

KENYA
11490

C/O
11490
REC.
REC. 9 MAR 21

3

McBLAIN, J.

ELECTRIC POWER AMENDT ORDER

1921

11th FEBRUARY

Fwds copies of papers re.

Last previous Paper.

24/6617

250/10 (190-dec)

Sir H. Read.

This mass of papers comes to us unofficially and it is obviously desirable that we should not take Mr. McBlain's points up with the Governor if we can avoid it.

Although Mr. McBlain leaves the Government Service on voluntary resignation it is known that the stimulating cause was the poor stimulated condition in which he attended an important meeting in Louansa. His condition was the subject of serious comment, and he was for a time, at all events, under suspension from his office. His periodical bouts of alcoholism had been a subject for some time, but, as the D.P.W. remarked to me on one occasion, "we cannot expect to have ~~out~~ a £1,500 man for £700 unless there is something wrong with him".

In addition to this final crisis Mr. McBlain has discovered that the D.P.W. has made enquiries as to the allegations that Mr. McBlain had used professional titles to which he was not, or no longer, entitled.

23 p. probably 29 Apr. 1195

Last subsequent Paper.

11595

Whether these were ^{imagined} ~~alleged~~ or not, they have driven Mr. McBlain to the bitterest antagonism towards Mr. Ross, with the curious result that his diatribes are directed entirely against Mr. Ross and that the Colonial Office comes in for unlimited praise; whereas 18 months ago he admittedly suspected this Office of ^{un}correct practices.

This is perhaps of no importance, but the fact remains that Mr. McBlain stays in East Africa as a Consulting Electrical Engineer, with ^{strong} ~~harsh~~ bias against the Government and the Government officer who is finally responsible for electrical matters.

For the present, the ^{only} ~~actual~~ point to which I may draw attention is the bearing of his letter of February 14th (marked (B)) on the (Amendment) Ordinance received in 11593. Mr. Huske and I have failed entirely to make out what the trouble is, and what breach of faith there has been with the two sisal companies which have used electricity in the past.

The ^{original} ~~Draft~~ Ordinance was sent by Mr. McBlain to Mr. Ross, who sent it here and ^{collaborated} ~~cooperated~~ with us in its revision. Mr. Ross did not supply us with a copy of Mr. McBlain's covering memo on the Draft Ordinance [marked (A)] but I do not see that it would have made us any wiser.

As we cannot understand Mr. McBlain's trouble we must I think ignore it and deal with the Amendment Ordinance simply as an amendment on 11593.

It might be as well for us to let the Governor know privately that we have had the papers from Mr. McBlain, but I do not think it is essential. I shall not reply to Mr. McBlain.

L.C.H.
20.4.21

at once
H. J. R.
22/4/21

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C. WITH FEBRUARY 1921.

17490

112

Mr. Bottomley,

Recd
MAR 21

In writing to say an official Goodbye, I may
that I hope to continue to figure here in matters in which
pleasing to know that you are keenly interested.

It is probably needless for me to ask that if
found that my criticism of Governmental methods is
chant and vigourously pressed home, you will believe that
object is constructive; not destructive, except with
ect to pernicious practices.

Having met the Officers of the C.O., it is a
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d be Gilbertian.

I have forwarded some matter to you through
governor, and enclose herewith an additional copy of same.

Matters generally seem to have got to a
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There is little chance of your getting
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James H. H. H.

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Yours sincerely,

James B. G. Hays

P. O. Box 557,
Nairobi,
Kenya Colony.
10th February, 1921.

114

TO HIS EXCELLENCY, THE GOVERNOR,
Through
THE HON'BLE ATTORNEY GENERAL,

N A I R O B I.

Re: The Electric Power (Amendment) Ordinance,
Passed at a recent Session of the
Legislative Council.
re: Messrs. Maraga Ltd., and Messrs.
Swift and Rutherford Ltd.

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Your Excellency,

I have the honour to inform Your Excellency that in my capacity as Consulting Engineer, I am instructed by my clients, Messrs Maraga Ltd., and Messrs Swift and Rutherford Ltd., to make urgent representations to Your Excellency with a view to stopping the Assent to, and Application of the above named Ordinance.

The reasons I have to advance for making this request are that the modification, promised to my respective clients, of certain provisions of the Electric Power Ordinance, 1919, on the subject of Standardization, has not been fulfilled.

I am also instructed to say that my clients cannot contemplate that Your Excellency would knowingly commit a breach of faith in this matter, and conclude that Your Excellency has not been competently advised.

For Your Excellency's information I may say that, while occupying the position of Government Electrical Engineer, and after my work at the Colonial Office on which I was engaged practically up to the date of sailing to return to the Colony, I proceeded on boardship to prepare the Draft of the Amending Ordinance which was required by the Secretary of State, to give effect to the undertakings given and the conclusions arrived at in London. A copy of this Draft I forwarded by post to the Colonial Office through the Director of Public Works, who was then in London.

The original of that draft, - of which a carbon copy was sent home - is still in my possession, and I am enclosing a copy herewith. On examination it will be found by Your Excellency's Legal Advisers, that the original draft provides the easement relating to time which was promised to my clients in London. This undertaking was repeated in a more definite and augmented form at an interview granted by His Excellency, Sir Charles Bowring, assisted by myself as adviser, to Mr. E.W. Cowan and Mr. W.C. Hunter in April last, when it was stated to them that the Amending Ordinance would exempt presently operating agricultural industry equipments from the necessity of converting to standards.

I am also instructed to point out that relying on

the undertakings given by Government, my clients are already committed to an arrangement for extension of equipment based on that now operating, continuing to do without change of pressure.

My clients, therefore, respectfully urge the necessity for the fulfillment of the promise given by Government.

The original draft of the Amending Ordinance referred to above, is dealt with in another aspect in an accompanying letter.

I have the honour to be,
Your Excellency's
Most Obedient Servant,

James McBlane

Consulting Engineer,

for Messrs. Maragua Ltd, and
Messrs. Swift and Rutherford Ltd.

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My clients, therefore, respectfully urge the necessity for the fulfillment of the promise given by Government.

The original draft of the Amending Ordinances referred to above, is dealt with in another aspect in an accompanying letter.

I have the honour to be,
Your Excellency's
Most Obedient Servant,

Signed) James McCall

Consulting Engineer.

for Messrs. Haragus Ltd. and
Messrs. Swift and Rutherford Ltd.

P. O. Box 557,
Nairobi,
Kenya Colony.
16th February, 1921.

HIS EXCELLENCY, THE GOVERNOR,
Through,
THE HON'BLE ATTORNEY GENERAL,
N A I R O B I.

116

re: The Electric Power (Amendment) Ordinance,
Passed at a Recent Session of the
Legislative Council.
re: Messrs. The Nairobi Electric Power Co.,
and/or their Assigns.

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Your Excellency,

I have the honour to invite Your Excellency's attention to the enclosed copy of the original draft of the above mentioned Ordinance, which in the light of the present predicament of Government, I suggest will prove to have peculiar significance.

As Your Excellency is, or should be aware, perfect unanimity of opinion existed between the Administrative, legal, and technical advisers of the Secretary of State, and myself, on the subject of electric power supply. This concurrence of opinion embraced both the question of legislation and the course to be adopted with regard to existing operators.

As the result of the work performed at the Colonial Office, and the London Chamber of Commerce, and the undertakings given by the Secretary of State, an Ordinance to amend the Electric Power Ordinance, was shown to be essential.

In accordance with my promise to the Colonial Office, and fresh from the work there, I proceeded during the voyage to Cape Town, to prepare the draft of this Amending Ordinance. I forwarded a carbon copy of the draft to the Colonial Office, and as a matter of courtesy only, addressed it through the Director of Public Works, who was then in London. As I have stated above, I was fresh from a considerable and intimate contact with Colonial Office opinion. I fully agreed with all that the Colonial Office had done and, conversely, the Colonial Office recognized that my opinions both on technical matters and those of equity were unquestionably sound, and would have shown considerable hesitation before acting contrary to my advice.

On these facts I suggest that Your Excellency must conclude that my opinions, as expressed by the original draft of the Amending Ordinance reflect the true situation and intention.

I have no hesitation in saying that the Hon'ble Attorney General will recognize that this original draft is a very different document to the draft which came here purporting to be that of the Secretary of State's.

I also have no hesitation in saying that if the Hon'ble Attorney General had been in possession of the original draft, or been accorded the opportunity of discussion with the drafter of both that and the Principal Ordinance the serious predicament in which Government is now placed would have been avoided. 117

In view of the fact that the Amending Ordinance, has passed, commits a breach of good faith with Messrs. Maraga Ltd., Messrs Swift and Rutherford, and the Nairobi Electric Power Company, both with respect to specific undertakings and general equity, it appears to me that a common-sense, simple, and effective method of showing Government's bona fides in the matter, and of relieving the situation for all concerned, would be to scrap the offending measure and to allow the Hon'ble Attorney General to produce a new one. With the facts now in his possession the Hon'ble Attorney General would have no difficulty.

Should this course be acceptable to Your Excellency I will have pleasure in submitting to the Hon'ble Attorney General for his consideration drafts of the clauses suggested for inclusion in the Bill on behalf of my respective clients.

I have the honour to be,

Your Excellency's

Most Obedient Servant,

(Signed) James W. O'Hara

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Should this course be acceptable to Your Excellency I will have pleasure in submitting to the Hon'ble Attorney General for his consideration drafts of the clauses suggested for inclusion in the Bill on behalf of my respective clients.

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(Signed) James H. Hain

EAST AFRICA PROTECTORATE.

Bill of an Ordinance entitled The Electric Power
(Amending) Ordinance 1920. 118

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1. This Ordinance may be cited as the Electric Power (Amending) Ordinance 1920.

2. The words and expressions used in this Ordinance shall have the meanings assigned to them in the Electric Power Ordinance 1919, unless a different intention appears from the subject or context.

3. The provisions of the Electric Power Ordinance, 1919 shall not apply to the works, or to the powers, privileges, duties, or obligations under or comprised by the Agreement made between Clement Hirtzel of the one part and the Crown Agents for the Colonies (on behalf of the Government of the East Africa Protectorate) of the other part and dated the 26th. day of July 1906, (hereafter referred to as the Concession), Provided:

- (a) that the said concession shall not be extended or continue to have force or effect in any case after the 7th. day of April 1931;
- (b) that the area or powers or privileges defined or conferred in or by the said concession shall not be extended or amplified in any way.
- (c) that upon the grant of any Licence under the provisions of the Electric Power Ordinance 1919 to the said Clement Hirtzel or his assignees or any of them in respect of the works or of the area or of any part of such works or area as named or defined in or by the said concession, all the duties, obligations, liabilities, powers and privileges of whatever nature imposed or conferred by the said concession shall absolutely cease and determine and the said Clement Hirtzel or his assignees or any of them shall be held to be subject in every respect to the provisions of the Electric Power Ordinance 1919;
- (d) that the said Clement Hirtzel or his assignees or any of them and the said concession and any and all of the works or operations of whatever nature under or comprised in or by or in relation to the said concession shall be subject in every respect to the following provisions, that is to say:

The Governor in Council may from time to time make such Regulations as he may think expedient in relation to the use of Electrical energy in or on any harbour, river, canal, railway, tram-way, mine or quarry, or in any factory, workshop or place for securing the safety of persons and property from injury from shock or from fire or otherwise and may prescribe penalties for the breach or non-observance of such Regulations, and may from time to time amend or repeal any such Regulations and every such Regulations so amended or repealed shall from and after the date thereof be amended or repealed accordingly, but such amendment or repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such amendment or repeal or any proceedings or remedy which might have been had in relation thereto.

