1937

38198 | CO 533/483 | 38198

KENYA

LOCAL GOVERNMENT (RATING) LEGISLATION

Previous

1936

Subsequent

1938

		M: Duncan	14/6/37
		M: Flood.	16
		Sir C. Bottomley	16/6
		R. 299	22/6
		R 297	22/6
		R 303	1/7
		298	1/7
		297.	5/10
		Mr Grossmith	5/10
R. 297	4/2/37	R 297	8/12
R. 309	3/5	309	8/12
Mr Parkin	5/5	Mr Parkin	8
M: Duncan	6/5/37	297	8/3/38
M: Parkin	8	309	12/3
Library	11/5	Mr Parkin	18
Mr Parkin	19/5	297	
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299	1/6		
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Mr Parkin	14/6		

38198

FILE A.

(17420) 24836/26 3,000 11/36 M. & S., Ltd. Gp. 641

C.I. 5 1. ACTING GOV., KENYA...............52...............21.1.37.

TITLE. Details circumstances in which he requests advice as to whether, on legal or other grounds, the S. of S. sees objection to the Kenya Local Government (Rating) Ordinance, 1928, being amended so as to make the Crown liable to rates.

2

2. GOV. KENYA...............232...............24.4.37
Enquires whether circumstances now permit of a reply (to No.1.)

DESTROYED UNDER STATUTE

3

In the accompanying note I have tried to show the position in regard to the present system of Local Government Rating in Kenya.

Perhaps in the first instance Mr Duncan will advise whether on legal grounds there is any objection to the Kenya Local Government (Rating) Ordinance 1928 being amended so as to make the Crown liable for rates.

C.A. Grossmith
5.5.37

J.J. Paskin
5/5.

The Minister of Health is the authority on questions of rating, and I think that the matter should be referred to him for his advice.

We had better send a copy of No. 1 and of the relevant Ordinances etc., explain the present position in Kenya, and ask for his observations on the point raised in

paragraph 6 of No. 1.

Before doing so, however, it might be as well to get the Library to verify the statement at X in paragraph 5 of No. 1.

6/5/37 H. Duncan.

Library.

as to X.

J.J. Paskin 8/5.

I do not claim to have examined every Colony and Dominion law about rating or local government but I think that there is sufficient evidence to show that the statement ~~in paragraph 5~~ of No. 1 is incorrect. Besides the case of townships in the Gold Coast of which the Attorney General ~~is~~ of Kenya was aware, rates are leviable on Crown and Colony property under the Georgetown (British Guiana) and New Amsterdam Town Councils Ordinances (see section 136 of Cap.86 and section 76 of Cap.87). There is apparently no exemption in the case of the City Council of Gibraltar (and that the exemptions in sec. 301) see section 299(2)(c) and section 300. In Northern Rhodesia although buildings personally occupied by the Governor are exempt from rates, the exemption does not extend to Crown and Colonial property generally (see section 85 of Cap.25). As regards the Dominions, it will be seen from section 118(4) of the Sydney Corporation Act, 1932 (No.58 of 1932) that all buildings whether vested in or occupied by the Crown or not are deemed to be rateable property. Natal Act No.15 of 1910 provides for the payment of municipal and township rates in respect of certain properties belonging to or occupied by the Colonial Government. Buildings belonging to the Crown appear to be rateable in New Zealand. Copies of the various acts and ordinances referred to above herewith.

J. H. Thompson 11/5/37

I have spoken to Mr. Duncan by telephone giving him the gist of Mr. Thompson's minute. Mr. Duncan still thinks, however, that, in spite of these precedents, it would ~~still~~ be desirable to get the observations of the Ministry of Health on the question of principle involved in the taxing of Government property.

In referring the matter to the Ministry of Health we shall clearly have to give them enough past history to explain the present position in Kenya, but I think that Mr. Grossmith's note (No.3) amended as shown in pencil to incorporate also Mr. Thompson's minute, will be sufficient for this purpose, coupled with a copy of the Feetham Report.

I submit draft accordingly.

J.J. Paskin 19/5

(Margin:) 150. The Governor asks whether there are any objections on legal "or other grounds". The M. of H. are experts on the latter point. 24/5/37 H.D.

