

Thursday, 31st October, 1946.

PRESENT: —

HIS EXCELLENCY THE GOVERNOR (SIR MARK AITCHISON YOUNG, G.C.M.G.).

HIS EXCELLENCY THE GENERAL OFFICER COMMANDING THE TROOPS
(MAJOR-GENERAL F. W. FESTING, C.B., C.B.E., D.S.O.).

THE COLONIAL SECRETARY (HON. MR. R. R. TODD, *Acting*).

THE ATTORNEY GENERAL (HON. MR. G. E. STRICKLAND, *Acting*).

THE SECRETARY FOR CHINESE AFFAIRS (HON. MR. T. MEGARRY, *Acting*).

THE FINANCIAL SECRETARY (HON. MR. C. G. S. FOLLOWS, C.M.G., *Acting*).

HON. DR. P. S. SELWYN-CLARKE, C.M.G., M.C., (Director of Medical Services).

HON. MR. C. H. SANSOM, C.M.G., C.B.E., (Acting Commissioner of Police).

HON. MR. V. KENNIFF (Director of Public Works).

HON. DR. J. P. FEHILY, O.B.E., (Acting Chairman, Urban Council).

HON. MR. CHAU TSUN-NIN, C.B.E.

HON. MR. LO MAN-KAM, C.B.E.

HON. MR. C. C. ROBERTS.

HON. MR. LEO D'ALMADA E CASTRO.

HON. MR. R. D. GILLESPIE.

HON. DR. CHAU SIK-NIN.

HON. MR. M. M. WATSON.

MR. D. R. HOLMES, M.B.E., M.C., (Deputy Clerk of Councils).

MINUTES.

The Minutes of the meeting of the Council held on 24th October, 1946, were confirmed.

OATHS.

The Hon. Mr. C. C. Roberts took the Oath of Allegiance and assumed his seat as a Member of the Council, in place of the Hon. Mr. D. F. Landale, who is away from the Colony.

PAPERS.

The COLONIAL SECRETARY, by command of H.E. the Governor laid upon the table the following papers: —

Additional items and amendment made by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Price Control Order, 1946, dated 11th September, 1946.

Additional item added by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Prohibited Exports Order, 1946, dated 11th September, 1946.

Additional item added by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Prohibited Exports Order, 1946, dated 14th September, 1946.

Order made by the Governor-in-Council under Section 8 of the Law Amendment (Transitional Provisions) Ordinance, 1946, Ordinance No. 2 of 1946, amending Schedule 1 to the said Ordinance, dated 18th September, 1946.

Amendment made by the Governor-in-Council under Section 42 of the Merchant Shipping Ordinance, 1899, Ordinance No. 10 of 1899, to Table U of the Regulations, dated 18th September, 1946.

Additional items and amendments made by the Acting Director of Supplies, Trade and Industry under Defence Regulation 50 of the Defence Regulations, 1940, to the Schedule to the Price Control Order, 1946, dated 18th September, 1946.

MOTIONS.

The ATTORNEY GENERAL moved: —

That the amendment made by the Urban Council under section 4 of the Public Health (Sanitation) Ordinance, 1935, Ordinance No. 15 of 1935, on 15th October, 1946, to the by-laws under the

heading "Dangerous and Offensive Trades" contained in Schedule A to the said Ordinance, be approved.

He said: The effect of the by-law which adds the word "ablution" in line two of By-law 2 has the effect that where premises are required to be licensed for the purpose of any dangerous and offensive trade, the Council can require that they be provided to its satisfaction with ablution facilities in addition to the other facilities mentioned in the by-laws.

The COLONIAL SECRETARY seconded, and the motion was carried.

HONG KONG WAR SERVICES ASSISTANCE FUND BILL, 1946.

The ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance for the Establishment and Administration of a Hong Kong War Services Assistance Fund." He said: The object of this Bill is to define the objects of a Fund which is to be created and to provide the legal machinery for the administration of that Fund. Its origin was an approach made to the Adjutant of the Hong Kong Volunteers by members of the public who stated that they were desirous of contributing both in money and in the way of services to dependants of Volunteers. It was then considered that there were other forces and units who laboured during hostilities whose dependants would also require assistance and no doubt members of the public would be willing to assist. It should, however, be noted that under Clause 3 of the Bill appropriations may from time to time be made by the Legislative Council to swell any funds that are raised. Naturally such appropriations would be on matters which have to be voted by the Legislative Council. Passing to the objects of the Fund, the First Schedule to the Bill specifies the various corps and forces that are affected by the Bill. It will also be noted that by sub-section 4 of Clause 4 the Governor may, by an order under the hand of the Colonial Secretary, add to that Schedule. The objects which are set out seriatum in Clause 4 are not intended to confer any special priority and that is clarified by Clause 6 of the Bill. In other words it is intended that the committee should have full powers to decide as between the various objects. I would call your attention to the fact that the expression "wife" does include a person not legally a wife and the expression "child" a child not born in wedlock and that is provided under sub-section 2 of Clause 4. In addition to the dependants of the corps specified in the First Schedule it is also possible under the Bill to make provision for persons who were subjected to tortures under enemy occupation and who, as a result of those tortures, died or were temporarily or permanently incapacitated from earning a living and also persons executed by the enemy. I will call your attention to Clause 12 of the Bill

which provides for the substitution of other charitable objects in the event of ample provision having been made for the present objects of the Fund. This is intended to cover a case possibly where a response to a public appeal or by means of subsequent investments there may be surplus funds available.

The COLONIAL SECRETARY seconded, and the Bill was read a First time.

Objects and Reasons.

1. The object of this Ordinance is to establish in this Colony a Fund out of which provision can be made for assisting, without distinction of class or nationality, the dependants of members of certain services which participated in the defence of the Colony where such members as the result of their service lost their lives or were wholly or partially incapacitated from earning a living. The Ordinance provides that assistance from the Fund may also be extended to members of such services who survived and have been wholly or partially incapacitated from earning a living.

2. The First Schedule specifies the Services whose members or their dependants may be assisted from the Fund and the effect of sub-section 3 of clause 4 of the Bill is to enable the Fund to be applied also for the benefit of persons who were subjected to torture during the occupation and died or were incapacitated thereby and those who were executed and for the benefit of the dependants of such persons.

3. The Objects of the Fund are set out in detail in Section 4 of the proposed Ordinance.

4. Provision is made for the administration of the Fund by a Committee and in order to ensure continuity, the Ordinance provides for the incorporation of the Chairman of the Committee with the usual powers of a corporate body.

5. In order that the Committee may not be hampered in its administration of the Fund by any regulations prescribed by the proposed Ordinance, the Committee is empowered to make its own regulations, subject only to disallowance by the Governor.

6. The Ordinance envisages that the Fund will be financed in part out of the revenues of the Colony and in part out of voluntary contributions.

7. A Comparative Table has been omitted as it would not in the circumstances greatly assist. Clauses 10 and 11 of the Bill are based on sections 2 and 4 of Ordinance No. 6 of 1891. In considering clauses 5, 7, 8 and 9 of the measure, comparison with the provisions of the Mercantile Marine Assistance Fund Ordinance, 1933 and of the Regulations contained in the Schedule thereto may prove useful.

HAWKERS AMENDMENT BILL, 1946.

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to amend the Hawkers Ordinance, 1935."

The COLONIAL SECRETARY seconded.

The HON. MR. CHAU TSUN-NIN said: In view of the reasons stated in the Objects and Reasons of this Bill for the suppression of unlicensed hawking and particularly because of the grave threat to the public health of the colony, I assent to the Bill with great reluctance. In order to avoid any recurrence of the unfortunate incident which took place in Kowloon last week, I would venture to ask the Hon. the Commissioner of Police to give instructions that the greatest care should be taken in the selection of police officers and men to deal with the offences under this Bill.

