

X(EA)

Hand 21
for 132

KENYA
42353

432

C.O
42353
REC
26 AUG 20

GOVERNOR
NORTHEY 791

1920
1st JULY

Previous Paper

LEGISLATIVE COUNCIL
FINANCIAL POWERS

Quotes Resolution of Council that expro of public funds derived in country should not be authorised without sanction of Council which should if possible be previously obtained. Consider Council is of opinion that it should possess the power of the purse. Requests comments on position.

Hand 11 11 11
Order to Mr. Cairns 20 Sept 1920

Handwritten: *W. H. Allen*

I am very grateful for any inf. wh. you can give me as to your procedure in regard to authorising expenditure of W. H. Allen, in wh. there are legal Councils - i.e. do you authorise without ref. to the Colony? If so, could the leg. Council refuse to give covering authority? If so, what would then happen? Further, whether financial powers of Council are a matter of right under D.O.C. or a matter of enactment, or a matter of custom only?

Mr. Robinson
2/18/20

Subsequent Paper
1034 21

In order not to cumber up your minutes attach

...the points which you raise. I hope
it is all for your purpose, but if you want further
details on any points, they can of course be further
elaborated, but this is the best I can do without any
elaborate research.

30/1/30

You will need to distinguish carefully
between the delegation to the Legislature
of the power to vote expenditure and
the power to initiate money votes. I
suppose that you will wish to retain the
latter either in the hands of the C. S. S.
or in that of a committee with an
official majority.

In recent years the paramount importance
of the clause in Jamaica has been insisted
upon - to maintain a constant relation
between the Govt. and an employee - in St. Vincent
the official majority has been used to
interfere in appointments. The Council
Court refused to vote the salary of an
officer - a case where the Govt. had
selected a candidate outside the Colony
& the Court decided the appointment of a
local officer. It was of course very
awkward to have to provide for air mail
subscriptions. The appointment was
not on the Court.

You will no doubt consider the
advantages of having a Contingencies
fund from which minor charges may
be met without the necessity of recourse
to the Legislature. In practice it
is impossible for a Governor to avoid
incurring minor expenditure without
consulting the Legislature, but with
a reasonable Legislature a Contingencies
fund is not an absolute necessity as the

Governor himself she can rely upon
obtaining the sanction of the
Legislature subsequently

493

CROFT

Mr Hood

It wd. be very helpful if you could let
me know briefly the position in your
W.A. (C) where you have Leg. Councils -
eg. Gold Coast.

all

5/18/22

~~Mr Parkinson~~

We have complete control in W.A. & the
official majority can vote down the rest of members.

It very seldom is on finance matters. In Cyprus
there is a Civil List governed by Order in Council
but the unofficials could refuse to sanction

anything not on the Civil List, so we have to be cautious
to get the Govt to approve the Council.

The Council must vote the money sooner or
later in all Colonies either by ^{special} vote or by appropriation
Ordinances in which all things must
be included. We should not commit the Govt to
large expense without consulting the Governor.

D 518

~~W.A. Croft~~

Is the position in Nigeria similar, please?

all

1/19/22

Parkinson

There is nothing similar

to Nigeria in this matter [the Governor can ~~dispose of~~ deal with all Protectorate exp^{ts} without consulting any Legislative Council & can decide how much revenue the Legislative Council of the Colony may have to play with].

Your problem however is one on which I may perhaps be allowed to make some observations. What is done in West Indian Colonies with queer old institutions is not very helpful, & we had better confine ourselves to Colonies with a Legislative Council with an official

majority of the ordinary type, & no Fixed Establishment Ordinance. It is necessary to

distinguish between Constitutional Law & Constitutional Practice.

The Constitutional Law is simple & uniform. Put shortly it is that all exp^{ts} out of public funds requires the sanction of -

- (a) the Legislature and
- (b) the S of S.

That ~~sanction~~ ^{sanction} when given is addressed solely to the Governor; and before any officer of the Col Govt (or the C Agents) is authorized to spend public money ~~with~~ he has (or they have) to be authorized to do so, either by the Governor signing a General Warrant, Special Warrant or Requisition or by the S of S authorizing the C Agents to make a payment.

Col Reg 256 lays down that when the Estimates for the year have been passed by the Legislature & the S of S, any further exp^{ts} should be submitted to the Legislature at the earliest opportunity and, if possible, before any expenditure is incurred.

