

1937

38179

38179

28

KENYA  
C0533/483

28

KENYA-UGANDA RAILWAY & HARBOURS

CLOSED  
UNTIL

LEGISLATION

Previous

3304/35

Subsequent

1938

297

18/11

309

22/11

Mr. Pashin

27/11

~~Mr. Pashin~~

Mr. Pashin

8.12

Sir C. B. B. B.

9/12

Sir C. B. B. B.

11.12

R. 309

4/12

Mr. Pashin

P 299 20/12

297

62188

FILE A.

C.I. 1. HIGH COMMISSIONER FOR TRANSPORT.....108.....10.11.37.  
Comments on Bill it is proposed to introduce to amend  
TRANSPORT (K.U.R.) K.U.R. Ordinance, 1927 and requests early ruling on  
points raised.

The Attorneys General of Kenya and Uganda  
are wrangling over the legal matters involved  
in implementing the recommendations in the  
Name Report about Air Service in EA.

The High Comm<sup>r</sup> asks for a Final ruling on  
the purely legal questions which have been  
raised. Questions of policy involved will  
have to be discussed later, but at the  
moment? action may be confined to  
settling the lawyers' dispute. No more is  
required by the Africans. Close file.

On the v. of policy, I am bound  
to say that I agree with the view  
taken by the Gov. of Uganda. We are  
however not asked to consider that  
v. at this stage, as discussions are  
still proceeding between the two Governors.

The v. whether the proposed  
amendments of the Kenya & Uganda  
O.C. is a purely legal v. or  
whether you will is doubtful. The  
arguments are fully set out in  
pages 13-16

J.P. Pascoe  
27/11

If this was only a dispute upon an academic point of law, I should say let them do whatever is the most convenient. But I am afraid there is more to it than that since the action could be challenged in the courts by disgruntled persons.

The Order in Council constitutes the High Commissioner for Transport and sets up machinery. It is clear upon the face of the document that it does not purport to contain all his powers, and to ascertain what they are it is clearly permissible to look at other legislation of the territories. The Legislatures of Kenya and Uganda have, with His Majesty in Council, concurrent powers of legislation, and there is nothing to prevent those Legislatures dealing with the High Commissioner and the services provided only that the provisions of such legislation are not inconsistent with the provisions of the Order in Council. The whole point, therefore, is whether Uganda and Kenya legislation, which gives effect to these proposals, will be so inconsistent with the Order in Council as to make it inoperative. It is clear, I think, that provisions on the lines of (b) in paragraph 8 of the despatch are not so, but when you come to the proposals in (c) in paragraph 9 the position is more difficult. I think (c) is badly drafted and misses the point of the scheme, which is not to provide

films

for the establishment of air transport, but to provide funds for the purpose of enabling the High Commissioner to take part in the management or control of an air transport undertaking with a view to securing co-operation with the railway services, and so on. My own view is that properly drafted the substance of (c) is not so inconsistent with the Order in Council as to make it bad, but Mr. Duncan and Mr. Roberts-Wray, with whom I discussed the matter, take, I think, a different view. I think therefore that as the point is so debatable it would be safer to amend the Order in Council and, if when you have considered the policy you will let me know what you want, we will consider the form such an amendment could appropriately take.

4.18.37.

Uganda is being exceptionally stupid; I think unreasonably so. The point is that the Hans report recommended that the K.U.R. (of the T.T. railway) should be allowed to put capital into the monopoly air service company which is envisaged. Kenya says it can legislate for this but Uganda argues that this would be ultra vires the Order in Council. There is legal debate and Sir G. Baskin thinks it would be as well to amend the Order. So we had better do it, and tell the High Comm. that it is thought better to make sure <sup>x</sup> though the S. of G. is disposed to think that it isn't really necessary & that the desired object might be secured by some alterations of the proposed para (c) which would not be ultra vires the Order as the present draft appears to be.

\* some action taken might be challenged in the courts



Whether amendment is adopted had better be sweeping and empower the High Comm

- 1) To establish and operate transport services of any kind whether by road, air, or water in ~~conjunction with~~
- 2) To invest money in such private undertakings dealing with transport as may be approved by the Advisory Council, and to receive dividends thereon

[A curious feature is that unless I'm wrong the Order in Council does not give power to run a road vehicle which the Railway does between Kinshasa & Bakula. or to operate and own a delivery van, which, as Eusébe would say, is abundant! Still less is there power to assist in a road service, which is why reference is made to such in the proposed clause (b) in para 8.]