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(e) If the said Clement Hirtzel or his assignees or any of them make application under the provisions of the Electric Power Ordinance 1919, for a Licence or Licences, as may be necessary, in respect of the works and area named or defined in or by the said concession before the expiration of 5/12 months after the enactment of the said Electric Power Ordinance 1919, such application shall receive consideration as contemplated and provided for in the said Electric Power Ordinance 1919, provided that the said Clement Hirtzel or his assignees or any of them, shall have performed and discharged the obligations incumbent on him or them under the said concession to the satisfaction of the Governor in Council.

(f) If the said Clement Hirtzel etc., fails to make such application in the time stated, as aforesaid, or if he or they have failed to perform and discharge the said obligations to the satisfaction of the Governor in Council, the Governor in Council may refuse to grant any Licence to the said Clement Hirtzel etc., in respect of such works or area as aforesaid and may require the said Clement Hirtzel etc., to continue to perform and discharge his or their obligations on the terms and conditions of the said concession, and nothing in this section or in the Electric Power Ordinance 1919, shall be construed as limiting or restricting the powers of the Governor in Council in this behalf.

4. The provision contained in Section 19(a) of the Electric Power Ordinance 1919, is hereby amended so that "42 years" shall be substituted for "25 years," and "7 years" shall be substituted for "5 years", and for the purpose of the said Section 19(a) these longer periods shall be so read and construed as if they were stated therein.

5. Whereas by Section 49(a)(iv) of the Electric Power Ordinance power is conferred upon the Governor in Council to grant to a licensee an extension of the time within which the licensee must comply with the requirements of the said Section 49, and it is deemed expedient that the powers of the Governor in Council in this respect should be amplified, the Governor in Council, having due regard to the desirability of expediting the establishing of a standard system and standard pressures of supply of electrical energy throughout the Protectorate, is authorized therefore to grant such further extensions of time in this behalf as he deems necessary or expedient upon application being made and in the manner contemplated in the said section 49.(a)(iv).

6. Due regard being given to the objects and intentions of the Electric Power Ordinance 1919, and to the purposes of Sections 50 and 109 thereof, if it is deemed necessary or expedient in the public interest the Governor in Council with the concurrence of the Engineering Standards Committee of Great Britain may by Regulation specify as the mode material or apparatus to be or which may be used for any of the purposes contemplated therein, any mode material or apparatus other than those prescribed.

7. Whereas this Ordinance or the Electric Power Ordinance 1919, mention is made of the "British Board of Trade" or the "Engineering Standards Committee of Great Britain" these terms shall be construed to include and mean the Ministry of Transport and the British Engineering Standards Association and/or any other

authority or bodies for the time being exercising the functions of these authority or bodies.

8. The provision contained in Section 127 (2)(d) is hereby modified in so far that the draft Distributing Licence, alternatively to the statement of maximum prices prescribed by the said provision may contain a statement of one or more prices which it is proposed should be the maximum prices, and the statement required by (2)(d) of the same section may be submitted at the option of the applicant.

9. The meaning assigned to the word or expression "Company" in Section 2 of the Electric Power Ordinance 1919, is hereby amended to include a company registered in the United Kingdom under

10. The "Maintenance of Electrical Supply Ordinance 1919," is hereby repealed.

James W. H. H. H.

Gov... and Electrical Engineer's Memo: on the
attached Draft Electric Power (Amending)
Ordinance.

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It is important (for reasons which should be obvious) that the exemption provision should apply only to the Concession; (not to the area, which might entail fresh legislation before anyone else could be authorized if that became necessary).

The present company could be defined and mentioned in preference to using "Clement Hirtzel" etc.

It seems more desirable to state in full the conditions (a) (b) and (c), than to mention the application of these as proviso of the Electric Power Ordinance.

As the Electric Power Ordinance repeals the 1903 Electricity Application Ordinance and with it the Governor's power to make Regulations for the safety of Life etc., applicable to the works under the concession, it will be recognised that this provision is essential. (This is Section 142 (1) of the Electric Power Ordinance).

It may be considered that there are not strictly necessary. These chief objects is to let it be clearly understood by the company that they will not be allowed to play about with the public interest in their area for a number of years and then save their skin by asking for a Licence.

The extension of the period by this amendment only affects Distributing Licences in the areas of local authorities. Whatever the decision of the Secretary of State may be with reference to the Mombasa Company, this extension having been promised and discussed in various quarters, should be made. It might be thought that in the case of Nairobi it may result in the Municipality being precluded from any chance of conducting a Distributing Licence for the next 53 years, i.e., for the period of the Nairobi Electric Light and Power Company's tenure, 17 years, and that of another Licenses 42 years to follow. There is however another aspect. The acquiring of the present, or the installing of new distributing works would not entail the raising of a very large loan by the local authority, (about £25,000 would easily meet the present case). Other Licenses will be only too ready to give them a supply in bulk. Therefore it is quite possible that on the Nairobi Electric Power Company's termination - even before 1931 - the Municipality themselves may take up the Licence. If they think it is too early for them to assume the responsibility, the desirable nature of the township load would make it quite easy for them to get one of the Licenses operating in any adjacent territory, to take a Distributing Licence for a shortened term. Mombasa's case is different. Here, during the present stage, it is almost essential that the Generating Licenses shall be the Distributing Licenses, and the longer term is an additional attraction.

Apart from the promise made in this respect, and from my previous observations to the effect that in the case of present operators extension of this time must be prejudicial and should not be granted

Governor's Electrical Engineer's Memo: on the
attached Draft Electric Power (Amending)
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3. It is important (for reasons which should be obvious) that the exemption provision should apply only to the Concession; (not to the area, which might entail fresh legislation before anyone else could be authorized if that became necessary).

The present company could be defined and mentioned in preference to using "Glement Hirtzel" etc.

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the description of the Nairobi Electric Power Company
from the Electric Power Ordinance makes it necessary
to enlarge the powers of the Governor in Council. 122

Section 6. The Reference to the British Engineering Standards Association meets any objection to this modification.

Section 8. The specification in the Electric Power Ordinance was nothing more than a suggestion to applicants for modern methods of charging for supply and would not have been embodied in the Schedule of Prices. As, however, it has confused several and possibly at a later date might confuse the Administration it is advisable to clear the point now.

Section 9. The object of the original definition of "Company" was to ensure the control of the Nairobi Electric Power Company being in Nairobi when we thought that they might be Bulk Sup. Licensees.

There does not appear to be much hope of their becoming such and Government secured all the conditions required for Administration by Section 112. As all the Protectorate's industrial capital has to come from the United Kingdom, it seems advisable to remove anything which might prove even a temporary obstruction. I find that circles now interested in our power development strongly favour our suggestion as to local companies with the large power users on the Board. Until the local industrialist subscribes, the capital will be found in London and as the public interest is secured, it seems advisable to leave the promoters as free as possible.

SD/- JAMES MCLAIN.

16.2.20.

R.E.S. "NORMAN" Cape Town.

Consent of...

the exemption of the Nairobi Electric Power Company
from the Electric Power Ordinance makes it necessary
to enlarge the powers of the Governor in Council. 122

Section 6. The Reference to the British Engineering Standards Association meets any objection to this modification.

Section 8. The specification in the Electric Power Ordinance was nothing more than a suggestion to applicants re modern methods of charging for supply and would not have been embodied in the Schedule of Prices. As, however, it has confused several and possibly at a latter date might confuse the Administration it is advisable to clear the point now.

Section 9. The object of the original definition of "Company" was to ensure the control of the Nairobi Electric Power Company being in Nairobi, when we thought that they might be Bulk Supply Licensees.

There does not appear to be much hope of their becoming such and Government secured all the conditions required for Administration by Section 112. As all the Protectorate's industrial capital has to come from the United Kingdom, it seems advisable to remove anything which might prove even a temporary obstruction. I find that circles now interested in our power development strongly favour our suggestion as to local companies with the large power users on the Board. Until the local industrialist subscribes, the capital will be found in London and as the public interest is secured, it seems advisable to leave the promoters as free as possible.

ED/- JAMES MCBLAIN.

16.2.20.

R.M.S. "NORMAN". Cape Town.

To,
THE UNDER SECRETARY OF STATE FOR THE COLONIES,
Through,
HIS EXCELLENCY THE GOVERNOR IN COUNCIL, and
THE DIRECTOR OF PUBLIC WORKS,
KENYA COLONY.

re: Electric Power Legislation and
matters related thereto.

re: Applications for Licenses, Nairobi.

re: Applications for Licenses, Mombasa.

Sir,

As I shall have severed my connection with Government service before these communications can receive your consideration, and as I fully appreciate the difficulty of the position in which, I assume, His Excellency is placed by the conflict of opinion of legal and engineer officers, it is incumbent on me to supplement my letter of the 20th December 1920, by submitting for your information some observations on matters which have subsequently have come to my knowledge.

I will premise my further remarks by asking that it may be clearly understood that from the time when it became necessary for me to make the severe strictures contained in my memorandum of the 12.11.20. on the advice then about to be, and which was later given to His Excellency, by the Director of Public Works, until ~~yesterday~~ (5.1.21.), when I received from the Director of Public Works an invitation to comment on the draft, dated 4.1.21., of his recommendations to Government on the subject of Mr. Udall's application for Licenses for tramway purposes in Mombasa, no communication has been made or other opportunity given to me to enable me to offer advice to His Excellency, and, as stated in my letter of 20th ulto., I have only become aware of the steps taken by Government from newspapers and other outside information.

I have been furnished, by Mr. Udall, with a copy of a letter received by him from Government, which reads as follows:-

- 20th December 1920. Sir, With reference to your letter of the 18th December the position is as follows:-
- (1) The Nairobi Electric Power and Lighting Co., has no claim to prior licensees' rights, application not having been made within the time prescribed by law.
 - (2) As soon as the Ordinance passed at the recent Session of Council (The Electric Power Amendment Ordinance 1920) is assented to and becomes law, the Nairobi Electric Power and Lighting Co., or any person or company to whom their concession may be transferred will be excluded entirely from the provisions of the principal Ordinance and cannot apply for a license thereunder.
 - (3) Notice has been given by you personally that you intend to apply for a licence, no action however can be taken on this pending the expiration of the statutory period, i.e., until the 14th January 1921.

The statements made by me in the letter quoted above are much more astonishing than those attributed to Government and which I have traced in my letter of the

20th ulto. As will be apparent to you they are completely at variance with the intention of the Electric Power Ordinance and of the amending Ordinance, or any other Ordinance which, consistently, could be supplementary to the principal Ordinance. They are also at variance with the principles of common-law, and the expediency of public policy, and are entirely inconsistent with the essential spirit of conciliation and equity which governed the considerations and decisions of the Secretary of State. 124 These statements of Government, quoted above, are, presumably, based on the opinion of the Attorney General.

It is probably needless for me to point out that if the opinion of His Excellency as expressed, in concurrence with my own, at the interview, subsequent to my memorandum of the 12.11.20., at which the Acting Chief Secretary and the Director of Public Works were present, had been consistently acted upon, Government would have been saved from its present predicament. The steps taken to obtain an Opinion from the Attorney General, on an incomplete and ex parte case and the opinion which naturally resulted, have apparently been successful in preventing His Excellency from acting on his own opinion and thus have fulfilled the undertaking, specific and implied, which was given by the Secretary of State to the Nairobi Co., and followed the letter and intention of the Ordinance.