It is here that Constitutional Practice comes in. After my experience in the Eastern Dept, it was rather a shock on coming to the Niger

Dept to find how common was
the practice in the case of the
W Afr Colonies to authorize payments
by the Agents ~~without~~
~~without~~ consulting the
Governor, or ~~new~~ ^{payment of}
salaries without previous
submission to the legislatures,
or creation of new posts and
the engagement of men to
fill them without previous
submission to the legislatures.

The reasons for the difference
in practice are partly ~~caused~~
inexperience, partly the tradition
of the W Afr Dep't which grew
up under Sir R. Anderson of
settling so much here that in
older Colonies would be left
to the Col Gov't, & partly the
extreme tameness of the unofficials
of the W African Legislatures.

A nominated unofficial
member is usually a tamer
member than an elected
unofficial member; and
now you have got elected

unofficial members in Kenya
Colony you will no doubt ¹⁰⁵
have more trouble with the
Legislative Council than in
the past, and will no
doubt adopt more the
Constitutional Practice ~~of~~
in force in the Eastern
Colonies rather than that
in force in W Africa, and
will refrain a good deal
more than hitherto from
sanctioning expenditure first
and asking the Legislative
Council to agree afterwards.

As soon as a Legislative
Council gets to a point at
which it objects to expenditure
being incurred without its
previous approval, it is
advisable that Col Reg 256
should be more literally
followed.

I would suggest
replying that the resolution
is practically a request

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the practice in the case of the
W Afr Colonies to authorize payments
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submission to the Legislature,
or creation of new posts and
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submission to the Legislature.

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replying that the resolution
is practically a request, ~~and~~

that Col Reg 256 should be observed more literally than has sometimes been the case in the past; that the SoS considers that, as the Council have made this request, it should be granted, especially as there is no doubt that it is only by ~~the~~ submission of exp's to the L.C. for approval prior to the exp's being incurred that the full benefit of its advice ~~is~~ is obtainable. But that, as the L.C. will realize, there are occasionally especially in ^{new countries} cases which have to be decided on quickly either by the Govt or by the SoS ~~as~~ before the L.C. can be consulted, & where therefore it is necessary to ask for the approval of the Council after the event. But that the SoS does not anticipate that these will be either

numerous or such as to involve friction between the executive & the legislature.

A) 12/9/2

Arbitrarily

- I had intended in any case to reserve this for your comment: meanwhile I have been collecting up for Mr. Morris (esp: Dept. J).
- I spoke to Sir Canning about this when he called. He said (in effect) that not to let ourselves feel as if we had what we thought they really wanted was a statement falling not only on its merits as to his general control on the Treasury.
- You may have seen a news article in B.S.A. by "H.A.H." - a contemporary review - in a P.S. to the article. The article says that the Govt has since been made a policy - this must mean that in terms of control of admin: all power to the White (para. 15) that the matter will then be explained. [Up to this point the news had been C.S. a point of view - a expressed article dealing with the declaration of war to have in 1914, with it as was mainly binding]
- It will be well, I think, to not to limit the reply to the actual point of financial control.

... say that fact that Kenya is now
a Colony & fact that Dep^y Counsel
now has elected a Minister
do not in effect change the ~~position~~
position in regard to the 1954
with various responsibilities for the
policy to be raised by the C. & G.
C. & G. as for the general administrative
of the Col. & P. - but as matters
of fact will continue to consult
the Col. & G. on all matters of
policy - & that as regards the
question of exp^{ts} as in the Harding's
minutes.

Alfred
12/9/50

To: Griffiths

The point at issue is clearly
brought out in the Harding's minutes.
The difficulty is that Kenya is one of
a group - the most advanced
constitutionally, but constitutionally
having to be treated in the same way
as the rest.

In addition, the new practice
will contain more for Kenya - the
Council will not sit at all regularly.

In writing as the Parliament
probably we should make it clear
that in understanding that the
Council shall be consulted in advance

on financial matters & election
period the S. D. S.

- (a) that not to take the responsibility
in any way has control of the
financial proposals of the Council
- (b) must reserve his independent right
of opinion, of the Council which
shall be created under the Council
with financial proposals considered
submitted by himself & the Ex^{ts} &
- (c) must bring in his own laws, the
decision in any case whether a
question is one of policy, strictly or
not, in addition financial
consideration, ^{which} ~~and~~ under it himself
to consult the Council in advance

12/9/50

I think we had much better
conjure ourselves to the issue they
raise & not try to proliferate the
spheres of the V. of P. & of the
Key. In some respects may be
spelled against us later on.
I would reply as in the Harding's
minutes. That will suffice for the
present, but I am not sure.

