

OFFICIAL REPORT OF PROCEEDINGS**Meeting of 12th October 1966****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, KCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
MR MICHAEL DAVID IRVING GASS, CMG
THE HONOURABLE THE ATTORNEY GENERAL (*Acting*)
MR DENYS TUDOR EMIL ROBERTS, OBE, QC
THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS
MR JOHN CRICHTON McDOUALL, CMG
THE HONOURABLE THE FINANCIAL SECRETARY
MR JOHN JAMES COWPERTHWAITHE, CMG, OBE
DR THE HONOURABLE TENG PIN-HUI, OBE
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE DAVID RONALD HOLMES, CBE, MC, ED
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC
COMMISSIONER OF LABOUR
THE HONOURABLE GEOFFREY MARSH TINGLE
DIRECTOR OF URBAN SERVICES
THE HONOURABLE ALASTAIR TODD
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE IAN MacDONALD LIGHTBODY
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE KENNETH JOHN ATTWELL
ACTING DIRECTOR OF EDUCATION
THE HONOURABLE JAMES JEAVONS ROBSON
ACTING DIRECTOR OF PUBLIC WORKS
THE HONOURABLE DHUN JEHANGIR RUTTONJEE, CBE
THE HONOURABLE KAN YUET-KEUNG, OBE
THE HONOURABLE LI FOOK-SHU, OBE
THE HONOURABLE FUNG HON-CHU, OBE
THE HONOURABLE TSE YU-CHUEN, OBE
THE HONOURABLE KENNETH ALBERT WATSON, OBE
THE HONOURABLE WOO PAK-CHUEN, OBE
THE HONOURABLE GEORGE RONALD ROSS
THE HONOURABLE SZETO WAI
THE HONOURABLE WILFRED WONG SIEN-BING
THE HONOURABLE ELLEN LI SHU-PUI, OBE
THE HONOURABLE JAMES DICKSON LEACH, OBE
DR THE HONOURABLE CHUNG SZE-YUEN

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR DONALD BARTON

MINUTES

The Minutes of the meeting of the Council held on 28th September 1966 were confirmed.

PAPERS

THE COLONIAL SECRETARY, by Command of His Excellency the Governor, laid upon the table the following papers: —

Subject

Sessional Papers 1966: —

No 15—Annual Report by the Hong Kong Housing Authority for the year 1965-66.

No 16—Annual Report by the Commissioner of Registration of Persons for the year 1965-66.

No 17—Annual Report by the Chairman, Urban Council and Director of Urban Services for the year 1965-66.

QUESTION

MR SZETO WAI, pursuant to notice, asked the following question: —

Since the recent announcement of the establishment in the Buildings Ordinance Office of a new unit known as the Control and Enforcement Section for the purpose of dealing with illegal alterations to existing buildings that endanger the life and health of occupants, what steps will Government take to prevent abuses of power which may lead to corruption?

MR J. J. ROBSON replied as follows: —

Your Excellency, the creation of a new Section of the Buildings Ordinance Office, known as the Control and Enforcement Section, was approved in May this year to enforce the provisions of the Buildings Ordinance regarding alterations to buildings. This followed the discovery of a 6-storey building, designed wholly for non-domestic use, being converted by the owners into domestic accommodation shortly after the issue of the Occupation Permit. Smoke lobbies to staircases had been removed; partitions erected, and kitchens installed, many of them completely internal and without ventilation.

The task of the new Control and Enforcement Section of the Buildings Ordinance Office will be to seek out and rectify any such illegal alterations to buildings which

may endanger the life or health of the occupants. It is proposed that the new teams will first concentrate on the many reports of alleged illegal alterations which are now being received in the Buildings Ordinance Office and on ascertaining whether the orders already given to demolish illegal works have in fact been carried out. They will then inspect newly occupied buildings to make sure these are not also being misused or altered as soon as the occupation certificate is issued, and then finally their activities will be extended to cover the older buildings by making planned inspections area by area. Generally this Section will not concern itself with rooftop squatters.

It is known that these inspections will bring to light a host of unauthorized works. However, many of these, even when extensive, will be of a nature which will not contravene regulations and no further action will therefore be necessary. In cases where, although in contravention of the regulations, alterations can be tolerated, the owner will be advised to have plans submitted so that the alterations can be given formal approval. Where unacceptable contraventions are discovered, the owner will be instructed to carry out the necessary remedial works and these will be inspected on completion.

The actions of the Buildings Ordinance Office will therefore be to some extent discretionary and in these circumstances it is realized that the danger of corruption or allegations of corruption will always exist, but to no greater extent than in many other branches of the public service.

