

1900.
NEW ZEALAND.

AUDIT AND TREASURY DEPARTMENTS,

CORRESPONDENCE BETWEEN, RELATIVE TO THE REFUSAL TO PASS CERTAIN
PAYMENTS CONNECTED WITH THE SOUTH AFRICAN CONTINGENTS AND
LANDS AND SURVEY DEPARTMENT.

Laid upon the Table of the House of Representatives by Mr. Speaker, 6th July, 1900.

The Hon. the Speaker, House of Representatives.

THE Controller and Auditor-General has the honour, in compliance with the direction contained in section 53 of "The Public Revenues Act, 1891," respectfully to submit to the House of Representatives a copy of the correspondence which has just taken place between the Audit Office and the Treasury, in a case where the Audit Office having declined to pass a requisition of the Paymaster-General, on the ground that the charges therein were not according to law, the matter in dispute has been determined by the Governor in Council.

Audit Office, 5th July, 1900.

J. K. WARBURTON,
Controller and Auditor-General.

No. 1.

TREASURY MEMORANDA.

UNAUTHORISED EXPENDITURE.

Consolidated Fund—				£	s.	d.	£	s.	d.
Services not provided for	...	...	...	7,574	14	9			
Services in excess of votes,—									
Votes—									
Colonial Secretary (miscellaneous)	...	...	...	694	7	1			
Prisons	...	...	...	60	6	7			
Marine (miscellaneous)	...	...	...	1,448	5	2			
Labour	...	...	...	615	18	7			
Working Railways	...	...	...	1,435	13	5			
Permanent Militia and Volunteers	...	...	...	4,036	19	7			
South Africa Contingents	...	...	...	9,796	11	0			
Lands and Survey	...	...	...	6,497	14	9			
South Africa Contingents, payment	...	...	...	9,382	5	10			
count	...	...	...				41,542	16	9
Public Works Fund—									
Services not provided for	...	...	...				1,880	0	0
							43,422	16	9
							100,000	0	0
							43,422	16	9
20th June, 1900.			Balance	...	...		£56,577	3	3

CLASS XII.—DEFENCE.

State of Votes.

Dr. Permanent Militia and Volunteers	...	...	...	...	4,036	19	7
South Africa Vote	...	...	...	...	10,422	8	1
South Africa, Suspense Account	...	...	...	...	9,382	5	10
Cr. Miscellaneous services	...	...	...	...	23,720	10	9

CLASS XV.—LANDS.

Dr. Lands and Survey	...	...	...	...	6,192	2	9
Cr. Miscellaneous services	...	...	...	...	13,361	3	5

The Accountant—Transfer £15,000 and £5,000; prepare Order in Council.—J.B.H., 20th June, 1900.

No. 2.

[Form of Order in Council “for Year ending 31st March,” showing alterations made for purpose of period ending 30th June, 1900.]

Governor.

ORDER IN COUNCIL.

At the Government House, at Wellington, this day of June, 1900.

Present: HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

His Excellency the Governor of New Zealand, in exercise of the powers conferred on him by the fortieth section of “The Public Revenues Act, 1891,” and of all the powers enabling him in that behalf, and by and with the advice and consent of the Executive Council of the said colony, doth direct that the several sums mentioned in the Schedule hereto, being surplus upon the several votes therein mentioned, shall be applied in aid of the several votes set opposite to each such sum respectively.

SCHEDULE.

APPROPRIATIONS for the period ending 30th June, 1900.

Surplus.			In Aid of.		
Class.	Vote.	Amount.	Class.	Vote.	Amount.
XIII.	Miscellaneous services	£ 15,000	XIII.	South Africa Contingent and Suspense Account	£ 15,000
XV.	Miscellaneous services	5,000	XV.	Department of Lands and Survey	5,000

The above-mentioned sums are unexpended surplus on the several votes named.

Controller and Auditor-General.

Clerk of the Executive Council.

No. 3.

The Audit Office.

SUBMITTED for your certificate.—JAS. B. HEYWOOD, 20th June, 1900.

The Treasury.

THE 40th section of the Public Revenues Act provides only that “The Governor in Council may direct that any surplus on any vote on the estimates may be applied in aid of any other vote in the same class.”

Consequently, if, during the space of three months after the commencement of the financial year [following that] for which such vote on the estimates is passed, the issue and payment of moneys is not authorised by a vote on the estimates, the section would appear to be imperative [inoperative] for the time.

21st June, 1900.

J. K. WARBURTON, C. and A.-G.

The Audit Office.

I REGRET I cannot understand above memo. Will you kindly explain at greater length.—JAS. B. HEYWOOD, 21st June, 1900.