In writing while considering whether
the institution of a Finance Com^{tee}
of the Leg. Co. on the lines in force
in Germany & Czechoslovakia should not
simplify & expedite procedure &
make the Gov's Fin. a happier one.
Such a Com. would consist of all
the unoff. officials, or at any rate
a large majority of them, & the
Finance & Col. Sec. & would
examine all financial measures
before submission to the Council
discussion is easier & far more
free in the Com., the explanations
there given of tax increases
oppositions, & since the Com. has
agreed financial business in full
Council business much formal
& doubt the wisdom of expecting
such a Com. at present as
the European unoff. officials would
loathe it as a trick to
deprive them of their nearly un-
righted status & when they
find it impossible it is
to control finance in full

Council they may be glad to
agree. 418

In small colonies like N. Rhodesia
the Gov. of tax circulation papers
to the unoff. officials resident in
Belgium for their services on financial
questions of detail. If they agree
he knows he is safe & easy.
I am not sure whether this would
be possible in Kenya & if so, it
might be suggested confidentially to
Sir E. Northey as a means of getting
through minor financial proposals
not, of course, those involving large
questions of policy or tax
of money.

And despite the delay & fear the
S. Dept. will have to get
to communicate with the Gov.
before expending any money not on
the territories or varying his
proposals for appointments, etc. as we
always have to do in N. Rhodesia
matters.

W. G. G. G.

Send on 12 copy draft for 20 Jan, 49

I don't think the arrangement was so hard
to apply to the things.

- (c) Only a small proportion of the municipal
members live within any one of the
wards.
- (d) In the House the municipal members
are the only ones on the Council &
must be regarded as the things
There is no official majority which
has to be freely made. To Council
some (or all) of the municipal
members before hand means that
of the House the latter would
be taken to Council in order that
they may be voted down. This
will probably make more sense than
that if they are enfranchised
with a fair example for which
the Gov. can address himself to
the people.

Oct 15 9.20

✓ I'm afraid that local
will make the application

Oct 15 9.20

above

Mr. H. R. G. A.

439

I should like to see the
paper - 42359 - 8 months

While it is proper and understood
that the Population Council should be
consulted regarding financial items
little afraid of the result.

Things have not been given any
measure of responsible Government and
the executive and financial control
rest in absolute, in the Executive & the
S. of S. That control can only be
maintained and improved if the
Council has the official majority
freely, not only shall important
questions for which we are claimed
but also in minor matters where, e.g.,
the Gov. is the S. of S. cons. the control
is necessary.

I suggest that a small committee
be sent to be the authority to help the
Chair. Otherwise we may drift into
a position which will be lost control.
I think the representative character
of the institution is essential.

Mr. H. R. G. A.
Oct 15 9.20

Completed

Oct 22 1920

J.H. [unclear]

1920

28/5/20

Financial Powers of West Indian Legislatures.

The Secretary of State has financial control in Trinidad, the Windward Islands and the Leeward Islands. Generally speaking, the Legislative Councils in these Colonies comprise equal numbers of official and unofficial members, but in some cases there is an official majority of one. Where the numbers are equal, the Governor has a casting vote, so that as a matter of fact any expenditure can be carried by the official vote. This does not mean, however, that the Secretary of State is in the habit of riding rough shod over the Legislature in the matter of expenditure; and except ~~with~~ ⁱⁿ what one may term more or less routine items, it is the practice to consult the Legislative Council before making expenditure, certainly expenditure of any magnitude.

In the remaining colonies, viz., Bermuda, Bahamas, Barbados, British Honduras, British Guiana and Jamaica financial control is vested in the Legislature, and with the exception of British Honduras, the legislatures in these colonies are either wholly or partially elective. I append a short note in each case:

British Honduras: Since 1913 the Council has consisted of five official and seven unofficial members, the latter being appointed by the Crown. The unofficial members are therefore in a position to refuse to authorise expenditure.

Bahamas: The House of Assembly consists of 25 members all of whom are elected, and has complete control over the finances of the colony with the exception of the Crown Funds (and I may say that no one in his senses would wish to accept any responsibility for the finances of the Bahamas).

(It is to be noted that at times from certain sources of revenue or at other times the absolute control of the Dept. may rest upon the Council at times.)

Senate: The House of Assembly consists of 36 elected members. The Colony is self-governing for all practical purposes.

