

ATTORNEY GENERAL'S OPINION

ON THE

INTRODUCTION OF RESPONSIBLE GOVERNMENT.

By the recent Act for granting a Representative Constitution to New Zealand, no provision has been made for "establishing Ministerial Responsibility in the conduct of Legislative and Executive proceedings by the Governor."

By the Royal Letters Patent (15th September, 1832,) issued to the Governor subsequently to the passing of the Act, it is provided that the Government of the Colony shall be administered by the Governor under instructions from the Crown, and with the advice and assistance of an Executive Council.

By the "Royal Instructions" of the same date (15th September, 1832) and accompanying the Governor's Commission, the undermentioned persons are nominated and appointed by the Crown to be the members of the Executive Council, that is to say—

The Senior Military Officer in Command of H. M. Forces ;
The Colonial Secretary, or the person acting in that capacity ;
The Attorney-General, or the person acting in that capacity ;
The Treasurer, or the person acting in that capacity ;

and such other persons as the Governor shall deem to be qualified and capable to advise him. But it is provided that any appointment so to be made by the Governor shall be provisional only, and subject to be confirmed or disallowed by the Crown.

The "Royal Instructions" further provide that the Executive Council shall not proceed to despatch of business unless summoned by the Governor—that as a general rule no question shall be brought before them for their advice or decision excepting such as may be proposed by the Governor—and that it shall be competent for the Governor, although he may dissent from the opinion of the major part or of the whole of the Council, to execute the powers conferred upon him in opposition to their opinions. But that in such case it shall be competent for any member of the Council to record on the Minutes the reasons of any advice he may give, and that it shall be peremptory on the Governor in such case immediately to transmit to the Crown a full explanation, and a copy of such Minutes.

By the terms of his Commission, and by the "Royal Instructions" accompanying it, the Governor himself is made directly responsible to the Crown, and no power is given to him to delegate his authority, or to relieve himself from such responsibility in the conduct of the duties of his office.

By the same Instruments the members of the Executive Council are also made responsible to the Crown.

Neither by the Constitution Act, nor by the Instruments under the authority of which he administers the Government has any provision been made for enabling the Governor to establish "Ministerial Responsibility" in the conduct of Legislative and Executive proceedings by the Governor.

Looking to the provisions of the Constitution Act (secs. 55 and 56), by which it is enacted that the Governor may by Message transmit to either the Legislative Council or the House of Representatives for their consideration, the drafts of any Laws which it may appear to him to be desirable to introduce, and that he may also make such alterations as he may think expedient in any Bill which may have been passed by the Council and House, and return the same for their consideration ; and looking to the recommendation contained in the Report of the Committee of the Board of Trade and Plantations on the proposed establishment of a Representative Legislature for the Cape of Good Hope which appears to have been under the notice of Her Majesty's Government when engaged in the preparation of the New Zealand

Constitution Act, it would seem to have been the opinion of the framers of the Act that it was not necessary that the Executive should be represented either in the Legislative Council or in the House of Representatives ; and that it was intended by them that the Governor should not only exercise the power of assenting to, or disallowing, the Legislative measures of the Legislative Council and House of Representatives, but that he should form an active and co-ordinate branch of the Assembly, and with the advice and assistance of the Executive Council, take a direct and distinct share in the business of the Legislature.

With a general desire on the part of the Members of the Assembly to carry out the apparent intentions of the framers of the Act, it would be possible, though difficult, to carry through two Chambers the Legislative measures necessary for giving effect to the policy of the Government, but in the absence of a co-operative spirit on their part, it would be impracticable successfully to conduct through the two branches of the Legislature, the most ordinary government business. From the recent Debates in the House of Representatives, it is obvious that the members of that House are not prepared cordially to acquiesce in any arrangement for the conduct of the public business in the Assembly which shall render unnecessary the presence in the Legislature of any representation of the Executive Government.

It can scarcely be doubted that the absence of any provision for securing that the Executive should be represented in the Legislature is a defect in the Act ; and the practical question is, whether it is now within the power of the Officer Administering the Government to remedy the defect.

