

1935.

Kenya.

No. 38027.

SUBJECT

C0533/455

The Licensing Ordinance.

Previous

23022/34.

Subsequent

1936.

C.S.
Licensing Ordinance.
Shew to Libary.

Pol. Secretary 3/4
Trans. 12 copies of Select Committee of Leg. Council on the
Licensing Bill
Await the Ordinance -
C.A. P...
27/1/35
at once

Ward
J.M.

2. Extract from Gazette No. 57 of 27th Nov. 1934.
(Govt. Notice No. 769.)

?
L.B. ...
6/2/35
C.A. P...
6/2/35
L.B. ...
6/2

3. D/Gov. 46. 18th Jan. 3.

Trans. two authenticated copies of the licensing ordoc. 63 of 1934, together with Legal report by Attorney Genl
(1 copy of ordoc. sent to Liby)

See No 17
23027/34

In July 1934 the Licensing Commissioners, appointed under Section 15 of Ordinance XLI of 1933, in reporting on the working of the Ordinance up to the 25th of June 1934, referred to the very considerable difficulties which had arisen not only in interpreting the actual terms of the Ordinance but also in providing a measure of equity and giving effect to the known intentions of the Ordinance. In submitting the report the Governor pointed out that as a revenue measure the Ordinance had not come up to expectations. He proposed, therefore, to appoint a committee to consider the question of replacing the Ordinance by

C.I.
Licensing Ordinance.
Shew to Libary.

1. Pub. Secretary 3/11

24th Dec 34

Trans. 12 copies of Select Committee of Leg. Council on the Licensing Bill

Await the Ordinance -
C.A. Swainson: 20
24/1/35
at once

Ward
DM

2. Extract from Gazette No. 57 of 27th Nov. 1934.
(Govt. Notice No. 769.)

? Public
L.B. Swainson
6/2/35
C.A. Swainson: 20
6/2/35

L.B. Swainson
6/2

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Trans. two authenticated copies of the Licensing Ordnc. 63 of 1934, together with Legal report by Attorney Genl
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See No 17
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In July 1934 the Licensing Commissioners, appointed under Section 15 of Ordinance XLI of 1933, in reporting on the working of the Ordinance up to the 25th of June 1934, referred to the very considerable difficulties which had arisen not only in interpreting the actual terms of the Ordinance but also in providing a measure of equity and giving effect to the known intentions of the Ordinance. In submitting the report the Governor pointed out that as a revenue measure the Ordinance had not come up to expectations. He proposed, therefore, to appoint a committee to consider the question of replacing the Ordinance by

one calculated to prove more satisfactory.

The Committee consisting of the following gentlemen was duly appointed:-

Mr.G.Walsh (Treasurer-Chairman)
Mr.H.R.Montgomery (Chief Native Commissioner)
Mr.T.D.H.Bruce (Solicitor General)
Major F.W.Cavendish-Bentinck
Mr.R.S.Campbell (representing the Mombasa Chamber of Commerce)
Mr.E.P.Gill (Chartered Accountant)
Mr.J.B.Pandya (representing the Federation of Indian Chambers of Commerce)
Mr.T.A.Wood (representing the Nairobi Chamber of Commerce)
Secretary Mr.J.K.Ramsden (Assistant Treasurer and acting O. in C. of Revenue Office)

and their Report dated the 19th of November, 1934, with a dissenting minute by Mr.Pandya, and the text of the new Bill were received here on the 28th of December.

The Committee's invitations to the public to give verbal evidence or to submit written memoranda met with very little response. Five letters and memoranda were received and only one request to give verbal evidence was made, (by the Nairobi Traders Association). Ordinance No.LXIII of 1934 closely follows the recommendations of the Committee, the only departures of any consequence being:-

(a) Section 6(1). Period of Validity of Licences.

The Committee's recommendation envisaged provision for half-yearly licences only in cases where the annual fee does not exceed 300 Shillings. The Ordinance provides that half-yearly licences may be issued where the annual fee is 100 Shillings.

(b) Section 22. Duration of the Ordinance.

Section 22

Section 22 provides that the Ordinance shall continue in force until the 31st of December 1935 and shall then expire, provided that the Governor may by proclamation, with the approval of the Legislative Council, declare that the Ordinance shall remain in force until a date to be fixed by such proclamation. The period of duration was inserted at the request of the Unofficial Members of the Legislative Council. Members of the Representative Committee, at any rate, regarded the Licensing Ordinance as a permanent measure. See in particular Mr.Pandya's remarks on page 17 of the Report. The Licensing Ordinance is, of course, one of the alternative revenue measures and until it has been definitely established that those measures are unsatisfactory there seems no harm in providing for the temporary duration of Ordinance LXIII.

(c) Schedule of Fees.