To. M/H (Mencl as per) draft 28.5.37

AIR MAIL
DESTROYED UNDER STATUTE
To Kenya - 431 - (2 encl) — 31/5/37

6. MINISTRY OF HEALTH 9.6.37.
Trs. observations arising out of experience on question of Crown liability to rates in England and Wales. Returns report of Local Govt. Commn.

It seems that there are definite objections to the making of Crown property subject to rates. I think that it is for the Kenya first to consider in the first instance how far these objections are valid in the case of Crown property in Kenya. We might send a copy of No. 4 with the memorandum, and a copy of No. 6, to the Governor by Air Mail asking as at X.

A. Grossmith.
12/6/37.

This is urgent, so [illegible] a copy of this letter [illegible] better go by Air Mail. They [illegible] better have copies of our letter to the M/H & the memo. which shows that their idea that the Crown is exempted from rating in the Doms & in all Cols. (except the G.C.) is incorrect.

[illegible]

J.J. Paskin
14/6

This is not too easy a question and it is very hard to follow exactly what the situation is and why. Apparently Government pays a contribution in lieu of rates on the capitalized value of its interest in lands which it has leased. There had been an idea that anyone who had an interest in land should not pass on the liability to pay rates in respect of that interest, and a clause to make this clear was put in the 1928 Ordinance when it was in draft. This clause was deleted and there is therefore nothing to prevent Government passing on the rates to the lessees. Government has not, in fact, done so, and as Sir Alan Pim points out, by exempting itself from paying rates it has made it impossible to get back from its lessees any of the contribution which it pays to the municipalities. This is absurd, as the Crown is the only landlord in such a position, since any other landlord would have to pay rates which can be passed on. Accordingly, it is suggested that the Crown should now become legally rateable, and that is recommended more or less by Sir Alan Pim, who points out that the present situation would not have arisen if the Crown had accepted legal liability for the payment of rates.

Kenya's

Kenya's remedy than is to make the Crown pay rates, the only result being, in the case of leased land, that Government will get back the rates from the lessees and will therefore be that much in pocket, though the lessees probably won't like it.

As regards the political aspect of it, I should not worry very much except that it is Kenya, and the municipalities and settlers at large have got very acutely the feeling to which the Ministry of Health refer at 'd'. It is doubtful, however, whether this factor would have much effect in Kenya, at any rate in the present circumstances, and if attempts were made to put too high rates on Government, Government could retaliate by taking some measure which the European settlers would have to meet (such as putting up the duty on spirits) and saying that this was necessitated in order to find money to meet the extra rates. On the whole I think then that we may accept the position, though it is a matter for further consideration, in view of the fact that the Imperial Government, in the shape of the Air Ministry, may have lands in Nairobi or at Mombasa of high rateable value, and to make "the Crown" liable for rates would be to impose a liability which would have to be met by the Treasury (Air), to which they might very well demur. So it is not a case of the Colonial Government alone. I have, therefore, added a paragraph to Mr. Paskin's draft, and I send the whole thing forward for consideration.

I am none too happy about it in any direction.

In Gibraltar there is a provision whereby the Crown (i.e. Imperial Govt.) may make an agreed contribution in lieu of rates (see § 302 of the Public Health Ordinance). That does not give away the principle that "the Crown pays no rates", & is in accord with practice in this country. But even so we should have to consult Air Ministry & Treasury.

It may be that the R.A.F. sites are not liable to rates in any case but we can't say here, and they may of course lease a house or something any time.

The last part of the draft should get something on the point from Kenya.

[illegible] 16.6.

We cannot at this stage do more than put the various considerations before the Governor so that the matter can be further considered, and I have passed the draft.

I see that the question has already been before the Standing Finance Committee, but it is one on which there is a good deal of public [illegible] and these [illegible] words cover that.

W.W.S. 17.6.37

[illegible] 22/9

AIR MAIL

To Kenya 477 – (w/c 4 & memo w/c 6) Cons — 22/6/37

I

To. M/Health (W/C. 7).

Mr. Grossmith

No reply received to No. 7

? continue to wait.

[signature] R. 297 5/10/37

Yes: ? 2 months. C. A. Grossmith 5/10

Noted 6/IV

Mr. Costley-White

No reply received to No. 7

? Remind

[signature] R. 297 8/10/37

Kenya may have decided not to legislate, in which case there is no need to remind. If legislation is intended para 6 of (7) has already requested that we should be informed. ? B.U. in 3 months if nothing is in earlier.