The HON. MR. LO MAN-KAM said: Your Excellency, the hawker problem has for years been one of the most difficult as well as controversial questions of the Colony. It has been the subject of repeated references in this Council during the years preceding the war.

I am aware, Sir, that this Council is not concerned to-day with the general question of hawkers, but only with one particular aspect of that question: the seizure and disposal of goods of unlicensed hawkers. It is, however, difficult to isolate and consider one aspect of a problem without regard to the problem as a whole.

For instance, let us assume that as the result of the new law 50,000 to 60,000 hawkers can be driven off the streets. How are they and their dependents to live? In the Objects and Reasons it is admitted that it is difficult to estimate the number of unlicensed hawkers: if it is difficult even to make an estimate as to the number, I do not understand on what facts or basis the further statement is made that many of them are newcomers to the Colony. No doubt some of them, especially if they are newcomers, may be able to return to their homes, but the position as regards those who have to remain will become a grave problem.

It is perhaps pertinent to observe that this vast number of unlicensed hawkers is unlicensed not because they wish to break the law, but because they cannot obtain licences, owing to a restrictive policy which I understand the Urban Council has adopted.

I feel sure this Council will be interested to know what the policy actually adopted is, and I therefore venture to invite my Honourable friend the Chairman of the Urban Council to enlighten us in this regard. If, as I gather, the implication of this policy is

that no further hawker licences of any description are to be issued on the ground that the limits of each class of hawking set by the Urban Council have been reached then I feel bound to express my grave doubts on the soundness of that policy, and on its constitutionality having regard to Section 2 of the Hawkers Ordinance 1935, and Bye-law No. 9 of the Bye-laws.

Much has been said—and it is one of the grounds stressed in the Objects and Reasons—about the danger to health of hawked food. I confess I have never been greatly perturbed by this aspect.

I of course agree that the Urban Council should take such special measures as might be necessary in respect of the hawking of special classes of food during periods of epidemics or threatened epidemics, as it has done in the past. For the rest I do consider that this point has been over-emphasised. May I, Sir, quote from Hansard, 1938, at page 159, what I then ventured to say in this Council: —

"I unhesitatingly admit that the doctrine that food-hawking in itself constitutes a source of danger to public health is theoretically sound, but I suggest that the question as to whether or not there is any practical risk to health depends on the kind of food hawked, and the circumstances under which it is hawked. Theoretically, manual contact with bank notes and coins does, I suppose, become a source of infection, and yet the practical risk is not such as to deter people from handling them on that account. Perhaps I may also observe that hawking of certain kinds of food is a prevalent practice even in the Metropolis of England.

"In March this year I submitted a Memorandum to Government, and as paragraph 20 sets out my views on this aspect of the subject I beg leave to quote it here:---

‘20. It should be remembered that people who buy articles from hawkers generally belong to classes of persons who occupy such houses, cubicles, bed-spaces, and in surroundings that the hygienic ideal aimed at by the Urban Council cannot be achieved. What matters that the food is bought from a clean shop if it is cooked, kept and eaten in a place in which dust, dirt and flies etc. abound?.....’ ”

In the same Memorandum to which I have referred I ventured the opinion that insufficient attention had been paid to the economic doctrine of supply and demand. I went on:

"... When the hawking market has reached a saturation point I doubt whether there will be many new applicants for licences. If the saturation point has not been reached I have no doubt that hawkers, licensed or unlicensed, will respond to the call of economic demand. Can hawking be absolutely and effectively abolished? I doubt it!"

Another aspect of the problem which arises on this Bill is the question of squeeze.

In 1938 a Memorandum was prepared by one of the social welfare institutions in the Colony on this subject, based on data supplied from various sources and interviews with actual hawkers. According to this Memorandum only some 3 or 4 per cent. of hawkers paid no squeeze. An average payment by an average hawker was 10 cents per day. The lowest figure for the cases interviewed was 5 cents per day, while it went up to 60 or 70 cents per day where hawkers had fixed stalls in or near market areas. As a rough estimate made in that memorandum the total squeeze paid by hawkers was stated to be approximately \$750,000 per annum.