Having reference to an application which was lodged by Mr. Charles Udall, on behalf of local interests, for Licences for tramway purposes on Mombasa, I have received from the Director of Public Works a draft of his recommendations to Government, for favour of comment. The draft reads as follows:-

The application forwarded to this office with your above memo., may be regarded as having been submitted in proper form and the decision of His Excellency the Governor in Council may now be given upon it.

2. The advertisement giving public notification of intention to apply stated that the applicant would apply for a licence "to transmit, convey, and distribute electrical energy for the purposes of operating a public service of tramways and/or omnibuses." The draft licence submitted is one to authorize "supplies of electrical energy for all public and private purposes."

3. It is probably unnecessary for me to point out that a licence under the Electric Power Ordinance 1919 is a document of the most serious and binding nature conveying and imposing precisely the privileges and obligations which are explicitly detailed in it. If Government gave sanction to Licences in the form put up with this application, it would prove to be the case in law and in practice that a general sanction to operate in the generation, distribution and sale of electrical energy would have been accorded and not merely a right to operate tramways as indicated to the public in the applicants advertisement.

4. The grant of Licences in the form asked for is therefore, for the time being, inadvisable.

5. It remains for His Excellency the Governor in Council to consider whether Licences should be granted, in a widely different form, to this applicant for

- (a) the right to generate electrical energy for the purpose of operating a service of electric tramways
- (b) the right to distribute energy for the purpose of operating a tramway service in Mombasa Island.

No licence is required for running an electro-bus or a number of them.

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I recommend that Government should refuse the application under both heads. No reason need be given in thus refusing an application, but in this case sufficiently good reasons exist. A tramway service could not possibly pay at the present time unless associated with other features of electric power supply. The adoption of routes which are likely to prove the most appropriate could not take place in the present condition of town planning proposals for the Island. Negotiations were proceeding by conference as recently as Thursday and Friday of last week as to the possible sale of the present Electric Power and Light concern in the Island. It would be highly undesirable to complicate the situation at this stage by licensing a second small generating concern for supply to a Tramway service only. The Mombasa Electric Light and Power Co. Ltd., has lodged an objection against the grant of either of the Licences asked for.

Under Section 129(7) of the Electric Power Ordinance "the Governor in Council may appoint a competent person to hold an enquiry into any matter relating to any application."

I do not, however, recommend that such action need be taken in this instance, as all relevant facts point to the desirability of refusing the application.

On the subject of these draft recommendations the Director of Public Works cannot say that he did not know my opinion and that he has submitted the draft in order to obtain this, as the matter was discussed, quite two months ago, by him with Assistant Electrical Engineer, Mr. Heywood and myself. While, obviously, I cannot know what alterations, if any, he may make in these recommendations as the result of the criticism I am now making, and while, collectively and individually, the opinions therein expressed are erroneous, or misleading, the significance of these draft recommendations lies in the fact that they exhibit some of the strenuous efforts being made by the Director of Public Works not to surrender to either the Legislature or the Governor in Council the Dictatorship on electric power matters which he has for so long wielded and which I am now forced to conclude has been the root cause of the trouble which has existed between Government and the Nairobi Electric Power Company, from the time when the Director of Public Works took the conduct of matters in place of the Commissioner of Public Works.

In the consideration, by the Special Committee of the Legislative Council, of the Electric Power Ordinance, very great care was given to the question of administration. Carefully considered recommendations on this subject had been made by a Special Committee of the Nairobi Chamber of Commerce. These were of a nature so sound and desirable that they were unanimously adopted by the Special Committee of Council. Briefly they were that the Ordinance should be made as complete as possible, i.e., that as the public were afraid from past experience of "Government by Regulations," as little as possible should be left to be prescribed by such Regulations which were largely the predilections of the individual. With complete unanimity the Committee of Council, in adopting this policy for recommendation, designed that all the powers of any importance should be vested in the Governor in Council and that these powers could only be delegated to a Power Board. Certain powers of a very minor nature were vested in the Governor without Council and these alone could be delegated

In the Bill which was considered by the Committee of Council, the section relating to the Power Board, on the instructions given to me by the Director of Public Works, provided that the Power Board would consist of Officers of the public service with the Director of Public Works as Chairman. Council amended this giving the Governor in Council complete freedom of action as to the appointment both of members and Chairman.

The net result of this Legislation is that everything that the power experts of the world can conceive as being likely to arise, has been provided for, and, except as to the Safety of Life, the State or any of its Officers, has no right or necessity to interfere until requested. When any action is required its scope is defined by the Ordinance. An application under the Ordinance is a request for the exercise of the high power of the Governor in Council.

Incidentally, the Director of Public Works, as such, is unknown in the Electric Power Ordinance, and as the "Governor" has not delegated his powers communications on subjects which concern the "Governor" or the "Governor in Council" being addressed from or to the office of the Director of Public Works are irregular.

Reverting to these draft recommendations of the Director of Public Works, it must be noted that the Ordinance prescribes that an application shall be considered by the Governor in Council, who may order such enquiry as he deems expedient.

In this case the Governor in Council has not yet (6.4.21.) seen the application and consequently no enquiry has been ordered. Nevertheless the Director of Public Works proceeds to do precisely what the Ordinance is designed to preclude, and assumes the functions of the Governor in Council, and constitutes himself as a kind of court of enquiry, and assuming further, apparently, that the Governor in Council need not know any more of the matter, but will be content to act on his dictum, proceeds to recommend that the application be refused.

As the presentation of this application to the Governor in Council is long overdue, (notwithstanding repeated reminders from the Acting Chief Secretary,) if an enquiry and report had been made by the Director of Public Works on competent lines such as are contemplated in the Ordinance, its irregularity might be condoned by the saving in time and delay. Such however is not the case.

In the first place I may state that from its nature some of the matter of the Director of Public Works' draft communication, is an objection or representation without the meaning of the Ordinance, and should have been made both to the Governor in Council and to the applicant within the prescribed period. This was not done and the applicant would have to be upheld if he objected to its consideration now. If this particular objection had been in order and the Governor in Council had not dismissed it as being unwarranted or not the concern of Government, as he probably would have done, it would have been necessary to enable the applicant to furnish his reply to order an enquiry, which, obviously, would not have been conducted by the Director of Public Works, who was the objector.

The Director of Public Works concludes his communication by stating, in effect, that and further

enquiry in unnecessary:-

"as all relevant fact point to the desirability of
"refusing the application."

As the Director of Public Works is aware that the final decisions rests with the Governor in Council (while he at the same time virtually requests that the Governor in Council will accept his decision) it must be concluded from this statement that the Director of Public Works intends the Governor in Council to think that he has presented in communication "all relevant facts."

The truth is that the Director of Public Works, to my knowledge is not in possession of "all relevant facts." He was however put in possession of certain facts by myself in the discussion referred to in page 11, which are in the highest degree, relevant to this application, yet he completely fails to mention these.

All the facts relating to the matters concerned under these applications and which should be known to His Excellency the Governor in Council, should have been ascertained only by a competent enquiry, as contemplated by the Ordinance.

While the communication of the Director of Public Works is wholly irregular, he could possibly be excused on account of emergency, in making uncalled-for recommendations, especially of such a very positive nature, provided only that he placed before His Excellency the Governor in Council all the facts and circumstances which have been brought to his notice and also advanced some evidence to justify his opinion. He has not done so.

The Director of Public Works could, and should have informed His Excellency the Governor in Council that the applicant was not pressing for the immediate grant of a licence, and that the object of the application was that a number of local business people recognising the urgent necessity that exists in Mombasa for improved transport facilities have propounded a scheme to meet the requirements and were prepared to invest their capital, but desired to ensure that if it was necessary, in the first place, to use a type of self-contained electric vehicle, in order to meet either the requirements of the public or the township authority, that after having fostered and developed the traffic by this means, their application being lodged for formal tramway rights, involving the use of rails or overhead wires, or both, would be entitled to first consideration, only, i.e., not involving His Excellency the Governor in Council in any commitment as to the grant or the terms of a licence.

Apart from the specific provisions of the Ordinance in this respect, a decision on such matters is entirely in the province of the Higher Authority - not in that of any individual officer of Government.

The Director of Public Works states that:-

"No reason need be given in thus refusing an application
"but in this case sufficiently good reasons exist."

The two assertions in this statement are hopelessly wrong, and the first is astonishingly inconsistent with the Director of Public Works' ostentatious profession of love of publicity. It also exhibits another inadequate conception of the Power Ordinance, in which, to compensate for any shortcomings which may be discovered, publicity is relied upon, and provided for. The support ther-

"sufficiently good reasons"
for refusing the application, the Director of Public Works then proceeds to state

"A tramway service could not possibly pay at the present time unless associated with other features of electric power supply."

By what function of his office or by what right of knowledge of the economics of electric traction or other business, does the Director of Public Works advance his opinion as to the feasibility or otherwise of a business proposition? Is a matter of fact but for the uneasiness of the public mind in Mombasa, which has resulted from the tentative planning proposals of the Director of Public Works the nucleus of either a rail or a "trackless-trolley" system could be immediately considered as a sound project.

It is the case that the correct policy under the Ordinance would preclude the establishment of unnecessary or uneconomical generating stations. But the Director of Public Works does not inform His Excellency the Governor in Council, as he could have done, that no business which requires a supply of electrical energy for its operations, could possibly rely on that given from the present outfit of the Mombasa Electric Company.

This Company through their Acting Managing Director, lodged an objection, to be within the Statutory period, explicitly, in case the sale of their undertaking to the present applicant was not concluded. Obviously, to make their objection valid they would be under the necessity of showing proof that they could give the supply at a price not greater than that at which the applicant could prove would be his cost. However, it is a fact that a binding undertaking for sale and purchase, by arbitration, has been entered into between the principal owner of the Mombasa Company, Mr. Fowys Cobb, and the applicant for this license, Mr. G. Udall. It is therefore not correct to say, as the Director of Public Works has done, that:-

"Negotiations were proceeding by conference as recently as Thursday and Friday of last week as to the possible sale of the present electric power and light concern in the Island."

On enquiring I find that what the Director of Public Works designates as "Conference", was the imparting, by Mr. Udall to Mr. A.K. Constantine, the Mombasa Company's Acting Managing Director, of information as to the arrangement already concluded, and that the arrival of Mr. Fowys Cobb, (about the middle of January) was now awaited in order to appoint an Arbitrator.

I may also point out that the Director of Public Works has failed to inform His Excellency the Governor in Council that the Tramway Legislation (as distinguished from electrical legislation) applicable here, - that of India - makes adequate provision for the rights of operation being taken over by the local authority, even before their exercise has been commenced.

As I have, in effect, pointed out to the Director of Public Works, his opinion as expressed in paragraph 3 is frivolous in the extreme. It is the case that the applicant in drafting the license applied for, has used the only terms employed in the Ordinance. Under the provisions of the Ordinance, the Governor in Council would be considering applications for Licenses for tramway purposes if nothing else - and the Licenses would authorize "the generation supply of distribution of electrical energy in the manner described."