Certain of the licence fees recommended by the Representative Committee were altered in the passage of the Bill through the Legislative Council (see the pencil markings on pages 28-30 of the Committee's report in this connection). The most important changes are those in schedule 6, - Business Licences. I annex a note showing Mr. Pandya's recommendations compared with those of the majority of the Committee and those as passed by the Legislative Council. I have no doubt that we shall receive representations from the Indians on this point.

It will be remembered that the dentists in Kenya strongly protested against their inclusion within

within the scope of the 1933 Ordinance while medical practitioners were not so included. The Committee's views on this point are recorded in page 36 of their Report. Medical practitioners are no longer exempt and are to pay 300 Shillings for a licence the same as dentists.

In submitting the Ordinance the Governor has not included a copy of the Legislative Council's Debate or of the Select Committee's Report, but in view of the exhaustive consideration given to the new licensing legislation by the Representative Committee? we may, subject to legal objections, signify non-disallowance.

A. Grossmith
19.2.35

The addendum on p. 15 of the Report affords refreshing evidence that the services of Tanganyika officials are occasionally appreciated by the unaffiliated community!

The amended Ord. creates still further divergence from the Tanganyika model, but, as the Report (para. 7) points out, this is inevitable

? No proposal

A. Grossmith
19/2

No legal observations

W. D. J. J.

4. British Medical Assoc. 4.3.35 18 February 35
Encls. copy of notes with the Gov. regarding the effect of Licensing Ordinance as regards medical practitioners suggests amendments in connection therewith.
This Ordinance is to replace the original

hasty Trade Licensing Ordinance which was passed as part of the alternative taxation measures. The report of the Committee is quite interesting and the amount of general agreement reached is very satisfactory. The working of the Kenya Licensing Ordinance has we know caused a good deal of trouble and not been very satisfactory. Accordingly the Governor appointed a large Committee to go into the matter and make recommendations and the Ordinance now submitted is the result of their deliberations. As regards Mr. Pandya's dissent, Mr. Grossmith's Note shows clearly the differences between his suggestions, those of the Committee and the Ordinance as passed. The main point is that Mr. Pandya in the interests of the small Indian trader wants to make the lower limits easier. In the case of the bottom class of all Mr. Pandya proposed that a licence where stock was under £100 in value should be either 30/- or 10/- according to place. The Committee suggested that the low limit should be £75 and the Council adopted Mr. Pandya's proposal. Then where stock was between £100 and £300 Mr. Pandya proposed a fee of 50/- and the Committee of 75/- which was accepted by Council. Mr. Pandya introduced a fresh classification between £300 and £500 with a 75/- fee which was not accepted either by the Committee or by Council. In one respect Council goes further than the Committee because that body fixed the top limit for stock at £2,000 or over with a fee of 600/- while Council have brought

brought in further steps and the 600/- Licence does not apply unless the stock exceeds £5,000 in value.

I do not think that there is any need for comment. Council has accepted Mr. Pandya's proposal as regards the bottom class of all which is probably the one with which he was most concerned.

It is interesting to see that Mr. Pandya regards the Ordinance as a permanent measure of taxation, which indeed it is, although the enlargement of its scope and increase of the rates of licence form part of the alternative taxation proposals in 1933. However, at the end of this year Kenya will be in a position to decide whether or not it will have to be continued.

The Ordinance includes medical practitioners along with dentists. In the first edition dentists had been included among the list of professions requiring to take out a licence and medical practitioners had been exempted. The dentists objected to this on the ground of unfair discrimination so the Committee has very properly recommended that medical practitioners should be included also. As a result the medical practitioners are up in arms. They sent a letter to the Colonial Secretary in December and a deputation of them appeared before the Committee, whose Report, however, does not mention the fact. In the letter dated 18th December they put forward certain arguments against their inclusion

which

which can only be described as ridiculous. These are

(1) That medical practitioners are already licensed by the General Medical Council and have to be registered under the local Ordinance and pay registration fees, and they "strongly protest against being subjected to any further local restrictions". The answer to that is that they might as well object to paying income tax. The proposal for increasing the scope of the Trade Licensing Ordinance was put forward as ^{one of several} an alternative to income tax by the unofficial population of Kenya and the medical practitioner cannot have it both ways.

(2) "That it is an accepted principle that the primary object of raising revenue by means of licence fees is to provide funds for purposes of control and that such a system shall not be used as a method of increasing general revenue." Well, the short answer to that is that whatever the principle may be, and I don't admit that it is as they say, in this particular case licences are imposed as a means for raising revenue as an alternative to income tax.

(3) "That the imposition of such taxation will discourage medical practise in the colony and so be detrimental to the public health of the colony and will prevent practitioners from further practise in the colony". This only needs to be looked at. They might as well object to paying house rent or claim to be maintained free at the public expense. I am quite surprised that even a British Medical

Association

Association even in Kenya could put forward such a statement seriously.