It is obvious that the bye-laws foreshadowed by this Bill would furnish further lucrative material for squeeze, and this is another disquieting circumstance which must be borne in mind.

I am sure all the Unofficial Members of this Council must have been gratified to hear the assurances given by the Hon. the Attorney General at the last meeting, and I would like to add that I hope that reasonable time will be given to this Council to consider any bye-laws made, before they are introduced for approval in this Council.

I should also like to express the hope that in considering the new proposed bye-laws the Urban Council may think it right to consider the further question of the disposal of perishable goods of licensed hawkers who have been arrested for breach of regulations. There have no doubt been many cases where an arrested hawker was fined a small sum or let off on a caution, only to find that his whole stock had become absolutely unsaleable.

Since the Urban Council (as the authority charged by the Hawkers Ordinance 1935 with the responsibility of controlling and regulating hawkers) considers that the new powers proposed by this Bill are necessary to-day I feel that, however reluctantly, we should assent to this Bill. But before concluding I should like to express the hope that Your Excellency may consider that the time is opportune for the appointment by Government of a strong committee consisting not only of representatives of the Urban Council, but of social welfare workers and others, to review and report to Government on the whole question of hawkers, and that an opportunity will be given to the hawkers themselves to give evidence before that committee.

I feel all the more justified in expressing this hope because at a meeting of this Council held on the 13th October, 1938 H.E. Sir Geoffrey Northcote said this:

“... The problem of how to deal with food-hawking, licensed and otherwise, is still to be solved. It is closely bound up

with the very difficult problem of excessive population to which I have already alluded and may have to wait for solution until peace returns to China.... (Hansard, 1938, pages 122-123).

The HON. DR. GHOU SIK-NIN said: Your Excellency, in rising to support the remarks of my two Senior Chinese colleagues on the amendment to the Bill before this Council, I would like to make a few observations of my own. I confess that I feel deep concern in my honourable friend Mr. Lo's statement on the subject of squeeze. Such a state of affairs should no longer be permitted to pass unnoticed, in view of the proposed extra new powers to be vested in the Police by the amendment now before us for consideration-powers that could easily be abused. I must therefore support wholeheartedly the recommendation of my honourable colleague that a committee be appointed to enquire into the whole question of the hawkers' problem, and I suggest that, in addition to those mentioned, representatives of the Hawkers' Union be invited to sit on the proposed committee, and that the hawkers themselves be encouraged to give evidence before it, untrammelled by fear of retaliation.

I am not at all happy over the Police method of dealing with the hawkers' situation, for on many occasions I have heard complaints of their up-setting and smashing the stalls thus destroying goods laid out by the hawkers for sale---goods of general merchandise as well as foodstuffs, for the ostensible purpose of clearing obstruction. It seems to me that such action is unwarranted, and might easily lead to grave consequences. The unfortunate incident of a few days ago is still fresh in our mind, and though I do not wish to say anything that may prejudice the case, I must admit that I feel deeply about the treatment so often meted out to the poor hawkers. I would take this opportunity to advise my compatriots to say or do nothing concerning the present case that may create further disturbances, but to leave the whole matter in the hands of the authorities who will doubtless judge the case dispassionately and fairly, according to the law of the land.

Like my Chinese colleagues, I feel we must accept the amendment now before us, though with reluctance, but we have made our observations in order to record our dissatisfaction with the manner in which the hawkers' situation has been handled generally, and our desire to see this defect remedied as early as possible.

The HON. DR. J. P. FEHILY said: Your Excellency, for obvious reasons it is difficult to estimate the number of unlicensed hawkers in the Colony but I have been assured by the Inspector i/c Hawkers that of approximately 3,000 applicants for licences since 1st July, not less than 80% have been newcomers to Hong Kong,

i.e. they were not pre-war residents. I have also been informed that about half the applicants for the renewal of licences issued during the Military Administration were not pre-war residents of Hong Kong.