Costley-White 8/12

Noted 8/8/88

J. J. Paskin 8/XII

at once

Brought up as above

[signature] R. 297

? Now ask in a short s/o letter from Mr Paskin to Sir A. Wade whether anything is likely to be done in the way of legislation as suggested in (7), with particular ref to para 6 thereof.

Costley-White 12/[illegible]

I do not think we need [illegible] on this.

Put by.

J. J. Paskin 18/3

at once

38198/37.

7

C. O.

Mr. Paskin 14/6.

Mr. Duncan 14/6/37

Mr. Flood. 16.6

Sir C. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley 16.6.37.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

AIR MAIL.

22 June 1937

~~85~~

DRAFT.

Kenya

Gov.

No. 477

~~To M/H. 28/5 (No 4)~~
~~Treas~~

~~From M/H 9/6 (No 2)~~

(6)

Copy to M/H.

Sir,

With further reference

(1) to Sir A. Wade's desp. No. 52

of the 21st of January I

have etc. to transmit to

you the accg. copies of

corres. with the Ministry

of Health on the question

whether there are any objections to

the amendment of the

Local Govt. (Rating) Ordce.

1928 so as to make the

Crown liable to rates.

2. As regards the

statement in para 5 of

Sir A. Wade's desp. that

in all Crown Cols., except

the G.C., & in all the

Dominions, the Crown is

specifically exempted from

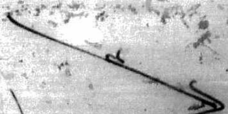
FURTHER ACTION.

Copy to M/H. ~~??~~

rating, attention is invited to ~~the last two paras of the~~ C.O. memo. ~~[struck-through line illegible]~~

3. It will be observed that, in the letter from the Ministry of Health, no objections to the rating of Crown property are raised on legal grounds; but

4. ~~[illegible]~~ that, in this country the policy generally adopted is for the Govt. to make contributions in aid of local expenditure in lieu of paying rates to local authorities; & reasons are given why H.M.G. have considered it desirable to resist proposals that Crown property shd. be made rateable. You will no doubt consider to what extent these objections are applicable in Kenya; and also how far it is necessary to consult unofficial opinion further before any change is made.



C. O.

Mr.
Mr.
Mr.
Sir C. Parkinson.
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.

4. The situation is now further complicated by the presence in Kenya of the Royal Air Force detachment, which may easily be in possession of lands or property which will be rated. If the Crown is made liable for rates, it would appear to follow that rates would also have to be levied in respect of any such properties held by the Royal Air Force at Nairobi or Mombasa, and that is contrary to the express policy of His Majesty's Government in the United Kingdom. Before any action be taken which would have this result, I should, of course, feel bound to consult the Treasury, and in present circumstances it is extremely doubtful whether agreement could be secured. I note, from Sir Alan Pim's report, that the present loss to Government amounts to not more than £1,600 in Nairobi and Mombasa together.

5. In the case of Gibraltar there is a provision (§ 302 of the Gibraltar Public Health Ordinance

which allows the Imperial authorities to make an agreed contribution in lieu of rates and it would no doubt be possible to enact a similar provision in the case of lands in Kenya held by the R.A.F. By this means the objection to the admission of the principle that Imperial Crown property may be subject to payment of rates would be met.

6. If however you propose to legislate accordingly, I request that you will furnish me with a draft of the intended provisions so that I may consult the Air Ministry & the Treasury both of which Depts. will be affected if, indeed, any rating liability attaches to property occupied, or likely to be occupied, by the Royal Air Force or by any other branch of the Imperial Services.

(Signed) W. ORMSBY GORE.

O.4
Telegrams—"Localise Parl, London."
Telephone—Whitehall, 4300.

Please address any further communication on this subject to:—
THE SECRETARY.

MINISTRY OF HEALTH.
WHITEHALL,
S.W.1.

6

Please quote the following reference—
VIII/96011/3/10.

9th June, 1937.