(4) "That it is undesirable to impose an annual licensing fee which appears to differ in its principles and/ ^{aims} from the principle of licensing a profession and that the present is an inopportune time to impose such fees in view of the large amount of work..... from which remuneration is neither expected nor received". This again means just nothing. As I have said above the licensing fees have been imposed in order to raise revenue.

In the letter which they have sent to the Governor, a copy of which has been sent to Sir T. Stanton, they say that medical practitioners won't apply for exemption and rather than do such a lowering thing to their dignity will cease to practise. Some of them have stated that they would refuse exemption even if offered to them. This sort of attitude is, I think, ridiculous and it is certainly not in accord with the traditions of the medical profession as I know them to refuse medical assistance when there is no one else from whom it can be obtained.

We can signify non-disallowance of the Ordinance and wait to get the doctors' protest officially, and in the meantime Sir T. Stanton might perhaps reply to the British Medical Association as per draft herewith.

J.L.O. 762
8.3.35

5 To Dr. R. Forbes (3 annul) etc. 13/3/35

Sir C. Bottomley
Please see above.

J.L.O. 762
14.3.

I agree that we can signify
non-disallowance.

Any objections there may be
will have nothing by that having
been done.

[No need to say anything to S.O. etc.]

J.L.O.
14.3.35

Noted
F. Hill
Library
28/3/35

To Kenya 147 (3 annul) G/3 15 MAR 1935

Subject of British Medical Assocn. 11th March 35.
Re: No 5 & state information therein will be considered
together with any representations received from Kenya.

DESTROYED UNDER STATUTE

Put by
C.K. Harrison
14/3

Signature

S. Bl. Secretary 3pm

19th Jan 35

Trans. 12 printed copies of Ordinance NO 62/111 of 1934

DESTROYED UNDER STATUTE

Shipped to library

Seen
Library
28/3/35

Put by
C.K. Harrison
27/3/35

Signature

D. C. Hill 10. May '35.
 States that he will call with D. Paterson, Dr. Gilkes on
 Monday next.
 H.S. Flood

D^r. W. Paterson and D^r. C. Hill
 of the B.M.A. with D^r. Gilkes saw
 us to-day about this. You pointed
 out that no formal despatch
 from Kenya had yet been
 received. D^r. Hill read to us
 letters exchanged between the
 local branch of the B.M.A. and
 the Kenya Secretariat but in
 these there was no mention of
 an appeal to the Socy. You said
 that in these circumstances there
 was nothing for us to consider here.

The deputation made a great
 point of the loss to Kenya of the
 professional services of D^r. Lagrange
 and others who would refuse to
 apply for exemption. I suggested
 that the Socy. might himself
 recommend exemption in such
 cases.

D^r. Hill will reply to the

Kenya branch saying that if
 they wish the question to be
 considered here they must
 petition through the Governour.
 ? wait

R. Stanton
 13. 5. 35

I didn't like the "deputation" at all,
 with the exception of Dr. Paterson. Dr. Gilkes
 looked rather like a disturbed ferret, and, after
 seeing Dr. Hill, it is quite easy to understand why
 he is Secretary to the B.M.A. The position is that
 the Kenya branch of the Association has received
 a reply to their memorial, and has sent a copy of
 said reply to the B.M.A. They have done nothing
 further and I pointed out that until they did, we
 could only assume that they accepted the situation.
 If they want the matter carrying ^{ied} further they must
 put up the memorial through the Government, though
 if the B.M.A. choose to write to us and ask what
 the position is we can then refer the matter to
 the O.A.G.

They talked at great length about the
 ethics, etiquette, and professional standpoint of
 the medical profession and left me singularly
 cold. I have been in close association with
 members of the medical profession for nearly
 forty-nine years and I object to a person like
 Dr. Hill trying to tell me about professional
 standpoints. The main points they had to urge

were that people in outlying districts who were primarily settlers and only secondarily doctors, but who at present did an immense amount of work for nothing and only charged fees where the patient could afford it, (medical men seem to suffer some purifying and uplifting influence when they get to Kenya because I never heard of a medical man who didn't send in a bill if he thought he would get it) would not make as much as £15 a year out of fees and, therefore, if they had to pay a £15 licence would actually be out of pocket. The result would be that they would give up treating anybody rather than lower themselves by applying for exemption. Much the same applied to the great consultants Dr. Jex-Blake, Dr. Sequeira and Dr. Gordon, who it is stated gave their services very largely for nothing but have now decided to cease placing their knowledge at the disposal of humanity because they are too proud to seek exemption. I pointed out that in the case of ^{men} practising in an outlying district where it was quite obvious that he was not really a practising physician, it would be open to the Provincial Commissioner or to the Director of Medical Services, assuming that the latter was doing his job, to represent to Government that so-and-so did a lot of medical practice but was not dependent on it and could not make any money out of it, and that it would be to the advantage of the community that he should not