In the absence of any practical difficulty, the most simple course would have been for the Officer administering the Government to select from the members of the Assembly three persons who enjoy the respect and confidence of the country, and who would be prepared to carry out the policy of the Government, and to appoint such persons to the offices of Colonial Secretary, Attorney-General, and Colonial Treasurer. But the difficulty which stands in the way of such an arrangement arises from the fact that the present holders of these offices hold virtually permanent appointments, which, in the absence of misconduct on their parts, they can hardly be called upon to resign. And not having been required by the Governor to secure their Election for a seat in the House of Representatives before the General Election, they could not now be required to vacate their offices merely because they could not be able to secure their Election by any particular constituency, even if a vacancy were made in order that the experiment might be tried.

It would be desirable, however, that the Officer administering the Government, if he remain in office, and that a new Governor, if a successor be appointed, should be in a position to call to his Councils, and to appoint to the principal offices of Government persons in whom the country would confide to give free scope to the full developement of the the New Constitution. An Act to be passed by the Assembly, for securing to the present holders of these offices a reasonable provision, in the event of their retirement, would probably tend to the attainment of that object.

It would further be competent for the Officer administering the Government, under the authority of the " Royal Instructions," at once to add to the Executive Council such other persons as " he may deem qualified and capable to advise him." By this means it would be within his power to secure in some measure the representation of the Government in the Legislature. With this object two or three Members, having seats in the Assembly, might be appointed provisionally Members of the Executive Council, to form the required organ of communication between the Executive and the Legislative. The persons selected for this purpose, without being appointed at present to any specific offices, might be charged with the duty of conducting the Government business through the two Chambers, with the duty of preparing, introducing, and superintending in their progress, such Bills as may be necessary for giving effect to the policy of the Government—of preparing a financial statement, and the necessary measures for giving it practical effect. To enable the persons entrusted with these duties to discharge them efficiently, it would be essential that the Officer Administering the Government should give them his confidence and cordial support as a return for laborious service, and further to secure their responsibility, it would be desirable that they should be adequately paid. It would also be indispensable that one of their number should be an able and experienced lawyer.

These Legislative Members of the Government, it is to be presumed, would take office only on the conditions of holding their appointments so long as they should retain the confidence of the Legislature as regards the Crown, their appointments being made under the authority of the "Royal Instructions," would be provisional only, and subject to be confirmed or disallowed by the Crown.

In the meantime, and during the continuance of the Session at least, it would probably tend to the public convenience that the present Secretary, Attorney-General, and Treasurer should continue to hold their offices, and to transact the ordinary and current business of their respective Departments.

In the absence of special authority from Her Majesty's Government, it is not, I think, within the power of the Officer administering the Government to take any measures for carrying into effect the resolutions of the House of Representatives further than to prepare the way for opening the principal offices of the Government to new men: and, in the meantime, and as a temporary measure, to add two or three members of the Assembly to the Executive Council, for the purpose of establishing a recognised and responsible medium of communication between the Executive and the Legislative branches.

The course thus suggested is not free from objection, and it would no doubt be attended with some difficulty and inconvenience: it proceeds, however, as far as, consistently with his powers and duties, and especially with his position as temporary administrator of the Government, he can, I think, prudently be advised to proceed.

Looking to the views and expectations of the Members of the Legislature now assembled from all parts of the colony, there is no reasonable ground to believe that in the absence of any measure for securing the representation of the Executive in the Assembly, that the most ordinary and necessary business of the Government can be successfully conducted through the Chambers, seeing the strong tendency to Provincial independence. Believing that, if the General Government be not strengthened, the central authority will become virtually powerless: and that if the power of the General Government be not now increased the opportunity will be lost of limiting and defining the powers of the Provincial Executive. Seeing, too, that the temper of the House is as yet moderate, and that there appears to be a disposition on the part of the members to work cordially with the Government, if met in a conciliatory spirit; and believing that ill-feeling, if once aroused, would be followed for years by a mischievous and unprofitable agitation—I think that if the course above suggested would secure the maintenance of harmonious relations between the Executive and the Legislative branches of the Government, His Excellency would, under all the circumstances of the case, exercise a sound discretion in adopting it.

WILLIAM SWAINSON.

Attorney-General.

June 5th, 1854.