Sir,

4

I am directed by the Minister of Health to refer to Mr. J. E. W. Flood's letter of the 28th May (reference 38198/37) on the question of Crown liability to rates in Kenya. The Minister would not venture an opinion on the question whether the Kenya Local Government (Rating) Ordinance, 1928, should be amended so as to make the Crown liable to rates, but the following observations are offered arising out of experience on this question in England and Wales.

In this country property occupied for purposes of the Crown has always been exempt from local rates, but for some 75 years the Government have, as a consistent policy, made contributions in lieu of rates in respect of most classes of property occupied. It may be noted in passing that the demand that Crown property should be made rateable became insistent about the time when pressure first began for Government assistance generally towards local expenditure. In this country, as the Secretary of State will be aware, the general principle of Government contribution in aid of local expenditure through the instrument of the block grants or percentage grants or otherwise, has since been much developed.

The contributions in lieu of rates are based on valuations made by the Treasury Valuer after consultation with the local authority and are made, as far as practicable, on the same principles as the valuations of rateable properties with which the premises occupied by the Crown can fairly be compared. These valuations are revised from time to time concurrently with the revaluations made by the local authorities in respect of rateable properties. The total annual amount paid in contributions in lieu of rates is in the region of £2,000,000.

The principal properties excepted from this general policy are the Royal Palaces, Courts and Police Buildings, and property used by the Territorial Army, in respect of all of which no contribution is paid; and telegraph property acquired under the Telegraph Act, 1868, and certain telephone wires and posts in respect of which contributions are paid only of the amount for which they were liable for rates at the date when acquired. The existence of these exceptions from the general Government policy is a source of continual agitation by local authorities.

Apart from the agitation for the abolition of the exceptions, there is much dislike among local authorities of the general principle that property occupied for purposes of the Crown should be exempt from local rates assessed in the ordinary manner. When the Bill which became the Rating and Valuation Act, 1925, was introduced, all the principal associations of local government authorities made strong

The Under Secretary of State,
Colonial Office,
Downing Street,
S.W.1.

representations/

representations for the amendment of the law, and the demand made such an impression upon Parliament that when the measure was in Standing Committee a clause making Crown property rateable in the ordinary way was moved into the Bill against the opposition of the Government. It was subsequently deleted on the report stage after full debate. It would seem from this experience that, in the lay view, the making of Crown property subject to rates in the ordinary way would be welcomed.

It will be appreciated that in this country the responsibility for resisting proposals to make Crown property rateable does not rest solely with the Ministry of Health, and the Secretary of State for the Colonies may like to communicate with the Lords Commissioners of His Majesty's Treasury. The principal grounds which have been advanced for resisting such proposals may be summarized as follows:-

(a) the basis of valuation is the letting value of property, but a very large proportion of Crown property is of such a character that it could not be let, e.g., the Law Courts, prisons, fortifications, the Tower of London, the Houses of Parliament. Where exceptional property which is rated has no letting value there is usually some criterion of profits on which a valuation can be based, but even where Crown property approximates in character to outside properties, e.g., dock yards, there is no basis of profits on which to work. Alternatively, sometimes valuations are made upon cost or replacement value, but such a principle is clearly not applicable to such buildings as the Tower of London or the Houses of Parliament where the value is in a large degree due to historical reasons;

(b) if Crown properties were to be rateable in the ordinary way, officers of rating and assessment authorities would have to be allowed access to them. There would be the strongest objection on grounds of secrecy to allowing such entry to many establishments;

(c) when Government establishments are set up in out-of-the-way parts of the country they are not infrequently provided at Government expense with many services which would ordinarily be met out of rates, e.g., police protection, water supply, sewerage, fire protection and, on occasions, schools. The laws of rating in this country provide no machinery for equitable adjustment of the rate liability on this account;

(d) it is human nature for the ordinary man in the street to regard the Government as fair game in the matter of money, and there would therefore be an almost certain tendency on the part of rating authorities to put as much of their financial burden as they could on the broad back of the State. There would almost inevitably be extensive and costly litigation to secure the reduction of excessive assessments.

The copy of the report of the Local Government Commission is returned herewith, as requested.

I am, Sir,
Your obedient Servant,

[signature]

38198/37.

C. O.

Mr. Paskin 19/5
Mr. Duncan 24/5/37
Mr. Flood 26.5
Sir C. Parkinson.
Sir G. Tomlinson
Sir C. Bottomley
Sir J. Shuckburgh.
Permt. U.S. of S.
Parly. U.S. of S.
Secretary of State.