be

be induced to curtail his activities, in which case no doubt the Governor would proceed to exempt him from payment of the licence as there is full power to do under Section 17(2) of the Ordinance. They still seemed to think that there was something derogatory and undignified about suggesting that they didn't really practise medicine or didn't make much out of it, and I could not help thinking that when it is a case of getting fees the honour of the medical profession very frequently is summed up in the old Latin tag "pecunia non olet". In point of fact, as distinct from gasconading, I very much doubt whether there will be ten medical men in Kenya who could get exemption on the ground that they didn't really practise, and this ten will include the three consultants mentioned above, and what I suspect is that the ^{local} Association has been perfectly satisfied by the Government's reply, and, what is much more to the point, by the actual position of affairs now. If there is any hardship among the population generally we can bet that the European unofficial members will take it up.

No action needed.

J. S. W. Flood

14.5.35.

Dr. Peterson, as a member of F. X. Co., is in an odd position. So by the way are the "business" doctors (except the three consultants who, I hope, will change their attitude): I doubt if the rank file of the profession in Kenya will have much sympathy with them as, in many cases at least, they must be in the way of the working doctor. This will stand on

at this stage; there is nothing before
the S. C. at the moment.

Perby

W.C.S.

15.6.35

at once.

- DM
10. A/Governor Wade 372. _____ 29th July 35
Trans. 2 authenticated & 12 plain copies of The Licensing
(Amend.) Ordinance No 14 of 1935.

Subject to legal views

? Approve G.S.

C. J. G. with

23/8/35

No. 12/3/35

W.C.S.

24. VIII

Director
Kenya

Noted
L. Hill
Library
29. 9. 35

11 To Kenya 658 (10 amended) 6/3 28 AUG 1935

D. O.'Brien

Sir T. Stanton

In the Kenya Legislative Council of

1 July the Govt. stated that all medical men
and dentists would be exempted from payment of
licence fees by order under § 17 (2). So we may
assume that this has gone to sleep for good. It
will be useful later because we can argue with
the B. M. A. that it shows how local action in the
Colony is preferable to blasting in Downing Street!

No action needed but you should see
the fact.

J. E. W. Flood

7. 11.

T. Stanton
8. 11. 35

W. J. Hill
8/11

Library (Legal) ~~SA~~

(Debates 1 July 1935
p. 103)
in 38032/35.

KENYA.

No. 372



10⁹
GOVERNMENT HOUSE,
NAIROBI,
KENYA.



29 JULY, 1935.

Sir,

Governor (C)
I have the honour to transmit herewith two authenticated and twelve printed copies of an Ordinance entitled "The Licensing (Amendment) Ordinance 1935", which duly passed its third reading in Legislative Council on 1st July 1935, and to which I assented in His Majesty's name on 24th July 1935 together with a copy of the Legal Report by the Attorney General.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Adm. Wade

ACTING GOVERNOR.

THE RIGHT HONOURABLE,
MALCOLM MACDONALD, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.



Colony and Protectorate of Kenya.

IN THE TWENTY-SIXTH YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE V.

ARMIGEL DE VINS WADE, C.M.G., O.B.E.,
Acting Governor.

Assented to in His Majesty's
name this 24 day of July
1935.

A. de V. WADE

Acting Governor.

**AN ORDINANCE TO AMEND THE LICENSING
ORDINANCE, 1934**

ORDINANCE No. XIV of 1935

An Ordinance to Amend the Licensing Ordinance, 1934.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Licensing (Amendment) Ordinance, 1935, and shall be read as one with the Licensing Ordinance, 1934, hereinafter referred to as the Principal Ordinance, and shall be deemed to have come into operation on the first day of January, 1935.

Short title and date of commencement. No. 63 of 1934.

2. Item 7 of Schedule C of the Principal Ordinance is hereby deleted and the following is substituted therefor:—

Repeal and replacement of Item 7 of Schedule C of the Principal Ordinance.

Per annum.

"7. A licence to carry on all or any of the businesses described in this Schedule and in Schedule B ... Sh. 1,200

Provided that such licence shall not authorize the carrying on at more than one place of business of any of the businesses appearing as Items 1, 2 and 3 of this Schedule, that is to say, the business of a petty dealer, of a trader, or of a manufacturer."

Passed in the Legislative Council the first day of July, in the year of our Lord one thousand nine hundred and thirty-five.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

J. F. G. TROUGHTON

Acting Clerk of the Legislative Council.