Executive: The House of Assembly consists of 24 elected members. The Executive Committee, consisting of the members of the Executive Council, one member of the Legislative Council and four members of the House of Assembly (appointed by the Governor, introduces all money votes, prepares estimates and initiates all Government measures but the ^{matter of the Civil List and the} authorization of expenditure *is with the House of Assembly.*

British Cabinet: The Council of State consists of the Governor, seven Colonial Members, and eight elected members and six financial representatives who are elected officials. The Council of State has the power of (1) imposing taxes and auditing the public accounts and (2) voting freely and without reserve the items on the annual estimates prepared by the Governor and Executive Council. The first of these powers dates from 1756, while the second is conferred periodically by Order in Council on each renewal of the Civil List and is co-existent with the Civil List. The Civil List was last renewed for five years from the 1st of January 1919. The power of the House is therefore resident in the elected representatives except so far as concerns the items specified in the Civil List. These items comprise the salaries of the Principal Officials and the Governor with only a casting vote and five ex-officio

members and such other persons not exceeding 12 in number as his Majesty may appoint and 14 elected members. Some of the nominated members are officials. This Constitution was laid down in the Order in Council of 19th May 1884 and in a similar Order in Council of 18th Feb 1890. The first and 14th clauses of the 1884 Order in Council were that with a reservation, not affecting elected members, the votes of two-thirds of the elected members shall govern the decisions of the Council in financial questions and that the ordinances of such of the elected members of Great Sessions shall not be over-ruled unless in either case the Governor declares that, in his opinion, the contrary decision is of great and urgent importance to the public interest. Whenever the Governor takes such a declaration, he is required to report it with his reasons to the Secretary of State. In forwarding the Order in Council in a despatch dated the 15th May 1884 the Secretary of State said: "I trust it will be rarely or never necessary for the Governor to exercise the power of over-ruled the votes of the elected members, but it must be clear, in the event of his being a duty to do so, in his opinion, the public interest absolutely requires it." In practice on a financial resolution, if nine of the 14 members vote one way, the vote of the 14th member and 14th clause of the Order in Council is not taken.

In the case of the Colonies where the Secretary of State has no control, particularly those which are not Colonies, no expenditure could be authorized.

without consulting the Colony. If such expenditure were incurred, the Legislative Council could, of course, refuse to sanction it, and in that case, it is supposed, somebody would have to be surcharged. Cases have occurred in which the local executive has committed itself to expenditure without the sanction of the Council, and in such a case there is nothing for the Governor to do but leave himself at the mercy of the Council.

1922

3/18/22

No. 191

7/ July, 1920.

C O
42353
Re
66 26 JUC 20

My Lord,

I have the honour to inform Your Lordship that the following resolution was passed by the Legislative Council when dealing with the Appropriation Bill in General Committee on the 13th of June last by 23 votes to 3 :-

- * That in the opinion of this Honourable Council, more particularly in view of the
- * recent change in its constitution,
- * expenditure of public funds derived in
- * this country should not be authorised
- * without the sanction of this Honourable
- * Council, which should when possible be
- * previously obtained. That a copy of
- * this Resolution be forwarded to His
- * Majesty's Secretary of State for the
- * Colonies with a covering despatch
- * explaining the reasons for its introduc-
- * tion."

2. The occasion of this Resolution was a proposal by the Treasurer to increase the salary of the Electrical Engineer of the Public Works Department by £100, raising it to £700 per annum, in view of the circumstances to

which

RIGHT HONOURABLE
VISCOUNT MILNER, F.C., G.C.B., G.C.M.G., Ac., Ac.,
SECRETARY OF STATE FOR THE COLONIES,
DOWING STREET,
LONDON, S.W.

NO. 791

27 JULY, 1920.

C O
42353
RE
26 AUG 20

My Lord,

I have the honour to inform Your Lordship that the following resolution was passed by the Legislative Council when dealing with the Appropriation Bill in General Committee on the 12th of June last by 33 votes to 3 :-

- That in the opinion of this Honourable Council, more particularly in view of the
- recent change in its constitution,
- expenditure of public funds derived in
- this country should not be authorised
- without the sanction of this Honourable Council, which should when possible be
- previously obtained. That a copy of
- this Resolution be forwarded to His
- Majesty's Secretary of State for the
- Colonies with a covering despatch
- explaining the reasons for its introduc-
- tion."

2. The occasion of this Resolution was a proposal by the Treasurer to increase the salary of the Electrical Engineer of the Public Works Department by £100, raising it to £700 per annum, in view of the circumstances to

which

which Your Lordship's attention was invited in Sir Charles Bowring's despatch No. 484 of the 11th of May 1920.