Any statement which may be made by the Director

of Public Works to the effects that my opinions on the matters under review, are, to him at this juncture, any thing other than a very unwelcome circumstance which threatens to interfere with the attainment of his personal conceptions, can be entirely discounted by the fact that the Director of Public Works contemplated that he would be able to prevent my intervention. This will be apparent from the fact that having prevailed on His Excellency to take action under the Colonial Regulation No. 54, the Director of Public Works, (while commiserating with me on the unusual and harsh notice of an ungrateful service) proceeded irregularly to make my suspension immediately effective by peremptorily cutting me off from the service, stopping the payment of my salary, and removing all pertinent documents from my office. It was only the accident of my discovery that this procedure was unwarranted, that has enabled me to intervene to preclude the possibility of the work of years, in behalf of the public interest, being rendered abortive, by incompetent action. In case it may be contended or thought that the irregular action of the Director of Public Works, and the circumstances with which that action was connected, were matters which only unfortunately co-incided with the arising of questions on electrical matters, and that on this co-incidence it is not evident that the Director of Public Works had any desire to preclude my opinions from being duly considered.

Any such contention or thought is demolished by the fact that the Director of Public Works, after my intimation to him that I was, and intended to remain, a factor in these matters, attempted to over-ride my opinions on the ground of his position and seniority. The Director of Public Works did in fact raise this point at the interview with His Excellency, subsequent to my memorandum of 12.11.20., and was promptly informed by His Excellency that on these affairs I was the expert. Subsequent to this, as already stated, I have not been given any opportunity of offering advice to Government, until the receipt of the Director of Public Works' draft recommendation on the application for these Tramway Licenses.

I am forced to conclude that these have been forwarded to me only for the reason that in the presence of Assistant Electrical Engineer, Mr. Haywood, I have traversed the opinions advanced by the Director of Public Works.

It is the case that it has been stated by the Director of Public Works that some modification of the existing electrical legislation has been suggested. With the exception of the very general and undefined observations made by Mr. E.W. Cowan, (which, incidentally, were scathingly criticized by the Director of Public Works, who, however, is now doing his utmost to justify Mr. Cowan's allegations as to the "Government interference" which would result), no one with any knowledge of power supply has ventured to make any such suggestion, i.e., excluding the modifications being or to be made in pursuance of the Secretary of State's decision, and it is impossible to conceive that the Director of Public Works could suggest any modification which would be in the public interest.

As the Officers of the Colonial Office are aware, in all the proceedings in which I was honoured to take part, I maintained a perfectly open mind, and readily accepted suggestions for amendment of any provisions which might be matters of opinion, and which did not endanger the public interest.

My attitude towards this legislation is and will

remain the same, and the Director of Public Works is or should be well aware that if he could suggest any improvement the surest way of making it effective would be to obtain my support which would readily be accorded. If any modification, not of this nature, is suggested, it could not be expected that I would remain silent. 133

In view of the wide and exhaustive criticisms to which this legislation has been subjected I think it will be agreed by the Secretary of State that there is not much likelihood of any alteration being required for many years to come. Therefore I am forced to regard this suggestion as not being made seriously, but with the object of defeating the application of Mr. Heywood, Assistant Electrical Engineer, for the position of Government Electrical Engineer. In this connection I have specifically informed Government that my successor does not require to have "legal" knowledge; - that branch of the work I have finished - that my programme of activities for the employment of two engineers goes with me, and that in consequence there will not be enough work to keep one man busy, and that Mr. Heywood should be advanced to the post. This gentleman, who was a complete stranger to me, came from the Nagadi Soda Company, and had interviewed His Excellency, and the Director of Public Works, before I met him. My examination convinced me that with his vast experience and the high responsibilities which he had successfully carried, this Government was uniquely fortunate in being able to secure his services. My personal contact with Mr. Heywood has only served to enhance my opinion of his worth. His abilities are far above any that are ever likely to be required by this Government, and even if Government could afford to waste money on another appointment, which is out of the question, nothing could be advanced to justify the appointment of a new man as senior to Mr. Heywood.

I have the honour to be,

Sir,

Your most obedient servant,

(signed) *Wm. McBlain*

GOVERNMENT ELECTRICAL ENGINEER,

TO THE UNDER SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

Through,
HIS EXCELLENCY, THE GOVERNOR,
Through,
THE HON'BLE DIRECTOR OF PUBLIC WORKS,

N A I R O B I.

Sir,

KENYA COLONY.

Re: Electric Power Legislation and
matters related thereto.

I have the honour to draw your attention to the conditions existing here and to recent occurrences in connection with the above matters which threaten to involve this Government and the Colonial Office in embarrassment of a much more serious nature than that from which Government was rescued by the work of the Colonial Office, in which I had the honour to take part during my recent visit to London.

In the investigations at the Colonial Office it was evident that the then embarrassment of Government and the loss which the public had sustained as a result, was directly attributable, not, as has been thought here, to any action taken by the Colonial Office, but to the facts that this Government, in the first place, was without competent advice, and in the second, failed to act in accordance with such advice when it was tendered.

I will take the opportunity here to remark that the enquiries made at the Colonial Office, and events which have transpired since have shown beyond question that, with one exception, all the advice which I have given to, and the work which I have performed for this Government, has been confirmed as sound by both legal and engineering authorities, and also by the opinion of your Office.

The exception referred to, is of vital importance, but this, i.e., the high principle involved, does not appear to be adequately realized, or at any rate recognised, by Government. It was, that while my intention of trying to force Prior Licensees to come under the new Ordinance without delay, was understood and might be excused, I had committed a grave breach of equity by the phraseology used in amending Section 3 of the Ordinance so that, in effect, it legislated away the legitimate rights of the Prior Licensees. In other words, that while it could be permitted to use all legitimate pressure to make them come under the Ordinance, their concession and the rights under it could not be taken away unless they were given a legal right - not a moral one optional to Government - to a license, and to any compensation for any injury which it could be shown they would sustain by reason of the altered conditions. This was the unequivocal opinion of the present Chief Justice, Mr. Barth, then Attorney General, (who was absent through indisposition when the amendment was adopted); in which the Legal Advisers to the Colonial Office fully concurred and consequently upheld by the Secretary of State.

To briefly refer to the result of the Conference

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at the Colonial Office on 19th January 1920, with the Nairobi Company, as I subsequently pointed out there, the position was that by giving the Company what they asked for, after pointing out, as was done, the, for them, impossible nature of the situation, a probably very protracted and possibly futile discussion of the Ordinance and questions of compensation, was precluded; that immediately they realized their position they would either try to find a purchaser for the undertaking or would ask for a licence; that if the Company did not adopt either of these courses the only hope that remained to them of obtaining a fair price for their plant was by committing a serious and deliberate breach - such as complete stoppage of supply - to force Government in the interests of the public to step in and take over the works and operations. In this case it would be necessary for Government to pay them the usual fair valuation - "on the then value" - but not the extra to which they would be entitled if Government took over in 1931, on the expiry of the concession. Incidentally, I may say that with the prices of plant, etc., at the present time, this valuation would be infinitely greater than any price the Company even contemplated getting when the agreement was made, and on a very moderate estimate Government would be under the necessity of finding about £300,000 for immediate purposes, and a further unknown, but large, amount possible within 12 or 18 months.

For substantial reasons as to the inefficiency inherent in Government methods which made it impossible to contemplate State operation of power supply for industrial purposes, I deprecated any suggestions of that kind. Apart from these reasons it was also apparent that the difficulty in obtaining money for works to which Government was already committed, alone, made it almost imperative that the conduct of electric power supply should be entrusted to private enterprise.

Therefore in view of these facts, all of which dictated the necessity for encouraging private initiative, and particularly that of the present operators any action on the part of Government which might tend to make the contingency an occurrence which would compel Government to take over and operate this service, was to be strictly avoided.

Apart from these reasons, but of equal, or perhaps greater importance there was, and is the fact that any avoidable or unsympathetic action of Government which might tend to, or result in private enterprise being covered from either of the two projects at present operating would probably be construed by prospective investors as unwarranted Government interference with legitimate private rights, and react disastrously on the credit of Government and the Colony.

That the Officers of the Colonial Office were keenly aware and had an admirable grasp of the whole situation was soon made evident to me on my arrival in London. In accordance with that knowledge of the position and the policy briefly reviewed above, it was never contemplated at the Colonial Office that either of the Prior Licensees would be refused a Licence under the Electric Power Ordinance, if asked for, in place of their Concessions or Agreements. On the contrary, it was thought, and indeed the officers of this Government have, until now, both here and in London, incessantly declared that these Prior Licensees would be received by Government with open arms, as Licensees under the Electric Power Ordinance.

That the facts of the occurrences here are quite the reverse will be learned by the Secretary of State with much surprise. Vexatious, incompetent, and illegal, obstruction is what the first attempt of a Prior Licensee to obtain a Licence in exchange for his Concession, has met with from Officers of Government.

The Colonial Office believed, quite correctly, that all that was required to remedy electric supply matters in both Mombasa and Nairobi was to get the Companies to accept Licences. It was gratifying to find an early prospect of what it was no doubt expected would be mutual hopes in these matters, being realized, and the Officers of the Colonial Office immediately rendered all the assistance possible to expedite what promised to be a very satisfactory solution of Government's difficulties.

Towards the end of October Government received a telegram from the Colonial Office referring to the proposed transfer of the Nairobi Concession to C. Udall who was applying for a Licence. This telegram was brought to my notice after it had lain in the P.W.D. for ten days, when I found that the Director of Public Works was advancing the extraordinary recommendation that Government should require Mr. Udall to indicate that he would apply for a Licence and that by that indication he acknowledged that the Concession was surrendered and void, and that Government would then, by public advertisement, invite other applications.

I will not labour this communication by recounting my efforts in discussion to show that the adoption of such a course would be an egregious blunder and fatal, and moreover, ultra vires. For your information, however, I attach copy of my written comments on the subject, dated 12th November, 1920.

At a meeting, subsequently, His Excellency stated that on the subject of the Nairobi Company he supported the views expressed by me.

On the subject of the Mombasa Company, which was also mentioned at this meeting, His Excellency stated that his recollections did not coincide with my statement. In consequence of this I submitted a short memorandum dated 23rd November, 1920, of the interview at the Colonial Office with Major Crowley, on behalf of the Mombasa Company.

In forwarding my communication to His Excellency, the Director of Public Works stated that he had no reason to vary his opinion, of my "proposals." In this connection I should like it to be noted that I have not made "proposals." My advice throughout has been, to give effect to the decisions of the Secretary of State, and otherwise to follow the provisions of the Electric Power Ordinance. Copy of my communication, above mentioned, is also enclosed for your information.

Learning from the newspaper press that it was intended to introduce to the Legislative Council, the Bill of the Electric Power (Amending) Ordinance, I drew the attention of the Director of Public Works to the Secretary of State's communication as to the enactment of this measure, when the position with reference to the Mombasa Company was known. At the same time I mentioned the undertaking given to the Nairobi Company by the Secretary of State that the emergency legislation of 1919, would be repealed. The Director of Public Works informed me that he was not aware of any documentary evidence on the files to that effect. I replied that such evidence was on the

I subsequently learned, again from newspapers, that the provision repealing this emergency legislation had been deleted by the Legislative Council. Consequently, I next invited, His Excellency's attention to the subject with special reference to the Secretary of State's letter of 4th February 1920 to the Nairobi Company.