28 May, 1937.

DRAFT.

THE SECRETARY,
MINISTRY OF HEALTH.

Copy (of memo) to Kenya (7)

~~From Kenya No.52 of 21 Jan.~~ (1)

~~Report Local Government Commission, Volume I.~~

~~Kenya Local Government (Rating) Ordinance, 1928.~~

~~Memo. (No.3, as amended)~~

Sir,

I am etc. to transmit to you, for the consideration of the Minister of Health, the accompanying copy of a despatch from the Governor of Kenya in which the question is raised whether there are any objections, legal or otherwise, to the Kenya Local Government (Rating) Ordinance, 1928, being amended so as to make the Crown liable to rates. ~~and~~ I am to request that ~~he~~ Mr. Ormsby Gore may be furnished with the Minister's observations on this question.

2. Copies are also enclosed of Volume I of the Report of the Local Government Commission, 1927, the Local Government (Rating) Ordinance, 1928, and of a memorandum prepared in this Department explaining the circumstances in which

FURTHER ACTION.
Interim reply to Gov. by air mail

the

the provision recommended by the Commission was deleted from the Bill, and including an extract from the Report of Sir Alan Pim containing the recommendation that Crown property in Kenya should now be made rateable.

3. It is requested that the copy of the Report of the Local Government Commission may be returned with your reply.

4. A further despatch has since been received explaining that the matter is of some urgency in view of the impending revaluation in respect of the Municipality of Nairobi.

I am, etc.

W. FLOOD

NOTE.

The existing system whereby Government makes contribution to Local Authorities in lieu of rates was introduced in 1928 as a result of the recommendations of the Feetham Local Government Commission 1927 - (See pages XIX and XX of the Report Volume I.)

As regards the present position, the following is the passage in the Report of Sir Alan Pim which is referred to in the Acting Governor's despatch.

"317. The remaining subhead of the budget with which this department is concerned is that of contributions to local authorities, including the Municipal Council (Nairobi), three Municipal Boards (Mombasa, Nakuru and Eldoret), and six District Councils. The distinction between the Municipal Council and the Municipal Boards is that the annual estimates of the latter have to be approved by the Governor in Council, and that they are not automatically Public Health Authorities. In fact the Municipal Boards have been declared Public Health Authorities but they do not engage their own senior public health staff.

The question of Government contributions to local bodies was examined in detail by the Expenditure Advisory Committee. Those to Municipalities include:-

(1) contributions in lieu of rates;

(2) contributions on account of Public Health staff.

(3) contributions on account of Public Health services;

(4) contributions on account of Municipal staff;

(5) contributions on account of roads.

The contribution in lieu of rates given to Nairobi, Mombasa and

and Eldoret, is of a normal type except in one important respect. Under the Local Government Ordinance, 1928, every interest in land has to be rated separately, the sum of the values of the individual interests being the freehold value of the land. The Crown having exempted itself from rating, and giving instead a contribution in lieu of rates, is legally unable to recover this contribution from its lessees in the case of leases granted under the Ordinance of 1902 which comprise the bulk of the leases granted. If the Crown had accepted liability for the payment of rates this situation would not have arisen. In the case of leases under other Ordinances the liability has not been passed on although this would be legally possible, as it was considered that all should be on the same footing. The loss to Government, and gain to the lessees (on the basis of the present rates), is about £1,600 in Nairobi and Mombasa together. Legal complications are involved, but there seems to be no adequate reason for delaying to rectify the position, more especially as the same situation will arise in connection with the three other Municipal Boards. It is the more necessary to adjust the position because, as a result of the method of rating, the assessment of the Crown's residuary freehold interest in plots will increase as the date of termination of the leases comes nearer. The ratio of interest between lessee and lessor is, however, not likely to change materially until the balance of the terms of the lease is reduced to some twenty years."

The Acting Governor points out that the keystone to the structure of rating of interests was that the liability to pay rates on such interests should not be

passed

passed on by the owner of an interest to any other party. He says that the purpose of the system was, therefore, largely defeated when the provision to this effect which was included in 1928 in the Draft Local Government (rating) Bill was deleted.