THE word “imperative” should have been “inop:rative.”—J. K. WARBURTON, C. and A.-G.—21st June, 1900.

No. 4.

The Audit Office.

I THOUGHT the word was intended to be written "inoperative," and I read the context with that word, but I am still unable to understand the meaning of the minute. It is my stupidity, no doubt, but I would be glad if you would write out at greater length what you intend to convey.

21st June, 1900.

JAS. B. HEYWOOD.

The Treasury.

THE words of the Audit Office express their meaning so clearly, and explain the objection so completely, that it is difficult, except by repeating the same proposition, to write at greater length. The meaning which the words convey, and are intended to convey, is the meaning that section 40 does not authorise the Order in Council.

21st June, 1900.

J. K. WARBURTON, C. and A.-G.

No. 5.

The Audit Office.

YOUR memo. appears to say that the section is inoperative because the issue and payment of moneys was not authorised by a vote on the estimates during the three months after the commencement of the "financial year for which such vote on the estimates is passed"—that is to say, in the present instance, during the three months after the 1st April, 1899. This appears to me unintelligible. If you mean "after the end of the financial year," I would observe that section 3 of "The Public Revenues Act, 1896," extends the previous year's appropriation for a period of three months of the succeeding financial year, and one-fourth of the amounts voted last year may be used as votes of the current period of this year. This section is in effect a re-enactment of section 39 of the Act of 1891, and the section 40, following it as it does, obviously relates to it as well as to the specific appropriation on the estimates themselves.

21st June, 1900.

JAS. B. HEYWOOD.

No. 6.

The Treasury.

Audit Office, 21st June, 1900.

THE meaning of the Audit Office is taken correctly. The minute should have read "financial year following that," and it is regretted that the last two of these words should accidentally have been dropped.

Section 40 must be understood to have the meaning of its words, "any surplus on any vote on the estimates," and could not relate to any appropriation but a vote on the estimates.

The appropriation by section 3 of the Act of 1896 is not a vote on the estimates. It provides that, "If, during the space of three months after the commencement of any financial year or period, no Act is passed granting and appropriating money for the service thereof, the Colonial Treasurer may, until such Act is passed, issue and pay moneys during such three months," on the condition that the payments shall not exceed a prescribed amount; and the unexpended balance of the vote on the estimates and the fourth part of such vote are mentioned in the section only to define to what amount authority is given to pay moneys.

J. K. WARBURTON,
Controller and Auditor-General.

No. 7.

REFERRED to Solicitor-General for his opinion.—J. G. WARD, 22nd June, 1900.

Hon. Colonial Treasurer.

THE 40th section of "The Public Revenues Act, 1891," provides that "the Governor in Council may direct that any surplus on any vote on the estimates may be applied in aid of any other vote in the same class." This section follows the original provision for continuing appropriations for three months after the expiration of a financial year—a provision now contained in section 3 of "The Public Revenues Act, 1896."

It is objected by the Audit that the appropriation by section 3 is not a vote on the estimates, and that section 40 is at present inoperative. Having read the papers submitted to me herein, I do not think the proposition of the Audit can be legally supported; but that section 3 of "The Public Revenues Act Amendment Acts, 1896," having extended appropriations after the close of a financial year for three months, all the enactments of these Acts, so far as applicable, must be read together, and that there is no good legal reason why section 40 should not be operative. To hold otherwise would reduce that provision to a nullity, because until the end of the financial year it cannot be said whether there is a surplus on any vote, and section 40 could never be operative unless estimates were submitted within the three months after the end of the financial year.

It is a maxim of ordinary construction of statutes that it should be such as would suppress the mischief and advance the remedy—a principle recognised by "The Interpretation Act, 1888," section 5, subsection (7), which declares that every Act shall receive such fair, large, and liberal construction and interpretation as will ensure the attainment of the object of the Act according to its true intent, meaning, and spirit. Clearly one of the objects of section 40 was to promote the service of the State by allowing the powers thereby conferred to be exercised during the period of extended appropriation which has been provided for by law.

I am therefore of opinion that the Governor in Council may now exercise the powers conferred by section 40 of "The Public Revenues Act, 1891," as therein prescribed, and that it would be the duty of the Audit to act thereon whenever the necessary formal requirements have been duly observed.

Crown Law Offices, 23rd June, 1900.

W. S. REID.

No. 8.

The Audit Office.

THE opinion of the Solicitor-General will, I presume, enable you to append your certificate to the required Order in Council attached.—JAS. B. HEYWOOD, 25th June, 1900.

The Treasury.

Audit Office, 25th June, 1900.