In covering my letter of 1st December, 1920, to His Excellency, the Director of Public Works said that his advice had been confined to suggesting that the repealing provision should be re-drafted to exempt the Nairobi Company only, and then expresses the opinion that this course might still be adopted by re-committing the Bill before the Third Reading. In view of the fact that the emergency Ordinance became necessary in 1919 only because the Principal Ordinance had not been applied, as the latter measure, as a fact in law, now applies to Mombasa, the effect of adopting the Director of Public Works' suggestion would be to have two emergency provisions applicable to Mombasa and elsewhere, with the exception of Nairobi. It has been suggested to me that with the issue of Licences for Nairobi and Mombasa this anomaly would be of no consequence. Even that would not excuse irregularity, but it is highly improbable that these Licences will be applied or accepted if Government's latest attitude is maintained.

As stated, I have only been made aware of the matters mentioned through newspaper reports. Of subsequent, and seriously erroneous, steps taken by Government, I had no knowledge until such was imparted to me by Mr. Udall, the promoter of the project for taking up the businesses of the Nairobi and Mombasa Companies under Electric Power Ordinance Licences. From this it appears that the Director of Public Works has intimated that security was required, and also information as to the price actually to be charged, price for public lighting, and that other applications may be received and that the area of supply may be altered. Subsequent to this the applicant has been informed that the Attorney General has ruled that owing to the lapse of time all the rights of the Prior Licensee in the making of an application are defunct, and that any application which may now be made will be that of an ordinary applicant, i.e., without any rights of priority, and may be refused, or granted on any terms.

The points raised by the Director of Public Works and, in a subject so entirely outside of his province, a host of others, far beyond his conception, are all dealt with in the Electric Power Ordinance. And are dealt with precisely in the same way that has satisfied the experts and Legislatures of the World, (including Great Britain from whose provisions they are taken). It is obvious that the Director of Public Works does not understand the Ordinance, or if he claims to do so, (and he may on the few points mentioned), then his attitude is either purely vexatious, or indicates an objective with which I will deal with later.

Passing on for the moment to examine the Opinion of the Attorney General, it is necessary to remember that strictly in Law the only Ordinances at present effective on electrical matters, are the Electric Supply Line Ordinance, 1914, the Maintenance of Electric Supply Ordinance, 1919,

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and the Electric Power Ordinance, 1919. The Electric Power (Amending) Ordinance is not applied, and if His Excellency expressed intention of allowing deletion of Section 9 to stand until the matter has been referred to the Secretary of State, is carried out, it will not be applied for some considerable time, and the exemption from the provisions of the Principal Ordinance which it provides for the Nairobi Company, is not effective. Therefore is any action at law, the Court could only recognize, (in this consideration) the Principal Ordinance.

I have no knowledge as to how or by whom the Case for Opinion was actually presented to the Attorney General, but from the nature of the obstruction which is being placed in the way of this new project, common sense leaves no explanation possible, but that the Case to the Attorney General was presented as part of that obstruction.

That the Opinion of the Attorney General was obtained on an Ex parte Case there cannot be the slightest doubt, as if only a very moderate but competent view of the true intent of the Ordinance had been placed before him, he could not have given the Opinion which is attributed to him.

The opposition to the grant of this Nairobi Licence, as applied for, has been and is, strenuous, and apparently it is thought that with the indefinite postponement of the Amending, and exempting, Ordinance, the provisions of the Principal Ordinance, as interpreted, by the Attorney General, mean that the Nairobi area is thrown into the melting pot, and that with respect to any Licences which may be granted, the area and the conditions can be cut about and prescribed, not as the Ordinance provides, but as various laymen think fit.

However, it is a fact that the Opinion of the Attorney General is not tenable, even as the law now stands, and the Attorney General would not have contemplated for one moment, giving such an Opinion, if the intention of the Legislature had been explained to him.

If the Director of Public Works presented this case to the Attorney General, or was present in discussion, while he might be pardoned for a rash or unwarranted intrusion into matters outside of his knowledge, it requires some explanation that he failed to give to the Attorney General the information mentioned in the last paragraph. He was able to do this as he was present in the Legislative Council when His Excellency, and Sir Charles Bowring, and other Members, cross-examined me at length on the provision in section 3 of the Ordinance, on which the opinion of the Attorney General is based with the object of ascertaining that no injury was intended to the Prior Licensee of that no ulterior motive was covered by the provision, which was being moved as an amendment, and heard the assurance given by me, with which Government was identified, that nothing of the kind was contemplated, and that the only object of the amendment was to ensure that all electricity supply would be subject to the general provisions of the Ordinance.

Apart from the facts stated above, neither a strict interpretation of the text of Section 3, nor implication, permits construction or meaning which restricts or limits the right of the Prior Licensee to apply, as such, for a Licence to embrace all, or more than, the powers, privileges or obligations, contained in his Prior Licence, at any time. The only meaning which can be read into or deduced from the provision is that if he failed to apply for a Licence within six months, and an application for a

licence appeared on the scene, the latter might be given powers to acquire compulsorily the works of the Prior Licensee.

If a Prior Licensee - or indeed anyone - has made an Application, no other can be considered until that has been disposed of.

An application can be lodged by any individual, either for himself or for anyone else. The party to whom, and the conditions on which it may be transferred, need not be stated by the applicant. Indeed, in certain cases he could not name the party to whom it might be transferred. The prescription as to transfer is entirely in the province of the Governor in Council, subject to the provisions of the Ordinance, in granting the licence, and is to be stated therein.

Assuming for the purpose of argument that the object of the opposition was attained, and the Nairobi area and district was open for re-adjustment, let the situation be examined. Section 6 provides that the Local Authority shall have priority if its application is one of two, or more, for the same area, etc. In the present case the Local Authority has not made application, or even given notice of intention. The application which has been lodged by Mr. Udall is due for consideration and issue of licence, if no material and maintainable objection is previously made, by the 15th January 1921. If the Local Authority were to give notice of intention, at the date of this letter, their application could not be lodged before the middle of February. Therefore, by reason of the time factors, there cannot be more than one application before Government. Granting, again only for the purpose of argument, that an application from the Local Authority might be received, it could not be considered at the present time, and possibly for years to come, unless they applied for the whole of the area of the Prior Licensee, i.e., the area comprised by a radius of 15 miles from Nairobi. Section 10, and the practical facts are clear on this point.

(The financial disabilities of the Nairobi Municipality indicate that they could not take the matter of the electric supply for the township alone, without considering the liabilities of a large rural district. In this connection it has been argued that the profits which the Nairobi Company have made would be very welcome to the Municipal revenue. This profit could not be made by the Municipality, as, outside of their business as suppliers of electrical energy, the Company are trading to an extent impossible to a Local Authority, and further, the Ordinance Section 44, limits the profits of a Local Authority to, say, and a half per cent.)

While it can easily be shown that the correct interpretation of the Electric Power Ordinance, without any assistance from the suspended Amending Ordinance, completely disposes of the objections of the Director of Public Works and of the Opinion of the Attorney General, it is also the case that for all practical purposes Mr. Udall may be said to be the Prior Licensee. If what, under the circumstances is only a legal triviality, is maintained, viz: that Mr. Udall is not yet a Prior Licensee when, on the strength of the Company's letter of 27th October 1920 to the Secretary of State, anything which may be legally necessary for suitably framing the provisions as to transfer, is rendered easy.

The brief replies presented above to the points raised, show conclusively that the official obstruction which has been placed in the way of this new project cannot be justified, and, in my opinion, could not be satisfactorily explained.

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If we turn now to the full facts, the present situation is revealed as amazing. Summarised it amounts to this:

(a). If the Nairobi Company continue to carry on under their concession the outlook is most unsatisfactory for Government, and the public, (The Director of Public Works does not think so, but he speaks without knowledge of the subject.)

(b). they are not desirous of accepting a Licence but are ready, and have made arrangements, to transfer their concession rights to another party who is desirous of obtaining a Licence;

(c). failing the acceptance of a Licence by the Company themselves, this is precisely what the Colonial Office, in conjunction with this Government's advisers, have been striving for;

(d). to make this transfer, which is required for the purpose of the prospective Licence, regular, the consent is asked for, of the Secretary of State, or Government.;

(e). in order to preclude any misunderstanding arising through action being taken by one office without the knowledge of the other, as in the past, the Colonial Office ask for the views of this Government on the request made for the transfer of concession;

(f). Government relies to Secretary of State approving transfer;

(g). prospective transferee being informed of this approval, asks Government to state, with reference to his application, that, subject to the provisions of the Electric Power Ordinance, the necessary Licences will be issued in due course;

(h). this request, it was explained, was made in order to preclude delay in forming new Company, and expedite work of re-organization and augmentation of system for electric power supply;

(i). Government's reply to this request is, in effect, that neither the grant of the licences, nor anything in connection with them can be assured.

Information as to the attitude shown by Government has reached the ears of the business community, and a local Bank Manager, in asking me if the report which had reached him was correct, remarked that it was incredible that such an absence of business morality could be found in a Government. In reply, I requested the gentleman referred to, and others making similar enquiries, to suspend judgment pending competent investigation.

That the anxiety of the Colonial Office, that action should be avoided which might be construed as prejudicial to legitimate vested rights, was justified, is apparent.

Earlier in this communication I have stated that the attitude of the Director of Public Works was either purely vexatious or indicated other objectives. One of the latter I have already briefly, but for the present sufficiently,

dealt with in my remarks on the possibility, or rather the impossibility for many years to come, of the Nairobi Municipality being able to operate electric power supply.

I am aware that on this subject, and that next following, the Director of Public Works holds a different opinion, but this can be at once dismissed, as in this, the most involved of all public services, he has had no experience, without which, intrusion into its intricacies, invariably proves expensive. 138

The other objective of the Director of Public Works to which I have referred, is Governmental operation of electric power supply as a public service. I may be wrong in using the term "objective", as it is possible or even probable, the Director of Public Works has no intention of recommending that Government should take up this project. I am however aware, as I have indicated above, that the Director of Public Works entertains the opinion that electric power supply could be operated as a public service under his direction. I need not add to what I have already said on this aspect of the matter. What I must point out is that if the present attitude of Government, or its officers, is continued, which permits of the undue "Government interference" which both here and in London I, on behalf of Government, asserted was not contemplated, and would not be allowed, the capital required for power development will not be forthcoming. Government will not receive any warning of this. Power project will simply be ignored, resulting in other developments being prejudiced, until, finding industry starving for that power, no course will be open but for Government to step into the breach, regardless of how difficult it may be to find the money.

On the situation generally it will probably be considered by the Colonial Office that no one was better aware than myself of the difficulties which possibly, or rather probably, would confront Government until the provision of the Principal Ordinance were in universal operation throughout the Colony. That is to say, until these old Concessions or agreements had been expunged and substituted by Licences under the Ordinance. A few days after my return to the Colony, I informed Government, through the Acting Director of Public Works by letter, dated 10th April, 1920, copy of which is attached, that the situation set up as the result of the Conference at the Colonial Office, on 19th January 1920, was:-

"one of somewhat grave delicacy which does not permit any room for future error. Of this the Colonial Office are fully aware and I have assured them that the technical advisers will see both the Colonial Office and Government safely through this situation, provided that they advice which will be given, is followed."

The gravity of the situation which has arisen is greater than was ever contemplated by either the officers of the Colonial Office or myself, as will be apparent to you, and is due entirely to Government acting on incompetent advice without consulting myself and actually in direct contradiction of my opinions.

While it is incomprehensible to me that it is so, it appears to be the case that Government completely fails to see the seriousness of the situation into which they

have allowed themselves to be lead, and nothing but the intervention of the Secretary of State seems possible to redeem the position.