I think we should add the <sup>High Comm</sup> ~~provision~~ as suggested above & say we will get on with an amending order as at X & ask if he has any more to suggest.

J. L. S. ~~Hand~~  
8.12.

Brian Geo: I  
minced that

The points at A and B above are met, are they not, by Article 1(3) of the Order in Council of the 13th of August 1935.

The only point here is whether they can use the Road Fund for the purpose of financing outside companies. I attach a draft amending clause which they could have for consideration. I should like the despatch to set out fully the legal position as we see it since I think there is some confusion of thought locally. (The last time I saw this question was in connection with the

Congo

Congo Basin Treaties. I never saw those papers again, but I presume that that point has been settled or has ceased to be relevant).

H.B. 9.12.37.

Off. according - insley for  
para. 19 shall have further  
on the question of fishing

W.L.S.  
11.12.37

306

Min. of Transport 1937 & Transport Com. 30 DEC 1937



C. O.

38178/28/27 Kenya.

Mr. Costley-White 14/12

Mr. Paskin 16/12

Sir G. Bushe 17/12

Mr. Flood 17/12

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Partly. U.S. of S.

Secretary of State.

Downing Street,

30 December, 1927.



Handwritten notes: 'Amud 2 on 1928 file' and '30'.



Sir,

I have the honour to

(1) acknowledge the receipt of your

despatch No. 108 of the 10th of November on the subject of the legislation which it is desired to introduce in order to enable the Transport Administration to participate in the management and control of aircraft services etc.

2. I have considered the points raised by the Government of Uganda as to the validity of such local legislation and I have the following observations to offer. The Kenya and Uganda (Transport) Order in Council constituted the High Commissioner for Transport and established machinery. It is

clear

DRAFT.

TRANSPORT

KENYA. UGANDA.

NO. 129.

HIGH COMMISSIONER.

FURTHER ACTION.

clear that this instrument does not purport to set out all the powers of the High Commissioner, and that, to ascertain what those powers are, it is necessary also to have regard to other legislation passed in the two dependencies. The Legislatures of Kenya and Uganda have, with His Majesty in Council, concurrent powers of legislation, and there is nothing to prevent those Legislatures dealing with the powers of the High Commissioner and the Services, provided only that the provisions of such legislation are not inconsistent with the provisions of the Order in Council.

3. The proposed amendments of the Kenya and Uganda Railways Ordinance, 1927, set out in paragraph 8 of your despatch, are clearly not to be open to objection on this ground. As regards the amendments proposed in paragraph 9 of your despatch, the position is, however, less clear;

C. O.

Mr.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

**DRAFT.**

**FURTHER ACTION.**

and, having regard to the desirability of avoiding any possibility of the validity of the new powers, which it is proposed to confer upon the High Commissioner, being challenged in the Courts, I am advised that it would be prudent for the Order in Council to be amended.

4. I accordingly suggest, for your consideration the following draft paragraphs for insertion in Article 3 of the Kenya and Uganda (Transport) Order in Council, 1925:-

"(3) It shall be lawful for the High Commissioner, in accordance with the provisions of any Ordinances passed by the Legislature of Kenya and Uganda, to enter into such Agreements as may be considered expedient relating to the ownership, control, working or management of any railway, road, motor services, aircraft services,

ports, harbours, wharves, or steamship services, with any person, persons, corporate body or authority concerned in such ownership, control, working or management.

The rights, liabilities and interests of the High Commissioner under any such Agreement shall form part of the Services for the purposes of this Order, and accordingly moneys of the Railway and Harbour Fund may be expended for the purposes of, or in connection with, such Agreements.

5. I note from paragraph 13 of your despatch that I shall be informed in due course of the results of the discussion proceeding with the Joint High Commissioner on the questions of policy involved.

I have, etc.

(Signed) W. ORMSBY GORE.

C. O.

38178/28/37 Kenya.

M. Costley-White, 14.12.37

Mr. Paskin. 16/12

Sir G. Burke & Co.

Sir H. Moore. Mr. Flood

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.



Downing Street,

December, 1937.

Sir,

I have the honour to acknow-

(1) ledge the receipt of your despatch

No. 108 of the 10th of November on the

subject of the legislation which it

is desired to introduce in order to

enable the Transport Administration to

participate in the management and

control of aircraft services etc.