LEGAL REPORT

THE LICENSING (AMENDMENT) BILL, 1935

2/28/27/35

It was always the intention that the "omnibus" licence provided for in Item 7 of Schedule C to the Principal Ordinance should not cover more than one place of business of a petty dealer, or of a trader, or of a manufacturer. As the Ordinance stands at present, it is not free from doubt as to whether this intention is capable of being carried out under the present wording of the law. Clause 2 gives effect to the intention beyond doubt.

A Comparative Table is attached.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,
3rd July, 1935.

W. H. Hanaf
~~ATTORNEY GENERAL~~

COMPARATIVE TABLE

THE LICENSING (AMENDMENT) BILL, 1935.

Clause.	Remarks
1.	Short title.
2.	New.

C. O.

Mr. Flood.

Handwritten signature
11. 3. 35

For Sir T. Stanton's signature.

Mr.

Mr. Parkinson.

Sir G. Tomlinson

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.
R 12 MAR
D 121

Downing Street,
13 March, 1935.

Dear FORBES,

Thank you for your letter

DRAFT.

~~THE DEPUTY MEDICAL SECRETARY,
BRITISH MEDICAL ASSOCIATION.~~

Dr. R. FORBES

2652
of the 18th of February forwarding a copy of a communication from the Kenya branch of the British Medical Association. We have not yet received the memorial through the Governor and I do not expect we shall for some time. Until it is received with the Governor's comments it will not be possible for any official action to be taken.

I may ~~as well~~ say, however, for your information, that the ~~revised~~ Licensing Ordinance in Kenya was part of a series of measures for raising revenue which were brought forward at the instance of the unofficial community in 1933 as an alternative

FURTHER ACTION.

to a general Income Tax which had been proposed. In the circumstances the new licences and new rates of fees must be regarded as deliberately intended to raise revenue.

The Governor appointed a strong Committee locally with official and unofficial members on it to consider the working of the first Ordinance as passed in 1933 and the revised enactment follows their recommendations.

I do not think myself that there is much substance in the complaint ^(of the local Association) and if you examine ^{closely} the grounds put forward in their ^(to the Colonial Secretary) letter of the 18th December I think you will probably be disposed to agree with me.

Yours sincerely,
(Sd.) A. T. Stanton

Scottish Office:

7, Drumhugh Gardens, Edinburgh.

Irish Office:

18, Kildare Street, Dublin.

Australian Federal Council:

B.M.A. Building, 135, Macquarie Street,
Sydney, N.S.W.

Federal Council of the Medical Association of

South Africa (British Medical Association):
Box 643, Cape Town.

New Zealand Branch:

Box 156, Wellington.

Affiliated to B.M.A.:

Canadian Medical Association:

184, College Street, Toronto.

British Medical Association

(FOUNDED 1832)

Medical Secretary:

G. C. ANDERSON, M.D.

Assistant Medical Secretaries:

A. D. MACPHERSON, M.A., M.B., C.M.
C. HILL, M.A., M.B., B.Ch., D.P.H.

Telegrams: Mediseca, Westcent, London.

Telephone: Euston 2111.

Deputy Medical Secretary:

R. FORBES, M.B., Ch.B.

HEAD OFFICE:

British Medical Association House,

Tavistock Square,

LONDON, W.C.1.

All communications to be addressed to
"THE MEDICAL SECRETARY."
In reply please quote:

DMS/GP

18th February 1935.

Dear Sir Thomas,

I enclose herewith a copy of a communication and enclosure which our Kenya Branch on 17th January 1935 sent to His Excellency the Governor of the Colony and Protectorate of Kenya, and I should be glad of any assistance that you may be able to give in connection with this communication.

Yours sincerely,

Robert Forbes
Deputy Medical Secretary.

Sir Thomas Stanton, K.C.M.G., F.R.C.P.,
Colonial Office,
Downing Street,
S.W.1.

15
4

89 27/2



Handwritten signature/initials



BRITISH MEDICAL ASSOCIATION,
KENYA BRANCH,
P.O. Box 126,
NAIROBI.

17th January 1935.

To:-
His Excellency the Governor,
Colony & Protectorate of Kenya,
Nairobi.

Through,
The Hon'ble the Colonial Secretary,
The Secretariat,
Nairobi.

Through:-
The Hon'ble Director of Medical Services,
Nairobi.

Your Excellency,

RE: LICENSING ORDINANCE-1934.

I have the honour to inform you that I am directed by the unanimous resolution of the Annual General Meeting of the Kenya Branch of the British Medical Association held on Friday, January 4th 1935, and by the Council of the Branch, which met on Saturday, January 12th 1935, to petition you concerning the afore-mentioned ordinance.

2. It is understood by us from Section 17(2) of the Ordinance as published in the Official Gazette Vol. XXXVI No.57 of November 27th 1934, that Your Excellency may exempt any profession if, in Your opinion, such exemption is desirable in the interests of the community. It is submitted by us that it is in the interests of the community that the whole medical and dental profession be exempted.