THE Audit Office regards section 40 as applying only in respect of the year for which there are votes on the estimates for the public service, and, consequently, as not authorising the Order in Council.

The abstract of the accounts for last year and the Appropriation Account for that year having already been closed and prepared for presentation to Parliament, it is too late now to apply section 40 in respect of such year; and to apply the section now to the present three months' appropriation would vary this appropriation without the knowledge of Parliament.

On these grounds the Controller and Auditor-General feels that he would not be justified in appending his certificate for the purpose of the Order in Council.

The Solicitor-General appears to be under a misapprehension in thinking that the Audit Office is contending for any meaning of section 40 that would reduce its provision to a nullity.

J. K. WARBURTON, Controller and Auditor-General.

No. 9.

IN EXECUTIVE COUNCIL.

HIS Excellency the Administrator of the Government is recommended to sign the attached Order in Council directing the surplus upon certain votes to be applied in aid of certain others.—J.B.H.

R. J. SEDDON.

Approved in Council—R., 26th June, 1900.

ALEX. WILLIS, Clerk of the Executive Council.

No. 10.

RANFURLY, Governor.

ORDER IN COUNCIL.

At the Government House, at Wellington, this twenty-sixth day of June, 1900.

Present: HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

HIS Excellency the Governor of New Zealand, in exercise of the powers conferred upon him by the fortieth section of "The Public Revenues Act, 1891," and of all the powers enabling him in that behalf, and by and with the advice and consent of the Executive Council of the said colony, doth direct that the several sums mentioned in the Schedule hereto, being surplus upon the several votes therein mentioned, shall be applied in aid of the several votes set opposite to each such sum respectively.

SCHEDULE.

Appropriations for the Period ending 30th June, 1900.

Surplus.			In aid of.		
Class.	Vote.	Amount.	Class.	Vote.	Amount.
XIII.	Miscellaneous services ...	£ 15,000	XIII.	South Africa Contingent and Suspense Account	£ 15,000
XV.	Miscellaneous services ...	5,000	XV.	Department of Lands and Survey	5,000

ALEX. WILLIS,
Clerk of the Executive Council.

No. 11.

The Audit Office.

PLEASE note.—R. J. COLLINS, for Secretary to the Treasury.—26th June, 1900.

The Treasury.

Audit Office, 27th June, 1900.

IN noting this Order of the Governor in Council the Controller and Auditor-General begs to remark that as, on the grounds already stated in his minute of the 25th instant, section 40 of "The Public Revenues Act, 1891," is not considered by the Audit Office to authorise the Order in Council, he will be unable to pass any transfer under it.

The Solicitor-General's opinion is that it cannot be said until the end of the financial year whether there is a surplus on any vote. It appears to the Audit Office to follow that it cannot be said, until the end of the period of three months' appropriations under section 3 of the Act of 1896, whether there is any surplus on any of these appropriations; that, therefore, an Order in Council under section 40 made before the close of that period of three months could not operate to vary such three months' appropriation, and that as the present Order in Council is made before it can be said that there is a surplus, the Order is bad.

Passing over this point, however, the Controller and Auditor-General would explain the power which, in his judgment, is given by section 40.

Section 70 of the Public Revenues Act of 1891 provides:—"70. The Treasury shall within thirty days after the end of each financial year prepare and send to the Audit Office an account to be called the Appropriation Account, showing the several sums appropriated by Parliament for the public service, and the expenditure thereon during the year, with the amount over-expended or under-expended on each vote severally, or expended under the authority of the forty-eighth section, and such account, when certified by the Audit Office, shall forthwith be laid before Parliament."

Now, during the period of thirty days that the Appropriation Account may remain open after the close of the financial year, the Treasury find that the year's expenditure on the votes requires the power of section 40 to be exercised in order satisfactorily to provide for such expenditure. But in such case the Appropriation Account, of course, shows the consequent variation of the votes, Parliament is thus informed of the exercise of the power under section 40, the extended appropriations under section 3 of the Act of 1896 are based on the votes so varied, and the "maxim of ordinary construction of statutes is observed."

If the power of section 40 could be exercised in the manner proposed by the Treasury, not only could the surplus on any vote on the estimates be correctly applied in aid of any other vote in the same class, and shown on the Appropriation Account for the financial year, but any surplus on the extended appropriations, being the balance unexpended of such vote as is increased under the section, together with one-fourth part of such increased vote, could be transferred back during the three months without Parliament, even though in session, having any knowledge of the transaction. For there is no such Appropriation Account required for the three months as is required under section 70 of the Act of 1891 for the financial year.

The Controller and Auditor-General ventures respectfully to express a fear that the Solicitor-General has misapprehended the true operations of the power of section 40.