*I have considered the points raised*

2. As regards the doubts felt

by the Government of Uganda as to the

legal validity of such local legisla-

*and I have the following observations*

tion, I would observe that, it is clear

upon the face of the Kenya and Uganda

(Transport) Order-in-Council that

this instrument does not purport to

set out all the powers of the High

Commissioner

DRAFT.

TRANSPORT

KENYA-UGANDA

NO. \_\_\_\_\_

HIGH COMMISSIONER.

FURTHER ACTION.

*Constituted the Transport Authority. It is clear.*



Commissioner, and to ascertain what those powers are, it is necessary also to have regard to other legislation passed in the two Dependencies. The Legislatures of Kenya and Uganda have, with His Majesty in Council, concurrent powers of legislation, and there is nothing to prevent those Legislatures dealing with the powers of the High Commissioner, and the Services with which the Administration may deal, provided only that the provisions of such legislation are not inconsistent with the provisions of the Order-in-Council.

3. The proposed amendments of the Kenya and Uganda Railways Ordinance, 1927, set out in paragraph 8 of your despatch, are clearly not to be open to objection on this ground.

As regards the amendments proposed in paragraph 9 of your despatch the position is, however, less clear; and, having regard to the desirability of avoiding any possibility of the validity of the new powers, which it is proposed to confer upon the High Commissioner,

being

*and the difficulty is not  
made any the less by the  
desire to avoid the  
ambiguity in the  
(c). The scheme will  
undoubtedly be  
to provide funds for the  
air and road services  
to be provided*

- C. O.
- Mr.
- Mr.
- Mr.
- Sir H. Moore.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

**DRAFT.**

*As we are amending  
I don't think this  
matters*

**FURTHER ACTION.**

being challenged in the Courts, I am advised that it would be prudent for the necessary provision to be made by an amendment of the Order-in-Council rather than by local legislation.

*Take in A.*

4. Under article 1(3) of the *Wording Subord of Sub para* Kenya and Uganda (Transport) Orders in Council 1927, 1927 and 1935 the *need considered; on since it* High Commissioner has power to *appear to establish road motor services and* aircraft services and it would appear that what is now required is a provision <sup>not</sup> to enable the High Commissioner to take part in the management and control of independent undertakings, rather than to authorise *to provide* the provision of funds for the establishment of the air or road transport services, as is done by the draft paragraphs (c) and (d) quoted in paragraph 9 of your despatch.

I accordingly suggest, for your consideration  
the following draft paragraphs for insertion in  
Article 3 of the Kenya and Uganda (Transport)  
Order-in-Council, 1925:-

" (3) It shall be lawful for the  
High Commissioner, in accordance with the  
provisions of any Ordinances passed by  
the Legislatures of Kenya and Uganda, to  
enter into such Agreements as may be  
considered expedient relating to the  
ownership, control, working or manage-  
ment of any railway, road motor services,  
aircraft services, ports, harbours,  
wharves, or steamship services, with any  
person persons, corporate body or  
authority concerned in such ownership,  
control, working or management.

The rights, liabilities and  
interests of the High Commissioner  
under any such Agreement shall form  
part of the Services for the purposes  
of this Order, and accordingly moneys  
of the Railway and Harbour Fund may be  
expended for the purposes of, or in  
connection with, such Agreements."

5. I note from paragraph 19 of  
your despatch that I shall be informed  
in due course of the results of the  
discussion proceeding with the Joint  
High Commissioner on the questions of  
policy involved.

I have, etc.

*M. Roberts Gray, Sr.  
H.B. 8/2*

Proposed paragraph for insertion in Article 3 of  
the Kenya and Uganda (Transport) Order in Council,  
1935.

(3) It shall be lawful for the High Commissioner,  
in accordance with the provisions of any Ordinances  
passed by the Legislatures of Kenya and Uganda, to  
enter into such Agreements as may be considered  
expedient relating to the ownership, control,  
working or management of any railway, road motor  
services, aircraft services, ports, harbours, wharves  
or steamship services, with any person, persons,  
corporate body or authority concerned in such  
ownership, control, working or management.

The rights, liabilities and interests of the  
High Commissioner under any such Agreement shall  
form part of the Services for the purposes of this  
Order, and accordingly moneys of the Railway and  
Harbour Fund may be expended for the purposes of,  
or in connection with, such Agreements.



Proposed paragraph for insertion in Article 3 of  
the Kenya and Uganda (Transport) Order in Council,  
1935.