3. On December 18th 1934 I had the honour to send a letter on this subject to the Hon'ble Colonial Secretary, and later a deputation of three of our members made representations to the Select Committee on the matter. Since the arguments advanced in that letter still, in our opinion, stand, I have the honour to enclose a copy.

4. Since the despatch of that letter, the Bill has become an Ordinance, and I am directed by my Council to bring to Your notice certain events which have occurred. It might be presumed that Medical Practitioners who derive little personal emolument from the small amount of practice in which they are engaged would apply for exemption. This does not appear to be the case. Rather than apply for exemption they are signifying that they will cease to practise. It appears to them beneath the dignity of a medical practitioner to state the financial grounds that might or might not justify exemption. Certain have even stated that they would refuse exemption even if offered to them. It has come to the attention of the Council that three consultants, have, already officially signified their desire to cease medical practise. These consultants are figures of standing in the medical profession, not only of this Colony but of England also, and it seems invidious that they should have been led to adopt this present course of action.

5. Indeed I am instructed to communicate with all our members, to ascertain their views on the matter and what action they will take. It appears possible that certain doctors such as Medical Missionaries, doctors who have retired to sparsely populated districts and even Government Medical Officers may be led to cease all medical practise among those sections of the community who can pay fees. Although it may be argued that practitioners can still attend in a gratuitous capacity any case in an emergency, yet from our side it would appear that many doctors at mission hospitals, on farms, and in Government Stations will decide to give up ^{all} private ~~practise~~ medical practice, and that this will become common knowledge in the district concerned. In a land in which doctors are scarce, communications often bad, roads indifferent, and surgical emergencies such as road accidents and medical emergencies such as Blackwater

Fever are common occurrences, we as an Association view with grave and deep concern any legislation which will directly or indirectly deprive the patient of the care of the nearest medical attendant, or the considered opinion of the consultant.

6. I am directed to send a copy of this correspondence to the Medical Secretary of the British Medical Association, London, and the Chairman of the Elected Members of the Legislative Council of Kenya Colony.

I have the honour to be,

Your Excellency's Obedient Servant,

(SIGNED) H.C. TROWELL

Honorary Secretary.

19

COPY

BRITISH MEDICAL ASSOCIATION,
KENYA BRANCH,
P.O. Box 126,
NAIROBI.

18th December 1934.

The Hon'ble, The Colonial Secretary,
The Secretariat,
Nairobi.

Sir,

Licensing Ordinance 1934.

I have the honour to inform you that the Council of the Kenya Branch of the British Medical Association had under discussion this Bill to provide for the Licensing of Certain Professions, Businesses, Trades, Arts, Callings and Industries within the Colony and to Fix the License Fees payable (Official Gazette, November 27th 1934). The Bill was discussed at a Council Meeting held on Wednesday, December 12th 1934.

2. The British Medical Association has always resisted any attempts to License the profession in the manner set forth in this Bill, and previously in Kenya they have made representations against the Professional Licences Ordinance 1925, the Professional Licensing Ordinance-1931, the Licensing Ordinance 1933. On these three separate occasions the points raised have been very similar and the medical profession have never been included in the Ordinance which was subsequently passed. We desire in the name of the medical and dental professions to raise the following points of objection:-

1. That as Medical Practitioners are already Licensed by the General Medical Council of Great Britain and are also registered under the Medical Practitioners and Dentists Ordinance of Kenya, registration fees having been paid in both cases, they most strongly protest against being subjected to any further local restrictions.
2. That it is an accepted principal that the primary objection of raising revenue by means of License Fees is to provide funds for purposes of control and that such a system shall not be used as a method of increasing general revenue. It would appear to the Branch that members of the Medical profession are adequately controlled.
3. That the imposition of such taxation will discourage Medical practice in the Colony and so be detrimental to the Public Health of the Colony and will prevent practitioners from further practice in the Colony.
4. That it is undesirable to impose an Annual Licensing Fee which appears to differ in its principles and aims from the principle of Licensing a profession, and that the present is an inopportune time to impose such fees in view of the large amount of work performed by the medical and dental professions for which remuneration is neither expected nor received.

I have the honor to be,
Sir,
Your Obedient Servant.

(SIGNED) H.C. TROWELL

Honorary Secretary.

Business Licences. Fees.

Mr Sandya's proposals.

As passed by Legis. Cmt

With regard to Schedule C 1 and 2, I propose that these items should be replaced by the following:—

1. A licence to conduct the business of a petty dealer.

For each place of business where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £100—

- (a) in a municipality, township or trading centre ... 30
- (b) elsewhere ... 10

2. For licence to conduct the business of a trader.

For each place of business—

- (a) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £300 ... 50
- (b) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £500 ... 75
- (c) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £1,000 ... 200
- (d) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £2,500 ... 400
- (e) where the value of goods on hand may at any one time during the period of the validity of the licence exceed £2,500 ... 600

This schedule would be fair and just, and in a permanent measure of this description it is necessary that fairness in taxation between various classes of businesses should be observed.