The Draft Bill prepared by the Feetham Commission (See page 99 of the Report Volume I.) contained the provision of the Transvaal Ordinance prohibiting the transfer by agreement of liability for rates from lessor to lessee. The Commission said that the insertion of a provision of this character seemed to follow logically their acceptance of the principle of rating "interests". Such a provision was intended to prevent as far as possible the shifting of the burden of rates from the persons who actually enjoy benefits of ownership, more particularly in the case of owners of property, who, under leases for periods in excess of 10 years retain a present interest in the form of ground rents and also possess reversionary rights to the properties concerned (including improvements made by the lessees) at the termination of such leases. In the absence of such a provision the object of providing for the separate rating of interests would be partly defeated. The Commission did not propose that this provision should be made retrospective so as to affect the validity of agreements entered into between lessors and lessees prior to the introduction of this new system based on recognition of separate interests.

The actual clause deleted from the 1928 Bill

was

was as follows:-

> "Any provision in a contract entered into after the commencement of this Ordinance, whereby any person primarily liable for payment of any rates imposed pursuant to this Ordinance in respect of any rateable property or any part thereof/liable absolutely or conditionally to pay such rates or any part thereof in lieu or stead of himself, shall be null and void".

seeks to render any person interested under or subsequent to himself as lessee of such rateable property

In the passage of the Bill through Legislative Council, strong oppostion to the retention of this clause was voiced by all the unofficial members of the Select Committee on the Bill and as its provision in the light of different forms of Land Tenure in South Africa and Kenya seemed somewhat doctrinaire Sir Edward Grigg agreed to its excision.

As regards the statement, in paragraph 5 of the despatch, that in all Crown Colonies, except the Gold Coast, and in all the Dominions, the Crown is specifically exempted from rating, the laws of a certain number of Dominions and Colonies have been examined in the Colonial Office while this examination has not been exhaustive.

Besides the case of townships in the Gold Coast of which the Attorney General of Kenya was aware, rates are leviable on Crown and Colony property under the Georgetown (British Guiana and New Amsterdam Town Councils Ordinances (see section 136 of Cap. 86 and section 76 of Cap. 87) There is apparently no exemption in the case of the City Council of Gibraltar see section 299 (2) (c) and section 300 and vide the exemptions in section 301. In Northern Rhodesia although buildings personally occupied by the Governor are exempt from rates, the exemption does not extend to Crown and Colonial property generally (see section 85 of Cap. 25). As regards the Dominions, it will

be

be seen from section 118 (4) of the Sydney Corporation Act, 1932 (No. 58 of 1932) that all buildings whether vested in or occupied by the Crown or not are deemed to be rateable property. Natal Act No. 15 of 1910 provides for the payment of municipal and township rates in respect of certain properties belonging to or occupied by the Colonial Government. Buildings belonging to the Crown appear to be rateable in New Zealand.

Colonial Office.

May, 1937.

NOTE.

The existing system whereby Government makes contribution to Local Authorities in lieu of rates was introduced in 1928 as a result of the recommendations of the Feetham Local Government Commission 1927 — L.

(See pages xix + xx of Vol I of the Report L)

The following [illegible] as regards the present position which [illegible] the acting Governor's despatch

317. The remaining subhead of the budget with which this department is concerned is that of contributions to local authorities, including the Municipal Council (Nairobi), three Municipal Board (Mombasa, Nakuru and Eldoret), and six District Councils. The distinction between the Municipal Council and the Municipal Boards is that the annual estimates of the latter have to be approved by the Governor in Council, and that they are not automatically Public Health Authorities. In fact the Municipal Boards have been declared Public Health Authorities but they do not engage their own senior public health staff.

The question of Government contributions to local bodies was examined in detail by the Expenditure Advisory Committee. Those to Municipalities include :—

(1) contributions in lieu of rates ;

(2) contributions on account of Public Health staff ;

(3) contributions on account of Public Health services ;

(4) contributions on account of Municipal staff ;

(5) contributions on account of roads.