My friend the Hon. Mr. M. K. Lo has suggested that the vast number of unlicensed hawkers is unlicensed owing to the restrictive policy of the Urban Council regarding licences but it is estimated that more than two thirds of the persons now engaged in hawking never applied for licences.

During the period of the Military Administration it was decided to adopt a lenient policy towards hawkers owing to the fact that many industrial undertakings had not resumed business. In spite of the reduced population it was decided not only to issue the same number of licences as were issued in 1941 but even to increase the number of licences in safe categories. At the end of the Military Administration only 50% of the licences available had been taken up, no doubt because the hawkers realised that neither the Police nor Medical Branches of Civil Affairs had the necessary staff to take action against unlicensed hawkers.

Since the re-establishment of Civil Government the Urban Council has reverted to its pre-war policy, i.e., to grant licences only to persons who have resided in the Colony for many years and are considered deserving of special consideration on account of age, infirmity or disability. An attempt is made to ensure that licensees have no other means of support and that only one licence is issued in respect of any one family. Licences are issued also to pre-war licensees.

The present position as contrasted with that in 1941 is as follows: —

	Sept., 1941	30th Sept., 1946
Hawker (stallholder) licences	1,012	1,015
Hawker (itinerant) licences	10,000	14,122
Hawker (steamship) licences	176	175
Hawker (native craft) licences	200	82
Hawker (newspaper) licences	550	606

I may add that the figure of 1,012 for stallholders licences in 1941 included 413 licences for cooked food stalls. During the Military Administration licences were not issued for cooked food stalls as applicants were encouraged to take out licences for commodities other than cooked food. In July, 1946, the Urban Council decided to issue cooked food licences to pre-war licensees and also to a

very limited number of deserving poor who could prove long residence in Hong Kong. This policy was put into effect as from 1st October, the statutory date for renewal of such licences, and consequently, for a time the total number of licensed stallholders will be in excess of the 1941 figure.

The Hon. Mr. M. K. Lo has expressed his doubts as to the Urban Council's right to restrict the number of licensed hawkers but I understand that the Council is within its rights as By-law No. 9, which was approved by this honourable Council at the same time as the Hawkers Ordinance was passed, states that the Urban Council may, in its absolute discretion, refuse to grant a licence to any person if such refusal is, in the opinion of the Council, expedient in the public interest.

Officers of the Medical, Sanitary and Police Departments consider that it is in the public interest to limit the number of hawkers as, otherwise, traffic is impeded, streets cannot be properly cleaned and public health is endangered.

The Urban Council, whilst agreeing with the views of its technical advisers, must also consider the rights of market stallholders and shop keepers who are subjected to unfair competition.

The Hon. Mr. M. K. Lo has stated that he has never been greatly perturbed about the danger to health arising from the hawking of food but I can assure him that the Health Advisers to Government and the Urban Council are seriously concerned with this aspect. The unhygienic methods employed by food hawkers in the storage, preparation and serving of food greatly increase the risk of infection and it has been found that the incidence of gastrointestinal diseases, such as cholera, falls most heavily on the patrons of the cooked food hawkers. Indeed, on more than one occasion, living cholera germs have been found in the washing-up water used by food hawkers.

H.E. the GOVERNOR: Honourable Members, before I put to the Council the motion for the second reading of this Bill I propose to add some observations to those already made by the Honourable the Chairman, Urban Council and also to answer the requests that have been made by Honourable Members in the course of the debate.

The Honourable Mr. M. K. Lo described the hawker problem as one of great difficulty. He also spoke of it as a highly controversial question. Difficult it undoubtedly is, and it is also true that certain aspects of the question are controversial; but when one looks at the problem as a whole, I think one is struck more by the unanimity that prevails in regard to its main features than by any fundamental differences of opinion. It is common ground in the first place that the Government and the general public, whose

interests the Government is here to promote, are not the enemies of the hawker, and that there is a place, and a useful place, in our economy which the hawker can and does fill. This is, I say, common ground, but it is perhaps occasionally overlooked by some people, and I take this opportunity of reiterating that it is the view of the Government.