*Mr. Roberts 8/12*  
*H.B. 8/12*

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The rights, liabilities and interests of the High Commissioner under any such Agreement shall form part of the Services for the purposes of this Order, and accordingly moneys of the Railway and Harbour Fund may be expended for the purposes of, or in connection with, such Agreements.



TRANSPORT  
KENYA-UGANDA

OFFICE OF THE HIGH COMMISSIONER FOR TRANSPORT,  
GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

No 108

RECEIVED  
16 NOV 1937  
G.O. REGY

10th November, 1937.

Sir,

I have the honour to inform you that it is proposed to introduce into the Legislative Councils of Kenya and Uganda a Bill to amend the Kenya and Uganda Railway Ordinance, 1927.

The Bill has been drafted, and has been agreed to by the Government of Kenya. With the exception of one matter which I am now referring to you for your decision, it has also been agreed to by the Government of Uganda.

2. It is proposed, inter alia, to amend Section 3 of the Ordinance to give the High Commissioner power to operate Aircraft and Road Transport Services. The first proposal to legislate for the former service was to add to Section 3 (a) of the Ordinance the words:-

"and further to purchase or in any other manner  
"acquire, sell or otherwise dispose of, build,  
"construct, repair, hire, let or charter, from  
"or to any person, and control, manage, maintain  
"and work aircraft and any land and appliances  
"required for the purpose of the landing or mooring  
"of aircraft, and all things incidental thereto, and  
"to make contracts in connection therewith."

This was based upon provisions in Act No.21 of 1931 of South Africa.

3. The Government of Uganda, however, through the Chief Secretary in a letter to the General Manager, Kenya and Uganda Railways and Harbours, dated the 17th January, 1936, stated:-

"It/

THE RIGHT HONOURABLE  
W.G.A. ORMSBY GORE, M.P.,  
SECRETARY OF STATE FOR THE COLONIES,

*Amended 2*

"It is considered that all reference to aircraft or aircraft services should be deleted throughout the Bill, as it would appear to be incorrect for the Bill to contain any reference to powers to operate aircraft services when it is submitted to the Railway Council, since no decision has been taken by the two Governments concerned as to whether such services should be operated by your Administration."

"If such operation were to be agreed upon, then, it is considered, ad hoc legislation should be introduced conferring the necessary powers. Any proposal for operating such services by the Railway is, moreover, calculated to alarm existing vested interests, which should be consulted before the publication of draft legislation."

4. The General Manager in reply said:

"I regret extremely your Government's decision that all reference to aircraft or aircraft services should be deleted from the draft Bill."

"I consider this Administration should have the right to operate air services if, on the advice of Railway Council, the High Commissioner considers such services are necessary or desirable."

"The proposed legislation would in no way confer any monopoly upon this Administration. Moreover, if some scheme of regulation of transport is brought in, your Government, in addition to the control exercised under the Air Navigation Directions, 1929, would have full control in two other ways:

(1) Through/



"(1) Through Railway Council;

and

(2) Through Transport Regulation Control.

"As the proposed legislation would in no way confer any monopoly of air services on this Administration, I fail to appreciate why it should cause any alarm to existing vested interests, but consider that, unless Government is prepared to protect these Services from undue competition, these Services should be accorded rights at least equal to those granted to private enterprise. I trust, therefore, your Government will reconsider its decision."

5. In a further letter from the Chief Secretary, Uganda, dated the 1st October, 1936, to the General Manager, it was stated that the views of the Uganda Government had not been modified, but in view of the circumstances that Sir Osborne Mance was to advise on the regulation between air transport and other forms of transport, it would appear desirable to postpone further discussion on this matter until his Report was available.

6. As you are aware, Sir Osborne Mance reported in due course, and at paragraphs 110 and 111 of his Report he recommended unhesitatingly that the best policy for air services in East Africa was the grant of a monopoly to a local company, and he felt strongly that the two Railway Administrations of East Africa should be permitted to participate in the capital of the privileged air company.

7. At a meeting of the Transport Policy Board held on the 17th June, 1937, it was agreed, inter alia, that Sir Osborne Mance's recommendations in paragraphs 110 and 111 of his Report should be accepted in principle, and that

legislative/

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on 46537/37 E.A.

legislative provision should be made for (a) the grant of the proposed monopoly for internal air services, and (b) participation by the Railways in the capital of the selected company.

