

The Audit Office, Wellington, 22nd June, 1926.

The Hon. Minister of Finance, Wellington.

SIR,—

I have the honour, in terms of section 18 of the Public Revenues Act, 1910, to submit to you the attached correspondence, which discloses that a difference of opinion has arisen between the Audit Office and the Public Trustee regarding the legal powers of the Public Trust Investment Board when granting loans on mortgage, and to ask in terms of the above-quoted section that the matter be referred to the Hon. the Attorney-General to be determined by him.

As the principle involved is, in the opinion of Audit, an important one, and as the difference between the two offices has not been reconciled notwithstanding that the views of the Solicitor-General thereon have been fully expressed, it appears to the Audit Office that the only alternative is to submit the question for determination by the Hon. the Attorney-General.

The actual case which forms the subject of the Audit query is not in itself of serious importance, as Audit is not of the opinion that the Board has by its action necessarily incurred any serious risk of loss of trust funds. The principle involved, however, of granting renewals in excess of legal limitations might at any time, if continued, lead to very serious losses.

In regard to the concluding remarks of the Solicitor-General given in his opinion of 19th June, I have to say that although his remarks may perhaps be justified, I do not desire this phase of the question to enter into the discussion, which is purely one of law. It is recognized that in the exercise of its duties the Audit Office is at any time liable to incur a certain amount of opposition from Government Departments.

I have, &c.,

G. F. C. CAMPBELL, Controller and Auditor-General.

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Attorney-General.—Referred.—W. D. S.—29/6/26.

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Attorney-General's Office, Wellington, 29th June, 1926.

The Hon. Minister of Finance.

It is clear that the advance in question must be treated as a new mortgage from Mrs. Imlah, and not as an extension of the original mortgage given by Mr. Barleyman, which in point of fact has been discharged.

Section 20 (j) of the Public Trust Office Amendment Act, 1921-22, relates to the "renewal, extension, or variation" of an existing mortgage, and does not, therefore, affect this matter.

Neither does section 15 of the Finance Act, 1924, affect the question. This section merely confers powers to nurse an existing mortgage in order to minimize any loss on realization.

The sole question is therefore whether the new advance to Mrs. Imlah is one justified by section 34 (c) of the Public Trust Office Act, 1908. Clearly the valuation referred to in this section can only be the valuation made at the time of the advance; so that, to the extent of £27, being the excess of the amount of the advance over three-fifths of the valuation, the advance to Mrs. Imlah is an unauthorized advance. It follows that in the event of the security being realized and a loss being made, the Public Trust Office will be liable to make good such loss to the extent of £27.

The Public Trustee is a statutory officer, and as such is necessarily bound by the terms of the statute creating his powers, which it is clear have been exceeded in this case.

I think the Audit Office is justified in taking exception to the advance.

F. J. ROLLESTON, Attorney-General.

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The Controller and Auditor-General.—Referred.—W. D. S.—30/6/26.