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As I think the Colonial Office fully believed, it was my fixed intention not to quit my post (if at all) until all danger of embarrassment of Government had passed, and the provisions of the Ordinance were smoothly operating. Circumstances, however, have arisen, which, reluctant as I was to take the step, made it appear advisable to place my resignation in the hands of Government, which I did. These circumstances are detailed in a memorandum attached, to which I invite your further attention.

Since my resignation, (dated 13th October 1920), I have been approached (early in November), on behalf of this new Nairobi project, with the inquiry as to whether I could act for it in a consulting capacity. I have replied that I will do so with pleasure on terms, satisfactory to myself, can be arranged. These terms have not yet been discussed.

It has been suggested to me that my possible connection with this scheme might be used to allege that I am not impartial in this matter. Any such allegation or suggestion (if made) would only exhibit a further weakness in the opposition to this project. Long before anything occurred to make me contemplate resigning, I hailed this suggested scheme with great satisfaction, as exactly what I had been working for in the public interest, and I am certain that the officers of the Colonial Office, knew that this would be so, and felt likewise.

Further, I am not yet committed in any way which prevents me from accepting the Retainer mentioned in paragraph 7, of the attached memorandum on the circumstances of my resignation, or from continuing in any suitable manner to advise Government, until the difficulties of the situation are passed.

It may be only an unfortunate co-incidence that the temerity of the Director of Public Works, in advising His Excellency without asking for my advice, and even in direct contradiction of my considered opinion, has been exhibited only since my resignation, on which account he may have thought that these opinions were depreciated. Needless to say my opinions on these matters cannot be set aside, and it may appear to you to be infinitely preferable that their potency should be manifested from within the ranks of the public service, than otherwise.

I have the honor to be,

SIR,

Your most obedient servant,

GOVERNMENT ELECTRICAL ENGINEER.

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November 12th, 1920.

re Nairobi Electric Power Co.

ref. Hon'ble Acting Chief Sec, No. 476/L/11 of 1919/20.

Colonial Office Telegram of 2/11/20.

commenting on the undesirable and embarrassing situation in my opinion, both the Secretary of State and Government certainly be involved if the course recommended in your draft letter, is adopted, I have to point out that the correct and also the common sense course which should be followed with reference to the proposal in this telegram is for Government to concur with the spirit and letter of what I know to be the opinion of the Colonial Office on this matter, and that is, to refuse the offer of a license made to this company at the Colonial Office, and to act consistently with the spirit of the license, for the application of which we have so insistently urged.

Consistently with the spirit of the generously equitable and fair principle of the Colonial Office, and which I trust will be that of His Government in these matters, the offer of the license must be extended to the boy's successor.

In discussing the matter this morning I mentioned that I was under the impression that Mr. Sedall had informed me that his agreement to purchase the N.E.P. Undertaking was conditional on its obtaining a license. This point is immaterial to my view of the position, but, obviously, is of vital importance in connection with your suggestion that Mr. Sedall should be informed that before any consideration would be given to any application he may make he must consent to the extinction of any powers

possessed under the 1906 concession. In reply to my enquiry I am informed that my impression is correct.

On the subject matter of your proposed letter to Government with drafts of proposed Cable to the Colonial Office and proposed letter to Mr. G. Odell is in the highest degree important that Government should be made acquainted by me of the Colonial Office opinion on these matters as ascertained by me in the course of numerous discussions during my recent leave of absence, and with which I concur without the slightest reservation.

Briefly, the considerations at the Colonial Office showed that:-

- (a) The enterprise and valuable work done by these people as pioneers must not be overlooked.
- (b) It is essential to avoid any Act which could be construed as prejudicial to legitimate vested interests.
- (c) Regarding these as essential features of policy, and leaving aside, for the time being, any allegations as to their past defaults, and in view of the fact that we have propounded a piece of legislation which we boasted afforded every possible protection for the public interest, we must give this Company the opportunity of taking up a License under this legislation.
- (d) Consequently this License was offered, or more correctly speaking, the Company was practically beseeched to accept it.
- (e) In refusing the pro-offered License the Company, through their Counsel, stated as their reason that they were afraid to trust to the local Government, for justice, particularly with respect to the Director Public Works, and the Government Electrical Engineer.
- (f) The Company asked the Secretary of State to acknowledge their right to continue operations under the concession of 1906, which was done.

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On the subject matter of your proposed letter to Government with drafts of proposed Cable to the Colonial Office and proposed letter to Mr. G. Udall it is in the highest degree important that Government should be made acquainted by me of the Colonial Office opinion on these matters as ascertained by me in the course of numerous discussions during my recent leave of absence, and with which I concur without the slightest reservation.

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- (f) The Company asked the Secretary of State to acknowledge their right to continue operations under the concession of 1906, which was done.

- (g) In concurring with Mr. J.H. Rider in recommending to the Secretary of State that the Company's request be acceded to, I was fully aware, and in fact explained to them, that the position which they asked for was an impossible one, i.e., that they could not possibly continue.
- (h) The principal reason which actuated my recommendation was that it closed discussion on the very general and vague suggestions of the Company for the mutilation of the Electric Power Ordinance.
- (i) In view of my positive knowledge of the impossibility of their position, it was quite obvious to me that the Company, on realising their situation, would either try to sell at the earliest opportunity, or would be forced to apply for a License, under, of course, the non-mutilated Ordinance.
- (j) The only reservation ^{which I suggested} (vide my draft of Amending Ordinance forwarded to the Colonial Office from Cape Town) as to the grant of such License to Nairobi Electric Power Company, was designed to impress on them that if they delayed for long, say, more than 12 months, to apply for a License, and so continued the hardship to their consumers which must result while the Concession is in force, they might lose the opportunity altogether.
- (k) The idea of refusing to grant a License to these people if they made compliance with the provisions of the Ordinance, i.e., accepted the conditions of contract formulated by Government, would not be contemplated by the Secretary of State.

For Government to turn round now in face of this Ordinance, and insist on a provision which the Ordinance does not contain, i.e., stipulate that they must surrender their concession before an application from them (or their assignee) would be considered, while Government at the same time, exceeds any powers conferred or implied by law, and goes out of the way to invite competitive applications, is ultra vires and also, in my opinion, grossly inequitable.

- 7. It may be contended that this step, which I, and I am sure the Colonial Office, will strongly deprecate, is desirable in the public interest. Decidedly, this is not so. There is nothing which it may be mistakenly contemplated could be attained by taking this step, that is not already provided for in the Ordinance. Instead of anything desirable resulting from the adoption of the course suggested, it would almost certainly react detrimentally, perhaps disastrously, against the introduction into the Colony of much needed capital.
- 8. It may be appropriate if I offer a little advice from my business experience in these matters to the effect that financial circles contemplating investments do not trouble to take Counsel's opinion about a Country's laws, if it is alleged that fellow investors have been prejudiced by acts of the State or Legislation. That is quite sufficient to make them turn their attention elsewhere.
- 9. With reference to the utility of the advertisements which it is suggested should be published, I may say, and the Colonial Office is well aware of the fact, that the whole of my time in the United Kingdom last year was spent in advertising the possibilities of power and other industrial developments in this Country. I have been in constant correspondence ever since with various interested authorities with one exception all of these who are represented here, are so as the direct result of my representations in London etc. The people who, for the present are likely to be interested in power development here are already in possession of all the information they require.
- 10. From the knowledge which I acquired in the course of my investigations, I can state that it is the case that none of the desirable financial engineering people would move in power development here, except by means of a locally promoted project.

It is also the case that, putting aside their past defaults for which I have so severely criticised them when required, the valuable pioneer work performed by the local power company, showed a spirit of enterprise in embarking on what was a most hazardous venture, which is never found in other financial circles. 144

of the course which is recommended to Government in this letter as adopted the position will be as follows:-

- a) The Nairobi Power Company have done valuable work, but serious defaults have occurred entailing in recent years great loss to the public.
 - b) These defaults are directly attributable in the first place to the defective agreement made by Government against the advice of the Crown Agents.
 - c) The responsibility for the continuance of these defaults lies with Government.
 - d) For six years the officers of Government have been devoting unremitting and strenuous efforts towards finding a practical and of course equitable solution of the situation.
 - e) More recently His Excellency and the Colonial Office have joined and given considerable and invaluable practical assistance to these endeavours.
- As a result of this work a project is advanced which if dealt with under the provisions of the Electric Power Ordinance will provide a satisfactory solution of the situation.

If however Government adopts the course recommended in this letter, and which I must strongly deprecate, Government will by its act make this project impossible, and the present impossible situation will continue. In view of my frequent references to discussions at and consultations of the Colonial Office, I suggest that a copy of this communication be forwarded to the Secretary of State. However, Government should contemplate proceeding as

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course recommended to Government, that if adopted, as
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signed James M. 11/10/...

GOVERNMENT ELECTRICAL ENGINEER

HON'BLE DIRECTOR OF PUBLIC WORKS.

NAIROBI.

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GOVERNMENT ELECTRICAL ENGINEER

HON'BLE DIRECTOR OF PUBLIC WORKS.

NAIROBI.

23rd November, 1920.

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HIS EXCELLENCY, THE GOVERNOR,
Through,
THE HON'BLE DIRECTOR OF PUBLIC WORKS,
N A I R O B I.

Ref: Electric Power Supply in Nairobi and
Mombasa and Government's obligations
to the Prior Licensee Companies.

Your Excellency,

I have the honour to enclose a short memo, on the subject of easement of the conditions relating to certain works which are incumbent on a licensee, as recommended by Your Excellency.

During yesterday's interview, it was apparent to me that certain important matters which transpired at the Colonial Office had not been brought to your notice. Therefore for Your Excellency's information I also enclose another short memo, on the discussion at the Colonial Office, with Major Crowdy, on behalf of the Mombasa Co.

It will be observed from this, and it has never been and could not be otherwise, that Government is bound to give the Mombasa Co. as well as the Nairobi Co., a licence under the Power Ordinance if they ask for it.

It is true that legally the Company have not a sole right, and we have paraded this fact largely in order to expedite the Company to apply for a licence.

As a practical fact however the Company have a monopoly as no business man would dream of accepting a competitive licence in Mombasa.

Therefore the difference between the conditions in Nairobi and Mombasa, while perhaps legal is quite arbitrary, and does not exist in practical fact.

An extraordinary misconception of plain business principles, which it is incumbent on me to point out, was apparent in the discussion at yesterday's interview. This is the idea which was advanced that by advertising the opportunity for a licence, either with reference to Nairobi or Mombasa, it was possible to obtain the best people to accept a licence. Now it is the case that the best, or at least the only concern to operate a licence for either of these places is a limited liability company. When pointed out it will easily be seen that such a company could not be formed for the purpose of making an application. It could not be formed until a licence had been granted or guaranteed by Government. That is to say, no company to operate a licence could be floated until it was known what security and terms was offered to investors, by the terms of the licence.

The only result which such an advertisement could produce would be an offer from some company's prospecting agent or from some financing manufacturing interest, to undertake a licence on terms advantageous to themselves. In such cases the capital would be underwritten at a charge of about 7 1/2 or 10 per cent on the total, and a company would then be formed to carry on the licence.

From the foregoing it should be obvious that no

concern would undertake the responsibilities of a Licence until the terms of the Licence were known.