Committee proposals.

1. A licence to conduct the business of a petty dealer:—

For each place of business where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £75—

- (a) in a municipality, township or trading centre ... 30
- (b) elsewhere ... 10

2. A licence to conduct the business of a trader:—

For each place of business—

- (a) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £300 ... 75
- (b) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £1,000 ... 300
- (c) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £2,000 ... 450
- (d) where the value of the goods on hand may at any one time during the period of the validity of the licence exceed £2,000 ... 600

1. A licence to conduct the business of a petty dealer:—

For each place of business where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £100—

- (a) in a municipality, township or trading centre ... 30
- (b) elsewhere ... 10

2. A licence to conduct the business of a trader:—

For each place of business—

- (a) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £300 ... 75
- (b) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £1,000 ... 300
- (c) where the value of goods on hand does not at any one time during the period of the validity of the licence exceed £2,000 ... 400
- (d) where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £5,000 ... 500
- (e) where the value of the goods on hand does not at any one time during the period of the validity of the licence exceed £10,000 ... 600
- (f) where the value of the goods on hand may at any one time during the period of the validity of the licence exceed £10,000 ... 1,000

Per annum
Sh.

Per annum
Sh.

KENYA.
No. 46.



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
- 8 FEB 1935
C. O. REGY

18th
JANUARY, 1935.

Sir,

I have the honour to transmit two Authenticated copies of an Ordinance No. LXII entitled the Licensing Ordinance 1934, which passed its third reading in the Legislative Council on 22nd December, 1934 and was assented to in His Majesty's name on the 31st December, 1934 together with the Legal Report prepared by the Attorney General.

Twelve printed copies of this Ordinance are being transmitted under separate cover.

2. The Ordinance follows closely the recommendations of the Committee which was appointed to examine the working of the Licensing Ordinance 1933. Copies of this Committee's Report were forwarded to you under cover of the Acting Colonial Secretary's third personal note No. D. Leg. Co. 26/3/35 of the 1st December, 1934 and a copy is now attached for facility of reference.

3. I trust that His Majesty will not be advised to exercise his power of disallowance in respect of this Ordinance.

I have the honour to be,
Sir,

Your most obedient, humble servant,

Admiral

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE
MAJOR SIR PHILIP GUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. I.

Unward (6)

*No. 3 on
3262/33*

*No. 19 on
23022/34*

LEGAL REPORT

THE LICENSING BILL, 1934.

3/26/33
This Bill embodies the recommendations made by the Committee appointed to examine the provisions of the Licensing Ordinance, 1933, in the light of experience gained, and to suggest such amendments as may be considered advisable, together with amendments made to the Bill by the Select Committee of Legislative Council appointed to consider the provisions of the Bill.

The Bill itself follows closely the form of the Licensing Ordinance, 1933, but the Schedule, which takes the place of section 7 of the old Ordinance, is greatly enlarged, and enumerates a large number of trades and businesses, which, in the old Ordinance, came under the "omnibus" heading of "any other business" (vide section 7(1) (p) of the old Ordinance). This, besides being inequitable, was a source of loss of revenue.

The chief ways in which the Bill, including the Schedule, in its final form, differs from the old Ordinance are as follows -

- (1) Medical practitioners are included in the ranks of the professional men who are liable to pay a licence fee under the Bill. Their inclusion will enable dentists to be charged the fee which they objected to pay under the old Ordinance in view of the fact that under the old Ordinance medical practitioners were not liable to pay a licence fee.

Full powers of exemption from payment of the tax are given under Clause 17(2) of the Bill,

(2) Persons carrying on a business for which a licence is taken out under any law for the time being in force relating to intoxicating liquor must take out a separate licence for any business which they carry on in addition unless the liquor licence is in respect of brewers or traders dealing solely in intoxicating liquors- (Vide Clause 17(1(b))).