Table
6463

3. While this increase was approved by a majority, the opinion appeared to prevail that if the Government was committed to expenditure without previous reference to the Protectorate, the value of local advice in such matters would be lost, and the powers of control over the expenditure, which have been vested in the Legislative Council, would be curtailed.

4. I do not know to what extent Your Lordship is prepared to recognise the financial powers thus claimed by the Council, but that body, or at any rate the unofficial members thereof, certainly considers that it should possess the "power of the purse" and is inclined to be jealous of any attempt to infringe the privilege. I should be very grateful for Your Lordship's comments on the position.

I have the honour to be,
Your Lordship's
humble, obedient servant,

Edward ...

GOVERNOR.

17 Sept 1920

DRAFT.

No 1366

Gov. Bentley

MINUTE.

Mr. J. H. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

I have ... set the
 receipt of your despatch 791
 of the 21st of July, in which
 you request my comments on
 resolution of the Legislative
 Council expressing the opinion
 that expenditure of public
 funds derived in the
 Colony should not be
 authorized without the consent
 of the Council, which should,
 when possible, be previously
 obtained.

2. This ...
 respectfully request that
 the provisions of ...

1/2

no. 256 should be ~~more~~ observed
more liberally in future than has
^{previously} been the case in the past
and I consider that as the
legislative Council must make
this request, it should be granted,
especially as there is no doubt
that it is only by submission
of expenditure to the Council for
approval prior to the expenditure
being incurred that the full
benefit of the Council's advice
is obtainable.

I trust the Council will realize,
however, that such cases occasionally
arise, especially in new countries, which
have to be decided or finally settled
by the King by the S. P. before the
legislative Council can be consulted,
and where, therefore, it is necessary
to ask for the approval of the Council
after the event. I do not anticipate,
however, that such cases will be other than
a few, as to involve friction between the Executive & the Legislature.

no. 256 would be more stressed
 and generally a feature than has
 been the case in the past
 and I consider that as the
 Legislative Council must make
 the request, it should be granted,
 especially as there is no doubt
 that it is only by submission
 of requests to the Council for
 approval prior to the expenditure
 being incurred that the full
 benefit of the Council's advice
 is obtainable.

3. As the Council will generally
 be in session, these are ~~several~~ ^{new} ^{issues},
 especially the new ^{issues} ^{cases} which
 have to be decided ^{quickly} ^{either}
 by the Govt or by the S. of C. before the
 Legislative Council can be consulted,
 where, therefore, it is necessary
 to ask for the ^{approval} ^{of the Council}
 after ^{the} ^{event} ^{of the} ^{approval}
 having ^{been} ^{given} ^{by} ^{the} ^{other} ^{members}
 or men as to involve questions between the members of the Govt.

42/42353 Kenya

Downing Street

September 1920.

Sir,

With reference to my despatch No. 1588
 of the 17th of September, I have the honour

to inform you that, while I readily agree that
 the approval of the Legislative Council of
 Kenya should, wherever possible, be obtained
 before expenditure is incurred, there are
 certain considerations attending this arrange-
 ment to which it is important that you should
 give careful attention.

The recent changes in the constitution
 of the country do not give to it any measure
 of responsible government, and the control
 of executive and financial matters, as hitherto,
 rests, as between the Governor and the Secretary of State
 who cannot divest themselves of the responsibility
 for that control.

3. To ensure that the control is in fact
 exercised by the executive government, it is
 essential that the majority of official members
 in the Legislative Council should be effective,
 and that those members should be under no
 misapprehension as to their duty to support
 the views and proposals of the Government.

DRAFT

KENYA
SECRET

MINUTE

Mr. Bottomley.

Mr. 24/9/20

Mr.

Mr. Grindell.

Sir H. Lushington.

+ Sir H. Ross 25/9/20

Sir G. Balfour.

X Col. Asbery 25/9/20

Lord Milner.

for comment
 in conference
 not proposed
 to be made
 from the
 Govt.

only when
 the
 the
 the

Recommendation of the Council.

~~It is suggested that those bills should not be opposed.~~

4. I do not suggest that the official members should in all cases be instructed ^{how} to vote. Such a practice would be distasteful both to you and to them and could not fail to be resented by the unofficial members. On the other hand, it would be a disgraceful objectionable to be compelled to reintroduce in the Council a motion which had previously been rejected in order that it might be ferred through by the official vote, and I

am confident that you will view this, for the sake of the dignity of the Council, as most desirable that such a contingency should be avoided.