And it is also common ground that the place which the hawker fills requires in the interests of the community to be both controlled and limited. I need not enlarge on the necessity for this control and limitation; it is conditioned, as we are all fully aware, by the requirements of public health, public convenience, and the legitimate activities of other traders. The exercise of this control is vested in the Urban Council, and it is at the request and on the recommendation of that body that the Bill now before us has been introduced.

Honourable Members are of course aware of the fact that there is a Select Committee of the Urban Council which deals with all questions relating to the licensing and control of hawkers, and I think we may assume without question that any new Municipal body which may come into being in the near future will also be charged with the supervision and control of hawkers and will deal with the matter through one of its Committees.

The Government has been asked today to appoint a separate Committee or Commission to review the whole of this difficult question and to report to Government thereon.

I accept this recommendation, and I wish to make it clear that in doing so the Government is not in any way denying or diminishing the responsibilities of the Urban Council in connection with the control of hawkers. Members of the Urban Council will be asked to serve on this Committee, as indeed the Honourable Member who made the request himself suggested; and there will be added to them, as also suggested by Honourable Members, social workers and others capable of representing the views and the requirements of the persons concerned, that is the hawkers themselves. The Committee will also doubtless give opportunities to the hawkers to appear and give evidence before it.

There is one other matter on which I will touch before I put the question to this Council.

Mention has been made of what has been described as the 'further lucrative material for squeeze' which this Bill will afford. The point will certainly be borne in mind and the Commissioner of Police will, as suggested by the Honourable Mr. T. N. Chau, take special care in the selection of those who are to be charged with the duty of putting into effect the provisions of by-laws made under this Bill.

But in this connection I think I can conclude on a somewhat hopeful note. The object of Government and of the Urban Council in this matter is to render more difficult and thus to reduce the illegal practices of unlicensed hawkers and to improve and possibly also to increase the sphere in which legal practices can be carried out by those who comply with the law,

Clearly in so far as we are successful in this endeavour we shall in the long run be reducing and not enlarging the opportunities for corruption on the part of those whose duty it is to enforce the law; for while it is true that there are opportunities for corrupt practices in the field of blackmail of those whose actions are within the law, it is quite certain that there are far greater and more numerous opportunities in the field of connivance with illegal practices. And whereas in the former case we may appeal with some hope of success to the public to resist extortion and to help us in our campaign against corruption, in the latter case we can clearly get no help from the members of the public who are concerned. Our principal method then of checking that form of corruption which is based on connivance with illegal practices is to take steps to reduce the prevalence of such practices.

The Bill was read a Second time.

On the motion of the Attorney General, seconded by the Colonial Secretary, Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

The Attorney General reported that the Hawkers Amendment Bill, 1946, had passed through Committee without amendment and moved the Third reading.

The COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed.

EMERGENCY POWERS (EXTENSION AND AMENDMENT INCORPORATION) BILL, 1946.

The ATTORNEY GENERAL moved the Second reading of a Bill intituled "An Ordinance to give permanent effect to amendments made to various Ordinances by certain Defence Regulations and to make provision for the continuance in force of certain Defence Regulations for a limited period."

The COLONIAL SECRETARY seconded, and the Bill was read a Second time.

On the motion of the Attorney General, seconded by the Colonial Secretary, Council then went into Committee to consider the Bill clause by clause.

Council then resumed.

The ATTORNEY GENERAL reported that the Emergency Powers (Extension and Amendment Incorporation) Bill, 1946, had passed through Committee without amendment and moved the Third reading.

The COLONIAL SECRETARY seconded, and the Bill was read a Third time and passed.

ADJOURNMENT.

H.E. The GOVERNOR. —That concludes the business of the Council for to-day and Council now stands adjourned until Thursday, 14th November, 1946.