Under the old Ordinance an hotel which took out a liquor licence need not take out an hotel licence, and a grocer who took out a liquor licence need not take out a retail licence. This was thought to be wrong, both from the point of view of equity and of revenue;

- (3) Provision is made for half yearly licences - (Vide Clause 6(1)(a));
- (4) Powers of entry into trade premises are given in the new Bill - (vide Clause 10(4) and (5)) - and books are required to be kept - (vide Clause 10(6));
- (5) A pedlar's licence is introduced in the new Bill - (Vide Clause 13);
- (6) In the new Bill, a licensee is made responsible for the acts of his employee in so far as they concern the profession or business involved - (Vide Clause 19);
- (7) The Bill provides for its expiry on the 31st day of December, 1935, with the usual proviso for keeping it in force. This was inserted at the request of the Unofficial Members of the Select Committee, who pointed out that the late Attorney General, Mr. MacGregor, had said, when introducing the old Ordinance in August, 1933, that the measure must be regarded as temporary, being part

... temporary taxation, although it was not expressly stated to be temporary in the legislation. In the circumstances, Government found difficulty in resisting this request, which was accordingly acceded to - (Vide Clause 22 of the Bill);

- (8) The Schedules generally shew a very considerable amplification of section 7 of the old Ordinance.

A Comparative Table is attached.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,
22nd December, 1934.

W. H. ...
ATTORNEY GENERAL

COMPARATIVE TABLE

THE LICENSING BILL, 1934.

No. of Clause.	Remarks.
1.	Short title.
2.	<p>"Accountant and/or Auditor" - new.</p> <p>"Advocate" - Cf. Section 2 of the Licensing Ordinance, 1933.</p> <p>"Architect" - new.</p> <p>"Banker" - Cf. section 2 of the Licensing Ordinance, 1933, with slight alterations.</p> <p>"Business" - new.</p> <p>"Commercial traveller" - Cf. section 2 of the Licensing Ordinance, 1933.</p> <p>"Commission agent and/or manufacturer's representative" - new, based on Mauritius Ordinance.</p> <p>"Dentist or dental surgeon" - new.</p> <p>"Exchange banker" - Cf. Section 2 of the Licensing Ordinance, 1933, enlarged.</p> <p>"Hawker" - new, South Africa.</p> <p>"Hotel, boarding and/or lodging-house" - new, Mauritius.</p> <p>"Licensing Authority" - Cf. section 9 of the Licensing Ordinance, 1933.</p> <p>"Medical practitioners" - new.</p> <p>"Native" - Cf. section 2 of the Licensing Ordinance, 1933.</p> <p>"Oil Company" - Cf. section 2 of the Licensing Ordinance, 1933.</p> <p>"Pedlar" - new, South Africa.</p> <p>"Profession" - new.</p> <p>"Quantity Surveyor" - new.</p> <p>"Restaurant" - new, Mauritius.</p> <p>"Shipping Company" - Cf. section 2 of the Licensing Ordinance, 1933.</p>
3.(1)	New, based on section 3(1) of the Licensing Ordinance, 1933.
(2) (5)	New.
(4)	New, based on section 4(4) of the Licensing Ordinance, 1933.
(5)	New, based on section 4(5) of the Licensing Ordinance, 1933.
	Follows section 3(3) of the Licensing Ordinance, 1933.
4.(1)	Follows section 4(3) of the Licensing Ordinance, 1933.
(2)	Follows section 4(6) of the Licensing Ordinance, 1933.
5.(1)	New, based on section 7(1) of the Licensing Ordinance, 1933.
(2)(a) (b)	New.
	New.

- 6.(1) Follows section 7(3) of the Licensing Ordinance, 1933, with slight alteration.
- (1)(a) New.
 (1)(b) New.
 (2) New, based on section 7(4) of the Licensing Ordinance, 1933.
- 7.(1) New.
 (2)(a) and (b) Follows section 11(1)(a) and (b) of the Licensing Ordinance, 1933.
- 8.(1) Follows section 12 of the Licensing Ordinance, 1933.
 (2) New.
9. Follows section 13 of the Licensing Ordinance, 1933.
- 10.(1),(2) and (3) Follows section 14(1),(2) and (3) of the Licensing Ordinance, 1933.
 (4),(5),(6),(7) and (8) New.
11. New, Mauritius.
- 12.(1) and (2) Follows section 5(1) and (2) of the Licensing Ordinance, 1933.
13. New.
- 14.(1) Follows section 5(3) of the Licensing Ordinance, 1933.
 (2) Follows section 5(4) of the Licensing Ordinance, 1933.
 (3) Follows section 5(5) of the Licensing Ordinance, 1933.
 (4) Follows section 5(7) of the Licensing Ordinance, 1933, omitting (c).
15. Follows section 9 of the Licensing Ordinance, 1933.
16. Follows section 10 of the Licensing Ordinance, 1933.
17. Follows section 6 of the Licensing Ordinance, 1933, with certain alterations.
18. Follows section 15 of the Licensing Ordinance, 1933.
19. New, Mauritius.
20. New.
21. New.
22. New.
23. Repeal.

COLONY AND PROTECTORATE OF KENYA



REPORT OF THE COMMITTEE
APPOINTED TO REVISE THE
LICENSING ORDINANCE

1933

NAIROBI:
PRINTED BY THE GOVERNMENT PRINTER
1934