8. In view of this, and more fully to give effect to these recommendations, it was considered necessary further to amend Section 3 of the Railway Ordinance and the following proposal was put forward:-

To delete the words "and to make contracts in connection therewith" from the end of the suggested clause set forth in paragraph 2 of this despatch, and to substitute for paragraph (b) of Clause 3 of the Bill (which follows paragraph (b) of Section 3 of the Ordinance) the following:-

"(b) To enter into agreements with any person whether in the Colony or elsewhere in connection with:-

- (i) Matters affecting or incidental to the control, working and management of the services including contracts for the supply of water or electric energy to ships or to persons;
- (ii) The provision, owning, working, user, management and maintenance of any aircraft, lands, aerodromes, depots, buildings, sheds and property provided or used in connection with any Air Transport services;
- (iii) The working, user, management and maintenance of any road vehicles, lands, houses, depots, buildings, sheds

and/

and property provided in connection with any Road Transport services;

- (iv) The supply of aircraft, road vehicles and conveniences in connection therewith necessary for the purposes of such agreements, and the employment of officers and servants;
- (v) The interchange accommodation conveyance transmission and delivery of traffic conveyed or to be conveyed by air transport or road transport services and the payment, collection and apportionment of the fares, rates and charges and other receipts arising from any such service.

9. It was further proposed that new paragraphs to be lettered (c) and (d) should be inserted after paragraph (b) as follows:-

"(c) In order to provide or facilitate the provision of funds for the establishment or maintenance of air transport or road transport services under an agreement made in pursuance of paragraph (b) of this Section and to the extent requisite therefor to

(i) contribute any moneys which may be necessary.

(ii) hold stock shares and securities of any of the contracting parties,  
and

(iii) guarantee the dividends or interest on stock shares and securities of any of such parties.

(d) To grant powers of attorney and like authorities.

10. To these suggestions the Government of Kenya saw



no objection. The Government of Uganda, however, in a letter to the General Manager from the Acting Chief Secretary, dated the 6th September, 1937, has not concurred in the proposed amendments to Section 5 on two points of principle.

11. In the first place that Government objects to including in the Ordinance at this stage powers designed to enable the High Commissioner to own and operate railway air services since not only has the exercise of such powers not been advocated as a matter of policy but, on the contrary, the recommendations in paragraphs 110 and 111 of the Mance Report having been adopted, the accepted policy is and will be for some considerable time to discourage the Railway from owning and operating its own aircraft. The Government of Uganda does not suggest that the inclusion of such powers in the Ordinance would be ultra vires the Transport Order in Council, but it considers that those powers may not properly be implemented until the policy recently decided upon is changed. In that event, it maintains that ad hoc legislation should be passed. The Government of Uganda urges further that if the inclusion of these powers were to be opposed during the passage of the Bill through the Legislative Council (and publication of the Mance Report obviously puts the Unofficial Members of Council in a position to query the inclusion of these powers) the Government would be placed in the quite untenable position of having to defend provisions which it will be bound to admit were not in accordance with the policy of the East African Transport Policy Board.

12. The second point raised by the Government of Uganda concerned such of the proposed amendments to the

Railway Ordinance as are designed to carry out the recommendation of the Mance Report that the Railway Administration should participate in the capital and management of a local aircraft company. In this respect, the Government of Uganda does not object to the terms of the proposed amendment, but only expresses doubts as to its legal validity in the absence of some enabling power in the Transport Order-in-Council on which the local Ordinance depends.

15. In an endeavour to settle these divergent views, the Acting Attorney-General of Kenya kindly consented to discuss the points raised with the Acting Chief Secretary and the Attorney-General of Uganda.

In regard to legality of the proposed amendment to the Ordinance enabling the Railway Administration to participate in the management and capital of an aircraft company, the Attorney-General of Uganda advanced the following arguments:

- (1) The powers granted to the High Commissioner by the Railway Ordinance may only be exercised by him in so far as they are not inconsistent with the powers given to him by the Order-in-Council. (Article 3 (2)).
- (2) Under the Order-in-Council he has the control, working and management of the services (which are defined) and powers necessary and incidental thereto. (Article 3 (1)).
- (3) Articles 17 - 19 in particular, and the tenor of all the Articles relating to financial arrangements, require in effect that railway money shall be expended only on the services and for purposes incidental thereto.
- (4) It cannot be said that the aircraft company is, in any sense, a part of the services nor can participation in

the capital of the company be properly considered as a step necessary for or incidental to the working or management of any of the services. To expend railway money on this enterprise is thus ultra vires the Order-in-Council.