The contribution in lieu of rates given to Nairobi, Mombasa, and Eldoret, is of a normal type except in one important respect. Under the Local Government Ordinance, 1928, every interest in land has to be rated separately, the sum of the values of the individual interests being the freehold value of the land. The Crown having exempted itself from rating, and giving instead a contribution in lieu of rates, is legally unable to recover this contribution from its lessees in the case of leases granted under the Ordinance of 1902 X which comprise the bulk of the leases granted. If the Crown had accepted liability for the payment of rates this situation would not have arisen. In the case of leases under other Ordinances the liability has not been passed on although this would be legally possible, as it was considered that all should be on the same footing. The loss to Government, and gain to the lessees (on the basis of the present rates), is about £1,600 in Nairobi and Mombasa together. Legal complications are involved, but there seems to be no adequate reason for delaying to rectify the position, more especially as the same situation will arise in connection with the three other Municipal Boards. It is the more necessary to adjust the position because, as a result of the method of rating, the assessment of the Crown's residuary freehold interest in plots will increase as the date of termination of the leases comes nearer. The ratio of interest between lessee and lessor is, however, not likely to change materially until the balance of the terms of the lease is reduced to some twenty years.

See the Legal Report on Order 20 9 1928 in X 15408/28.

X. ? Crown Lands Ordinance 1902 Copy attached.

The contributions on account of Public Health staff are also normal, but it is not clear why Government should pay half of the cost of the Public Health services in Nairobi, though in Mombasa and Eldoret this is reasonable. The proportion of the salaries of

the staff to be paid by Government is laid down in the Local Government Ordinance, 1928, but the proportion of the cost of services is fixed by the Governor in Council. Child Welfare and some other Public Health services which had been performed by the Government were transferred to the Nairobi Municipal Council in 1935 and involved the Council in a net liability of some £800 p.a., after taking into account the Government contribution to the Council in respect of these transferred services. The Government contribution is at present half the cost of the service as indicated above. The contributions on account of Municipal Staff represent one-third of the salaries of the Town Clerk, Town Treasurer, and Municipal Engineer. This is a statutory obligation, but the Expenditure Advisory Committee recommended that the law on the subject should be changed, and that these payments should cease. This is largely a question of policy and no recommendation is called for.

The other contributions on account of main roads and traffic revenue require no special comment, except that the Expenditure Advisory Committee thought it necessary to suggest that the Road Board should scrutinise closely the estimates of road expenditure submitted by the Municipalities so as to reduce the commitment of Government as far as possible.

318. The remaining items under this head representing the basic road grants and other contributions to District Councils will come under consideration in connection with the Public Works Department, and need not be taken up in this place. The general principle involved, however, that the local authority is merely a spending agency for funds provided by the central Government and raises no money by local taxation, is one which requires consideration in connection with the small townships.

319. The total of savings actually proposed in this department amounts to £4,880.

MEDICAL DEPARTMENT.

320. The Medical Department in Kenya presents a very difficult problem in the disparity between the steadily growing demands and the resources available to meet those demands. Its history may be briefly summarized.

Up to 1913 the primary functions of the Department were the medical care of Government servants, including the troops and police, and the control of epidemic disease in centres of trade or administration. At the same time such measure of medical relief as was possible was provided for the African public at the hospitals and dispensaries which had been established at administrative centres. The establishment of hospitals primarily for the relief of the general public was not undertaken by Government until much later. Even for these limited purposes the staff and funds at the disposal of the Department were far from adequate.

The Acting Governor points out that the keystone to the structure of rating of interests was that the liability to pay rates on such interests should not be passed on by the owner of an interest to any other party. He says that the purpose of the system was, therefore, largely defeated when the provision to this effect which was included in 1928 in the Draft Local Government (rating) Bill was deleted.

(See page 99 of the Feetham Report Vol. I.)

The Draft Bill prepared by the Feetham Commission contained the provision of the Transvaal Ordinance prohibiting the transfer by agreement of liability for rates from lessor to lessee. The Commission said that the insertion of a provision of this character seemed to follow logically their acceptance of the principle of rating "interests". Such a provision was intended to prevent as far as possible the shifting of the burden of rates from the persons who actually enjoy benefits of ownership, more particularly in the case of owners of property, who, under leases for periods in excess of 10 years retain a present interest in the form of ground rents and also possess reversionary rights to the properties concerned (including improvements made by the lessees) at the termination of such leases. In the absence of such a provision the object of providing for the separate rating of interests would be partly defeated. The Commission did not propose that this provision should be made retrospective so as to affect the validity of agreements entered into between lessors and lessees prior to the introduction of this new system based on recognition of separate interests. The actual clause deleted from the 1928 Bill was as follows:-

> "Any provision in a contract entered into after the commencement of this Ordinance whereby any person primarily liable for payment of any rates imposed pursuant to this Ordinance in respect of any rateable property or any part thereof liable absolutely or conditionally to pay such rates or any part thereof in lieu or stead of himself, shall be null and void".