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The artifices which can be and frequently are resorted to, in Company promoting, are too numerous, nor do I think that there is any need for them to be reviewed here. I should however like just to call Your Excellency's attention to the fact that by inviting and allowing another applicant to super-impose an application on top of one already lodged and made public, the second applicant could easily show - ostensibly but probably not bonafide - an improvement on the terms offered by the first applicant. Common justice would necessitate the latter being given an opportunity to amend his application, an opportunity which the other might likewise claim, and so the game would go on to the serious injury of the public interest.

As I have pointed out in my letter of the 12th inst., to the Director of Public Works, to which I invite Your Excellency's attention, if the suggestions made were acted upon by Government, prospective investors in any of the Colony's development, would be so seriously alarmed as to preclude capital coming into the country.

The only safe and correct course for Government to adopt is to dismiss any extraneous recommendations, and allow the legislation of the Electric Power Ordinance.

In concluding I must call Your Excellency's attention to the Secretary of State's letter of the 2nd August, on the subject of the Amending Ordinance. Paragraph 2 of the letter referred to intimates that the Ordinance "may be enacted as soon as the position is known with regard to the exclusion of the Mombasa Electric Light and Power Co., from the provisions of the Principal Ordinance."

I have the honour to be,

Your Excellency's

obedient servant,

Sd. - James McBain

GOVERNMENT ELECTRICAL ENGINEER.

November, 1920.

Memo. on discussion at Colonial Office
relating to the position of the Mombasa
Electric Light and Power Co. Ltd.

Present:- Mr. W.C. Bottomley,
Major Crowdy, for Mr. Cobb, and
Government Electrical Engineer.

148

Major Crowdy presented the views of Mr. Cobb, the Manager Director of the Company, to the effect that the Company was entitled to a renewal of its agreement for a period of 43 years; that the period of the Licence offered to the Company under the Ordinance viz: 25 years, was insufficient tenure to enable the Company to raise the capital necessary for additional works and plant; that the Company was advised that the period allowed for conversion to Standards was too short and might be a hardship, and that the too rigid enforcement of British Standards might also be a hardship.

After discussion, the Government Electrical Engineer, while maintaining that the prescriptions of the Ordinance on the matters referred, were correct, conceded that they might be regarded as matters of opinion. Also, as the public interest on these points was thoroughly well safe-guarded, no valid objections existed to meeting the Company's views by making the period of a Licence under the Ordinance the same as that in British Law, viz: 43 years; by an extension of the time allowed for conversion to Standards, at the discretion of the Governor in Council, in the same manner a possible easement in the matter of Standards.

The Government Electrical Engineer's opinion, as above was accepted by Mr. Bottomley, who offered Major Crowdy, on behalf of the Company, these terms in a Licence.

Major Crowdy expressed his personal satisfaction and his appreciation of the spirit in which the officers of Government had received his representations.

It should be noted that the amendments, other than that which gives exemption to the Nairobi Electric Power Co., contained in the Bill of the Electric Power (Amending) Ordinance are those specially promised to the Mombasa Electric Light and Power Company Ltd., to induce the Company to accept a Licence.

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I have also to invite Your Excellency's attention to the statement, attributed to the Director's of Public Works, in the press, to the effect that no exemption was provided in the Amending Ordinance for the Mombasa Company, the latter had not asked for such. This is not correct. The Mombasa Company have asked for exemption, and the Secretary of State, in forwarding the draft Amending Ordinance stated that this Ordinance could be enacted as soon as it is known what measure of exemption could be extended to the Company. It is reasonable to infer that the Secretary of State has delayed giving any instruction as to this exemption, pending the result of the negotiations for sale of the purchase of the Company's undertaking which are being assisted by the Colonial Office.

The gravity of the responsibility still resting on me in these matters is such that in view of my pending departure from the public service and future contingencies, I must put on record my opinion on the situation. I am therefore preparing a full report which I will ask Your Excellency to kindly forward to the Secretary of State.

I have the honour to be,

Your Excellency's

Most Obedient Servant,

Sd/. James McBain.

GOVERNMENT ELECTRICAL ENGINEER.

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 Most Obedient Servant,

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GOVERNMENT ELECTRICAL ENGINEER.

3

Nairobi,
1st December, 1920

To, **HIS EXCELLENCY, THE GOVERNOR,**
Through, **THE HON'BLE DIRECTOR OF PUBLIC WORKS,**
NAIROBI.

150

- Ref: The deletion from the Bill of the Electric Power Amending Ordinance of the provision repealing the emergency legislation of 1919 (NO. 29 of 1919)
- Ref: Hon. Chief Secretary's letter No. 16976/131 of 9.4.20.
- Ref: Secretary of State's despatch No. 344 of 11.3.20.
- Ref: Secretary of State's letter No. 4555/1920 of 4.2.20 to Nairobi Electric Power Co. Ltd.

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Your Excellency,

I have the honour to invite Your Excellency's attention to the correspondence noted above.

In par. 3 of the Secretary of State's letter to the Nairobi Company, of the 4th February, it is stated:- As the representatives of the Company were informed at the discussion the provisions of the temporary Ordinance as to the maintenance of electric supply were taken from the new Ordinance and when the general Ordinance comes into force the Maintenance of Electric Supply Ordinance will be repealed, so that these provisions will not affect the Nairobi Company in view of the fact that they will be exempted from the operation of the general Ordinance.

The counsel on which Government is apparently acting in these matters, viz:- that of the Director of Public Works, is seriously at fault, and continued action on such advice must land Government in undesirable complications, probably involving heavy expenditure.

The inimical effects which may, or rather, probably will result from following this erroneous counsel were brought measurably closer in the proceedings of the Legislative Council, yesterday, the 30.11.20, when, contrary to the (virtual) instructions of the Secretary of State, the provisions repealing the emergency legislation of last year (No. 29 of 1919) was deleted from the Bill of the Amending Ordinance.

I quite understand and can sympathize with the feeling of the non-official member who moved this deletion, but that it should be allowed by Government demonstrated the ineptitude of those responsible for the advice given to Your Excellency. A competent statement of the position, such as the public had reason to expect but did not get, would have shown that there was no need for the deletion of the repealing provision. Further, the action of Council violates the specific undertaking given by the Secretary of State, and therefore is a breach of good faith. Also, although the act would, nominally, be the act of Government, it virtually places in the hands of a Government officer the powers which the Secretary of State's undertaking distinctly says shall belong to the Legislature, if the latter thinks fit, should and where the necessity for the exercise of these powers be contemplated. Further, the predicament in the electric supply question in which Government may be placed

3

Nairobi,
1st December, 1920.

150

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Through, THE HON'BLE DIRECTOR OF PUBLIC WORKS,
N A I R O B I.

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10th April, 1920.

THE HON. ACTING DIRECTOR OF PUBLIC WORKS,
N A I R O B I.

151

Ref: Hon. Agt. Chief Secretary's No. 16976/124 of 27
: Colonial Office telegram of 23/3/20.
: Electric Power Ordinance and position of
: Nairobi Electric Power Co., and Mombasa Electric
: Light and Power Co.

After very careful consideration had been given the contentions of the Nairobi Electric Light and Power Co., by Sir H. Read, assisted by Mr. W.S. Bottomley, Mr. Bush, legal adviser to the Colonial Office, Mr. A.H.P. and Mr. J.H. Rider, technical advisers to the Secretary of State, Sir. E. Northey and myself, and after hearing on the Company's behalf, Mr. Leslie Scott, K.C., M.P., assisted by their Board of Directors and their legal and technical advisers, it was decided by the Secretary of State to exempt the Company from the provisions of the Electric Power Ordinance, 1919, and to require them to perform the contract of 26th July, 1904.

2. The decision of the Secretary of State was made on the recommendation of Mr. J.H. Rider and myself, and was conveyed to Mr. Leslie Scott, for the Company, at a Conference at the Colonial Office on 10th January, 1920, at which all of the above named were present with the exception of Mr. Preece.

3. In the Colonial Office enquiries it was evident that the highly undesirable conditions in the Nairobi district which had resulted from the Company's incompetent conduct would have been precluded if effect had been given to the advice of the Protectorate Government's technical officers. The rectification of the position is made possible by the adoption by the Secretary of State of the recommendation of Mr. Rider and myself, as mentioned.

4. The situation which arises from the Secretary of State's decision is one of somewhat grave urgency which does not permit any room for further error. Officers of the Colonial Office are fully aware and I have assured them that the technical advisers will see both the Colonial Office and Government safely through this situation, and that the advice which will be given, is as follows.

5. The representations made by the Nairobi Company were related so that the Secretary of State had not decided on these at the time I had left London. They have, however, been discussed and I posted my memo. and recommendations on them, from Madeira.

6. The circumstances of these two companies are comparable or are so only in an immaterial degree, and have recommended that Mombasa's case can only be met the immediate application of the Electric Power Ordinance which course, with an incomprehensible lack of insight the Company failed to see, must benefit the public and themselves. Alternatively, if the Government is claiming exemption from the Ordinance and the Secretary of State sees fit to grant their request the public interest must be protected by granting a licence to some one who consequently I cannot conceive any exemption from the provisions of the Electric Power Ordinance, as fore-shadowed by the Colonial Office telegram, being granted them which would accord with my recommendations. Of course

no vital commitment is possible until the Legislative Council adopts the Amending Ordinance.

7. At the same time I find that the urgency which impressed on the Colonial Office is more than ever imperative as the Company have been refusing to connect any new consumers since the 1st December, 1919. Further it will be observed from the letter of the Postmaster General No. P.O.F. of 3th April, 1920, that the Company are illegally continuing to charge Cents 75 per unit instead of Cents 50, the authority for which increased charge, granted by the Hon. The Chief Secretary's letter No. 2159/40 of 28th October, 1915, expired on 10th January 1920. Notice to this effect should be published in the Official Gazette and the Postmaster General advised to refuse payment of this extra charge and to recover the excess already paid.

8. I am fully aware of the course to be followed in the case of the Nairobi Company and I would suggest that Government ask Colonial Office to communicate by telegram the intentions with reference to Mombasa.

Sd/- James McPhain.

MANAGER - ELECTRICITY ENGINEER.

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Edw. J. ...

... DIRECTOR OF MINES.

In September last a complaint was made against me by the Mombasa District Committee and I was notified on the 13th September, 1920 by the Acting Chief Secretary that it was His Excellency's intention to suspend me from office, and was required to furnish an explanation. In discussing the matter with the Director of Public Works, the latter stated that while it would be "catastrophic" for the Service, particularly at this juncture, he thought that His Excellency was already resolved to sever my connection from the Service. Relying on the explanation I had to offer, copy of which is attached, I did not share the view of the Director of Public Works, and forwarded this explanation.

The Director of Public Works took the responsibility of making His Excellency's intention to suspend effective and stopped the payment of my salary. This was only rectified after I called his attention to the Colonial Office Regulations.

I subsequently received a communication from the Acting Chief Secretary to the effect that I had not satisfied His Excellency, who consequently had appointed a Committee to enquire.

I now shared the opinion of the Director of Public Works that it was His Excellency's intention to expel me from the public service, and agreed with the Director of Public Works that the Committee of Enquiry was only appointed to make formal compliance with Clause 56 of the Colonial Office Regulations. In this discussion in which the Director of Public Works agreed with me on the advisability of resigning my post in order to anticipate His Excellency's action of dismissal, the Director of Public Works pointed out that by my resigning it would be possible for Government to make consulting reference to me, whereas, if I suffered dismissal from the Service, that would not be possible.