As a minor point, it should be observed that the Order in Council is at fault in proposing to authorise a surplus on an appropriation for Class XIII. to be applied in aid of a "Suspense Account." There was no vote on last financial year's estimates for a "Suspense Account," and there is consequently no appropriation under the Act of 1896 for such an account.

J. K. WARBURTON,
Controller and Auditor-General.

No. 12.

Public Account, Treasury, 27th June, 1900.

TRANSFER REQUISITION No. 23.—VOUCHERS.

To the Controller and Auditor-General,—

IN accordance with the provisions of "The Public Revenues Act, 1891," I hereby require that the several sums hereinafter mentioned under the heads of service employed in appropriating the same, amounting in the whole to the sum of £20,000, shall be transferred in the accounts as hereunder specified.

Consolidated Fund.						Dr.	Cr.
Ordinary Revenue Account	...	...	...	...	...	£20,000	£20,000
Total						£20,000	£20,000

Recommended—R. J. COLLINS, for Paymaster-General.

W. C. WALKER, for Colonial Treasurer.

Approved for Transfer.

, Controller and Auditor-General.

		Credit.	
Consolidated Fund,—	£	£	£
Class 13, Minister of Defence, Vote South Africa Contingent	15,000		389
Class 15, Department of Lands and Survey, Vote Lands and Survey	5,000	20,000	406
(and Suspense Account) J.B.H.			
Under Order in Council, dated 26th June, 1900 (T. 1900/1052).			
Consolidated Fund,—		Debit.	
Class 13, Minister of Defence, Vote Miscellaneous Services	15,000		393
Class 15, Department of Lands and Survey	5,000	20,000	415

No. 13.

The Treasury.

THE Audit Office, for the reasons already explained to-day, does not regard the Governor in Council as authorised to direct that any surplus on any appropriation under section 3 of the Public Revenues Amendment Act of 1896 should be applied in aid of any other appropriation in the same class, and cannot therefore pass the transfer requisition now presented to carry out the Order in Council.

There is the other ground of objection, that the Order in Council is, as also already explained, at fault in directing a surplus to be applied in aid of "Suspense Account."

Audit Office, 27th June, 1900.

J. K. WARBURTON, C and A.-G.

WORDS "and Suspense Account" struck out, as the Audit Office raise an objection to their inclusion.—J.B.H., 27th June, 1900.

IN EXECUTIVE COUNCIL.

HIS Excellency the Administrator of the Government is recommended to sign the attached Order in Council declaring that a credit requisition for £20,000 and the charges therein, which the Audit Office has declined to pass, are according to law.

R. J. SEDDON.

Approved in Council.—R. 27/6/1900.

J. F. ANDREWS,

Acting Clerk of the Executive Council.

RANFURLY, Governor.

ORDER IN COUNCIL.

At the Government House at Wellington, this twenty-seventh day of June, 1900.

Present: HIS EXCELLENCY THE GOVERNOR IN COUNCIL.

WHEREAS the Audit Office has declined to pass the credit requisition specified in the Schedule hereto, on the ground that the charges therein are not according to law: Now, therefore, in exercise of the powers in this behalf conferred upon him by "The Public Revenues Act, 1891," His Excellency the Governor of the Colony of New Zealand, acting by and with the consent of the Executive Council of the said colony, and having before him the opinion of the Solicitor-General (the office of the Attorney-General being vacant), doth hereby determine the matter in dispute by declaring that the said credit requisition and the charges therein are according to law.

SCHEDULE.

27TH June, 1900, credit for £20,000.

J. F. ANDREWS,

Acting Clerk of the Executive Council.

The Audit Office.

ORDER in Council under section 53 of "The Public Revenues Act, 1891," now submitted, also requisition.—JAS. B. HEYWOOD, 28th June, 1900.

The Treasury.

The Audit Office, 28th June, 1900.

THE Audit Office having this day received the order made on the 27th instant, by the Governor in Council, under section 53 of the Public Revenues Act, declaring to be in accordance with law the credit requisition of the 27th instant for £20,000, has passed such requisition under the authority of such order, and will now, with as little delay as possible, have copies prepared of all the correspondence relating to the dispute, and lay the correspondence before Parliament, in compliance with section 53 of the Public Revenues Act.

The Controller and Auditor-General should add that in the Order in Council under the 40th section the fault remains uncorrected—of the direction to apply a surplus on an appropriation, under section 3 of “The Public Revenues Acts Amendment Act, 1896,” in aid of Suspense Account. The Audit Office appears to be required by section 53 to pass the requisition notwithstanding.

J. K. WARBURTON,
Controller and Auditor-General.

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