In the passage of the Bill through Legislative Council, strong opposition to the retention of this clause was voiced by all the unofficial members of the Select Committee on the Bill and as its provision in the light of different forms of Land Tenure in South Africa and Kenya seemed somewhat doctrinaire Sir Edward Grigg agreed to its excision.

The Acting Governor points out that from 1920 until the Local Government (Rating) Ordinance 1928 came into force, lessees from the Crown did in fact pay rates on the full value of the land leased. He sees no inequity in replacing on them a burden which Government chose to assume. He is therefore prepared to accept Sir Alan Pim's proposal and suggests that the simplest and most convenient way of achieving this would be to make the Crown rateable. Advice is desired whether on legal or other grounds there is any objection to the Kenya Local Government (Rating Ordinance 1928 being amended so as to make the ~~Crown liable to rates, particularly in view of the~~ As regards the statement, in para 5 of the despatch, ~~fact that~~ in all Crown Colonies, except the Gold Coast, and in all the Dominions, the Crown is specifically exempted from rating, the Laws of a certain number of Dominions & Colonies have been examined in the C.O. while this examination has not been exhaustive [contains as in Mr Thompson's minute of 11/5 — as amended]

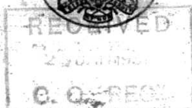
C.A. [illegible]

5. 5. 37.

AIR MAIL

KENYA
No. 52

GOVERNMENT HOUSE
NAIROBI
KENYA



21 January, 1937.

Sir,

I have the honour to refer to the recommendation made in paragraph 317 of Sir Alan Pim's report to the effect that an economy should be made in the Government contributions to Municipal Authorities by passing on to grantees the contributions now paid by Government in respect of Government's interest in the capitalized rentals paid to it on leased lands.

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2. The keystone to the structure of rating of interests was that the liability to pay rates on such interests should not be passed on by the owner of an interest to any other party. The purpose of the system was therefore largely defeated when the provision to this effect which was included in 1928 in the draft Local Government (Rating) Bill was deleted. For several years Government alone did not pass on its interest in view of its acceptance of the principle and in the hope that the principle would be restored to the legislation. When, however, it appeared that such restoration was improbable, Government decided, in the case of future grants, to impose the full liability for rates on the lessees.

(1) on 15408/28

3. From 1920 to 1928 when the Nairobi (Rating of Unimproved Site Values) Ordinance, Chapter 86, was in force lessees from the Crown did in fact pay rates on the full value of the land leased and I can see no inequity in replacing on them a burden which Government chose to assume for the intervening years. I am, therefore, fully prepared to accept Sir Alan Pim's proposal.

4. The simplest, and on the whole most convenient, way of achieveing this end would be to make the Crown rateable. The

advantage ---

THE RIGHT HONOURABLE,
W.G.A. ORMSBY-GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON...S.W.1.

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advantage of the present position of the Crown is that its system of contributions to municipal authorities is fixed under the Local Government (Municipalities) Ordinance, 1928, and can be varied if so desired by amendment to that Ordinance. In point of fact the Standing Finance Committee has this year recommended an examination of that system.

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L/1937 file " 38172/37" sent to R.309 29/1/37

On the other hand the rating contribution is the least likely to be varied inasmuch as Crown lands available for disposal should either be handed over as Municipal lands or be subject to rates pari passu with other undeveloped estates.

5. The Attorney General sees no reason why the Crown should not become legally rateable, but is anxious that the proposal be referred to you for advice on the legal side since in all Crown Colonies, except the Gold Coast, and in all the Dominions the Crown is specifically exempted from rating.

6. I should be grateful therefore if you would advise me whether on legal or other grounds you see objection to the Kenya Local Government (Rating) Ordinance, 1928, being amended so as to make the Crown liable to rates.

15408/28

I have the honour to be,

Sir,

Your most obedient, humble servant,

A. de V. Wade

ACTING GOVERNOR.