Elected members asked that the Report of.....

of the Standing Finance Committee -- including the minority report which it is hoped will then be ready -- should be debated on the 7th January. I gladly consented so that they should have no grievance, but I can imagine nothing more likely to sicken the public than a further abortive debate held after the Budget had actually been passed.

Malcolm Bailey has been staying with me for the past week and leaves tomorrow. I shall miss him for he is a most interesting guest.

If it would not be too much trouble could you help me over the following:-

On Friday when the re-imposing the Levy on official salaries was introduced Captain Schwartz rose on a point of order and stated that the official members of Council should be debarred from voting as they were pecuniarily interested. I ruled against him as it was a taxation measure. His attitude appeared to be rather offensive although he said nothing. To my surprise a letter, a copy of which is enclosed, appeared in yesterday's

East.....

East African Standard.

Now I do not think this gross breach of the spirit of Parliamentary Practice should be allowed to pass unnoticed. What I propose to do is to make a dignified communication from the Chair roughly on the lines of leaving it to Honourable Members -- who are as jealous as I am as to our procedure -- to judge on the propriety of the action taken by the Honourable and Gallant Member. At the same time I would then mention that I stand by my ruling, the correctness of which has authoritatively been confirmed.

I know from experience that the Speaker's Office is always anxious to help us poor isolated people in our difficulties and although Erskine May seems to make the position clear, I would greatly value an expression from the Office which, if permission were granted, I would quote.

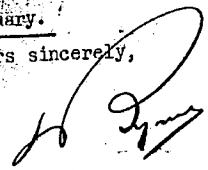
Advice on the propriety of publishing letters in the Press by Members of Parliament questioning the Speaker's ruling would also be appreciated.

Could you cable to me the result of your efforts

AS.....

as I must take action as soon as I can, probably at the meeting on the 7th January.

Yours sincerely,



E. A. Standard 21st December 1935

Levy on Salaries

POSITION OF OFFICIAL MEMBERS

To the Editor "E.A. Standard,"
Sir.—This morning's debate in Legislative Council on the motion to extend the Levy on Official Salaries to 31st December, 1936, showed more clearly than usual the futility and humbug of our present constitution.

The whole of the Official Members, (with one exception) all of whom are not unnaturally bitterly opposed to the Levy, were compelled to vote for the motion despite the intensity of their feelings on the subject. It is difficult to imagine a more ludicrous and unhappy position than that in which these unfortunate gentlemen were placed.

Under Standing Rules and Orders no Member is allowed to vote on any matter in which he may have a direct pecuniary interest, and there can be no doubt whatever that the Rufing, from the Chair that Official Members could vote on the motion to tax their own salaries was entirely wrong, and the reason given by the President for allowing them to vote, which was to the effect that this was a taxation measure, was, of course, completely irrelevant.

Yours etc.,
H. E. SCHWARTZ.

Nairobi.
Dec. 20, 1935.

B
END

E. A. Standard 21st December 1935

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Yours etc.,

H. E. SCHWARTZE.

Nairobi,
Dec. 20, 1935.