(5) To argue that the proposed transaction is a mere investment of idle railway money is not an accurate description of the proposal in paragraph 111 of the Mance Report. If the Railway is to participate in the capital of the Company and to be accorded the measure of control which follows from representation on the board of management then in effect the transaction will have been a capital expenditure of Railway funds.

(6) Whether or not the Railway is represented on the Board, in effect it will be engaging in a private commercial enterprise unconnected with the Railway with public money earmarked for railway services as defined in the Order-in-Council.

(7) The leading cases on the doctrine of ultra vires appear in point.

14. Neither the Government of Uganda nor the Attorney General wishes to press this point of view unduly. If the Secretary of State is satisfied that the proposed legislation is not ultra vires the Order-in-Council, the Government of Uganda is fully prepared to proceed with the necessary Bill but if, on the other hand, the position is open to reasonable doubt, then the Government of Uganda would favour an amendment of the Order-in-Council rather than risk any legal action in the courts which might conceivably be commenced by parties in Uganda or Kenya who may be disposed to dispute the policy that/

that it is proposed to follow.

15. The Acting Attorney General of Kenya does not share the view taken by the Attorney General of Uganda; the following is an extract from a letter he has written to the General Manager:-

"I do not share the view taken by the Attorney General, Uganda. In my opinion Article 3 (1) was included in the Order-in-Council for the specific purpose of bringing under the control of the High Commissioner for Transport railways etc. which had formerly been owned and controlled by the Governments of Kenya and Uganda prior to the creation of the post of High Commissioner. It does not appear to me that this Article has anything to do with the question of investment or in any way precludes the Administration from participating in the capital and management of a private air transport company provided it is authorized to do so by the Kenya and Uganda Railway Ordinance. I am informed by the Legal Adviser to the Railway Administration, who agrees with my opinion, that surplus funds of the Administration are invested by the Crown Agents. The only reason why it is advisable to make specific provision in the Bill for the proposed investment is that it would not be a trustee investment and therefore it is advisable to sanction it by legislation.

I agree with the Attorney General, Uganda, that under the circumstances it is advisable to address the Secretary of State with a request for an early reply."

This clearly sets out the point at issue, and I shall be glad if you will let me have your directions in the matter at your earliest convenience.



16. I may mention that the proposed paragraphs (b) and (c) of Clause 3 to which exception is taken are based upon Sections 8 and 11 of the Southern Railway (Air Transport) Act, 1919, and the Southern Railway (Road Transport) Act, 1928, respectively.

17. With regard to the question whether the Railway Administration should be permitted to participate in operating or operate aircraft services, the question of policy raised was considered by the Railway Advisory Council at a recent meeting, and that Council recommended that the principle should be accepted that the Railway Administration should be empowered to operate air services and participate in any aircraft services already, or to be, operated by any other company and that powers should be obtained to enable this to be done. Council also recommended similarly with regard to inland water transport.

18. As High Commissioner I fully approve Railway Advisory Council's recommendation and as Governor of Kenya I raise no objection to steps being taken in Kenya to give effect to it. My colleague, the Joint High Commissioner in Uganda, however, as at present advised, is unable to associate himself with Council's recommendation, and adheres to the point of view expressed in paragraph 11 of this despatch. I am personally impressed, however, not only with the necessity to take such legislative steps as will enable the Administration to participate financially in the monopoly company proposed by Sir Osborne Mance, but also with the desirability of ensuring that should circumstances prove to render such a course expedient, the Administration should have legal power to own and operate its own service. It may be pointed out, moreover, that even when suitable enabling legislation has been passed, both Governments will/

will still retain full control of the situation, as pointed out by the General Manager in his letter referred to in paragraph 4 above. In my view, therefore, the position of these Governments is amply safeguarded by the proposals now under consideration.

19. Further discussion with the Joint High Commissioner is proceeding, of the results of which you will be notified in due course. In the meantime, however, I shall be grateful if an early ruling may be given on the purely legal questions raised in paragraphs 13 - 16 of this despatch. If you uphold the contention of the Attorney General, Uganda, it would seem that the Kenya and Uganda (Transport) Order-in-Council, 1920, will have to be amended, in which event I shall be glad if you will suggest what form the amendment should take.

20. Copies of this despatch are being communicated to the Joint High Commissioner in Uganda, and to the Governments of Kenya and Uganda.

I have the honour to be,

Sir,

Your most obedient, humble servant,

R Brooke Popham

HIGH COMMISSIONER