In view of these opinions as to His Excellency's determination in the matter, no purpose could be served in meeting the Committee. Consequently I immediately tendered my resignation. So far I have only received a verbal communication from the Director of Public Works that my resignation was accepted, although a notice has appeared in the local press, to that effect.

Incidentally, a written complaint had been lodged which His Excellency had taken action, but no copy of same was furnished to me, as required by Clause 57 of Colonial Office Regulations.

In the course of a general discussion on electrical matters, subsequent to my resignation, I suggested to the Director of Public Works, that as Mr. Heywood, who was appointed to assist me, was exceptionally well qualified, and thoroughly capable of carrying out all the work that this Government would ever require, the requirements of Government would be met by advancing him to the position I was vacating. Also that the legislative work on which I had been engaged, and which had occupied the vastly major portion of my time, was finished; that the experience required for work of this nature was only very infrequently found in the engineer, but as the work was done, it was not now wanted; that the Ordinance would not require a lot

of administration; that on the contrary the operation of the Ordinance would entail very little work; (i.e., if that is of a competent nature); that in order to ensure the correct guidance of Government through the initial stages I was willing to accept a Retainer, which would give Government the first call on my professional services, in a Consulting capacity.

The Director of Public Works informed me that he was certain that Government intended to fill my position, and that it would not be contemplated to give me a retainer. However, if Government should ever think such necessary, they might make a reference to me.

In reply, I stated that Government need not count on being able to secure my services for references of that nature.

I have since become aware that while in London, and while this Government had on Staff two electrical engineers, neither of whom contemplated leaving the service, the Director of Public Works was interesting himself in finding electrical engineers with the qualifications, which he thought necessary for the Government Staff.

Approved by the Government 10th June 1920

GOVERNMENT ELECTRICAL ENGINEER.

Kenya Colony.

20th Dec 1920

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GOVERNMENT ELECTRICAL ENGINEER.

Kenya Colony.

On the morning of the 15.12.29, I forwarded to the Acting Chief Secretary, for his advance information, a copy of the above communication and memorandum. About 3.50 p.m. that day, the Director of Public Works who had not been near his office for a considerable time, called.

The foregoing memo. was not mentioned, (specifically, but the object of his visit was, in effect, to say that his version of the discussions referred to in that memo. was that with reference to the Mombasa incident, he had informed me that he had recommended to His Excellency that I should leave the service.

The Director of Public Works neither by word nor deed, until the 15th inst., ever conveyed the slightest intimation that he had taken or would take such a step. On the contrary his demeanour and conversation could not have been otherwise than carefully calculated to impress anyone to the effect that he, certainly, had not been responsible for the step taken by His Excellency. Numerous expressions of commiseration with me as to the "reward" being meted out by an ungrateful service, were coupled by the Director of Public Works to expressions of solicitude and dismay for the public interest and his own Department, as my severance from the public service could not have happened at a worse time, and was calamitous, etc., etc. During one conversation, in reply to my question as to what His Excellency had said, the Director of Public Works replied that His Excellency tacitly declined to discuss the subject, and after only the briefest reference, His Excellency turned the conversation.

If I had been given any intimation of the true attitude of the Director of Public Works it would be foolish to imagine that I would have discussed with him all the points of the reply I could have made to the charge made against me. Also, had I known this, I would certainly have met the Committee appointed by His Excellency, and if I had had any suspicion of that attitude, prior to tendering my resignation, I would have asked His Excellency for an interview. As it was, however, believing that the action was entirely His Excellency's, I was simply puzzled, and under the circumstances concluded that Government service was a good thing to be free from, and consequently I resigned.

While it was only on the 15th inst., that I learned the fact as to the Director of Public Works' recommendation, I began to doubt this sincerely after the interview referred to in paragraph 4, of the above memorandum, when in the course of conversation I said that if I attended the suggested enquiry I would ask for the attendance of the Hon. Acting Chief Secretary to testify to the fact that on the Nairobi Railway Station Affairs, when I was leaving for Mombasa, I enquired if he had any instructions to give me on the subject of the Mombasa District Committee, to which he replied "no." Also, that I would ask for his, the Director of Public Works', attendance to testify (1), that in meeting him at Mombasa on his arrival from England I informed him of the attack made on myself in that day's issue of the "Mombasa Times," a consequence of which I had refused to further discuss the subject, but had consented to make a personal statement solely to refute the attack on my veracity, and (2), as to the work which I had performed in the public interest. In reply the Director of Public Works informed me that as to (1), it was useless to ask him to bear witness to anything done or said on the day of his arrival, and as to (2), the enquiry would be into one specific charge, and other matters, such

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I suggested, would not be admitted.

Consequently, I observed the actions of the Director Public Works with closer discrimination, with the result that my doubts as to his sincerity were increased, and my determination to know the truth is the reason for referring the matter in this communication.

At the interview of the 15th inst., the suspicion which we lately entertained, and which, in view of my former confidence, has given me the most painful shock in my experience, to the effect that the Director of Public Works had long ago resolved to get me out of the office, was confirmed. 156

The reason now being given by the Director of Public Works, as to the Mombasa incident, is a mere excuse. The true reason may be deduced from the facts that I have observed the State operation of power supply, and also it is clear that if such a project did materialize during my service, I would not permit interference from unqualified persons. I have also consistently refused to subordinate my professional opinions, as to what I considered best in the public interest, to his, or to anything but the Higher Policy of Government. The action of Government and the Colonial Office in calling me into consultation, without any intermediary, also, has apparently not been without its effect on his reasons.

Notwithstanding the facts that for over six years, with an unswerving loyalty to himself, I have laboured strenuously in the public interest, with practically no leave, and during my period of leave, and that the work which I have performed was beyond his ability or that of anyone else, to assail, the Director of Public Works, having determined to get me out of the service, appears, as he on the 15th inst., advertently or inadvertently admitted, to have prosecuted enquiries at the Institutions of which I was a member, with the object of discrediting

(I still here remark that the Director of Public Works loses an opportunity of trying to impress on laymen, and out of Government, that these memberships, etc., are qualifications as to fitness. Emphatically, this is the case, as the profession in practice knows to its cost. Incompetent practice notwithstanding accomplishments.)

Although the Director of Public Works thought that he could possibly that would assist his purpose, and only averred that he had been on a mistaken, and (to himself) wrong ground, when I, with any knowledge of what he had done, stated that if I would advance anything to the contrary against me, he did not adopt any of the straightforward courage of impeaching me (with his mistaken conception of qualifications), or asking me for an explanation. Instead of taking any of these steps, the Director of Public Works preferred the opportunity which would enable him to attain his object while putting the responsibility on Government. Eager he was to grasp the first opportunity which would serve his purpose may be judged from the fact that prior to suading Government to act, as was done, the Director of Public Works addressed to me the following communication:-

"September 18th, 1920. It is a matter of some concern to Government that the Colonial Office cable of 16th August, referring to the price asked for the Mombasa Electric Light concern should have appeared in the local papers. (See East Africa Standard, 18th September 1920.)

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The reason now being given by the Director of Public Works, as to the Mombasa incident, is a mere excuse. The true reason may be deduced from the facts that I have exposed the State operation of power supply, and also made it clear that if such a project did materialize during my service, I would not permit interference from unqualified people. I have also consistently refused to subordinate my professional opinions, as to what I considered best in the public interest, to his, or to anything but the Higher Policy of Government. The action of Government and the Colonial Office in calling me into consultation, without any intermediary, also, has a parently not been without its effect on his reasons.

Notwithstanding the facts that for over six years, with an unswerving loyalty to himself, I have laboured continuously in the public interest, with practically no leisure, even during my period of leave, and that the work which I have performed was beyond his ability or that of anyone else, to assail, the Director of Public Works, having determined to get me out of the service, appears, as he on the 15th inst., advertently or inadvertently admitted, to have prosecuted enquiries at the Institutions of which I am a former member, with the object of discrediting me.

(I will here remark that the Director of Public Works thus loses an opportunity of trying to impress on laymen, and out of Government, that these memberships, etc., are qualifications as to fitness. Emphatically, this is not the case, as the profession in practice knows to its cost. Incompetent practice not in counts not accomplishments.)

Although the Director of Public Works thought that he had found something that would assist his purpose (and only discovered that he had been mistaken, and to himself) above ground, when I, with any knowledge of what he was doing, stated to me that he would advance nothing to the complaint (against me) he did not adopt one of the straightforward courses of impeaching me before Government with his mistaken conception of qualifications), or explain me for an explanation. Instead of taking any of these steps, the Director of Public Works preferred to wait for an opportunity which would enable him to attain his object while putting the responsibility on Government. How eager he was to grasp the first opportunity which would serve his purpose may be judged from the fact that prior to persuading Government to act, as was done, the Director of Public Works addressed to me the following communication:-

"September 18th, 1920. It is a matter of some concern to Government that the Colonial Office cable of 18th August, referring to the price asked for the Mombasa Electric Light concern should have appeared in the local papers. (See East Africa Standard, 18th September 1920.)

" 2. In the first case the Acting Director of Public Works states that he was unaware that you were proposing to present any papers from this office to the District Committee, but in any event the proceedings of the District Committee are supposed to be confidential and this newspaper report of proceedings is therefore not understood.

" 3. As Government may now feel itself under an obligation to apologise to the Directors of the Company for divulging the lines of private negotiations with them, I shall be obliged if you will state what you know as to the means by which this cablegram passed into the hands of the press.

Sd/- W. McGregor Ross.

Director of Public Works.

The Director of Public Works had taken the trouble to obtain the elementary facts his enquiry would have been necessary. Moreover, the proceedings of the District Committee are not private. On my enquiry as to whether a reply to this was wanted, the Director of Public Works informed me that it appeared that the District Commissioner was responsible. This was not the case, as I, alone, was responsible, but it may be noted that the "concern to Government" as to apologising to the Company, immediately followed a ground that a more substantial charge was made against

Disappointed in his endeavour to find anything with which it could injure me relating to my past Institution as, I find that the Director of Public Works is circularising the South African Universities on the subject of my education degree in Science. While the result of his labour in this direction will be as before, the effect is a parent and the statement that it is for his "confidential" report, is pure nonsense.

At this juncture, it is immaterial to me what step, the Secretary of State or Government, may take in the matter. Should that become necessary, however, I will communicate, through a competent channel, for the publication of this report.

signed by ...

"2. In the first case the Acting Director of Public Works states that he was unaware that you were proposing to present any papers from this office to the District Committee, but in any event the proceedings of the District Committee are supposed to be confidential and this newspaper report of proceedings is therefore not understood.

"3. As Government may now feel itself under an obligation to apologise to the Directors of the Company for divulging the lines of private negotiations with them, I shall be obliged if you will state what you know as to the means by which this cablegram passed into the hands of the press.

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Sd/- W. McGregor Ross.

Director of Public Works.

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disappointed in his endeavour to find anything with which he could injure me relating to my past Institution. As a result, I find that the Director of Public Works is, in fact, circularising the South African Universities on the subject of my education degree in Science. While the result of his labour in this direction will be as before, the fact is a parent and the statement that it is for his "essential" report, is pure nonsense.

At this juncture, it is immaterial to me what step, the Secretary of State or Government, may take in the matter. Should that become necessary, however, I will have my application, through a competent channel, for the publication of this report.

GOVERNMENT ELECTRICAL ENGINEER.