The approved establishment of the new Section is one Senior Building Surveyor who heads two teams each comprising a Building Surveyor, two Building Inspectors and a clerk. The following procedure has been evolved to safeguard not only the public but also the staff of the Section who have this task to perform: —

firstly all departures from approved plans discovered during inspection will be recorded and the reports submitted to the Building Surveyor in charge of the inspection team. There is no discretion permitted in this and severe action would naturally be taken against the inspecting officer if, subsequently, an alteration was discovered which had not been recorded;

secondly any alteration reported will then be inspected by the Building Surveyor in charge of the team, who will then make a report to the Senior Building Surveyor in charge of the Control and Enforcement Section and the appropriate course of action taken after joint consultation. In particularly serious or complicated cases the matter will be referred to the Government Building Surveyor; and

thirdly spot checks will be made on the reports of the Control and Enforcement teams by an independent Technical Audit Unit which is to be established in the Public Works Department Headquarters.

While the checks I have described should be effective in preventing abuses of power, there can be no doubt that allegations of corruption will be made as it can be anticipated that unscrupulous building owners who are prepared to flout the laws of the Colony by carrying out large scale alterations to buildings, without any thought for the safety and comfort of the tenants, would not hesitate to stoop to offer bribes, or to allege that bribes were taken if they fail in their attempt to corrupt public officers. I am, however, convinced that with the assistance and co-operation of the Anti Corruption Branch of the Police, such persons will eventually be brought to justice.

Allegations of corruption may also arise from persons impersonating officers of the new Control and Enforcement Section who may demand payment for not reporting illegal alterations. Regular publicity will therefore be given to the work of this Section and the public will be advised that all Buildings Ordinance Officers carry a warrant which gives their identity and their authorization, in English and Chinese, for the inspection of buildings. Householders should not permit any person to enter their premises unless he can produce this warrant and, if any suggestion of payment for services is made, the matter should be immediately reported to either the Government Building Surveyor or the Anti Corruption Branch of the Police, or alternatively to the Director of Public Works personally.

MAGISTRATES (AMENDMENT) BILL 1966

THE ATTORNEY GENERAL moved the First reading of a Bill intituled "An Ordinance further to amend the Magistrates Ordinance."

He said: —This Bill seeks to amend the Magistrates Ordinance in three respects. Firstly, clauses 2 and 3 of the Bill will enable magistrates to withdraw warrants of apprehension and committal. At present no provision for this exists, with the result that thousands of warrants, some of them issued many years ago, are still extant, though the possibility of them ever being executed is extremely remote.

Secondly, clause 4 introduces a simplified procedure for dealing with non-payment of fines. At present fines which are not paid are recovered by the issue of distress warrants, which is a cumbersome procedure. Under the new section 99, where a fine is not paid at the time of its imposition, or within such time or in such manner as the magistrate directs, a magistrate may issue a summons or a warrant of apprehension against the defaulter to bring him back before the court. He may then be given further time to pay the fine or sentenced to imprisonment in accordance with the scale of imprisonment for non-payment of fines which is prescribed in section 67 of the Ordinance. However, before he is so sentenced, the magistrate must first inquire as to his means.

Thirdly, clause 5 replaces Part VIII of the Ordinance. That Part now provides that rules and regulations under the Ordinance shall be made by the Governor in Council. It is considered more appropriate that these powers should be exercised by the Chief Justice, subject to the approval of the Legislative Council by resolution.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons

The "Objects and Reasons" for the Bill were stated as follows: —

Clauses 2 and 3 of this Bill make provision for the withdrawal of warrants, to apprehend or to commit to prison, issued in accordance with or under sections 30 and 54, respectively, of the Magistrates Ordinance. There are no express provisions to the like effect in the existing laws of the Colony.

2. The procedure for levying distress where fines remain unpaid is considered inappropriate in present day circumstances. Clause 4 makes provision for the bringing before a magistrate, by summons or warrant to apprehend, of persons who have failed to pay fines imposed on them. The clause also provides that where time has been allowed for payment or payment by instalments has been directed a person shall not be committed to prison unless a magistrate first inquires into that person's means.

3. Clause 5 gives the rule-making power under the Magistrates Ordinance to the Chief Justice and similarly the power to make regulations dealing with fees in the magistrates' court. Both these powers, which at present reside with the Governor in Council, are to be exercised subject to the approval of the Legislative Council. The power to amend the First Schedule of the Ordinance remains with the Governor in Council.

CROWN LEASE (POK FU LAM) BILL 1966

MR J. J. ROBSON moved the First reading of a Bill intituled "An Ordinance to make provision for the better establishment of the identity of certain portions of ground situated at Pok Fu Lam in the Island of Hong Kong with the parcels and plots of ground at the said Pok Fu Lam that were demised under a Crown Lease dated the 1st day of January 1893."

He said: —Your Excellency, the purpose of this bill is to re-establish a plan to show the precise delineation of various parcels of land covered by a Crown Lease issued on the 1st of January 1893 and certain other plots which were leased for cultivation purposes in association with those parcels of land. The original of this plan, which accompanied the Lease deposited in the Lands Office, was lost during the Japanese occupation.

If the bill is passed into law you, Sir, may instruct the Director of Public Works to prepare a new plan which will be compiled from existing records and from data and information obtained with the assistance of my honourable Friend, the Secretary for Chinese Affairs. The plan will not only indicate the position of each piece of land and give, so far as is practicable, the current postal address of each piece but will also give any other available information relating to the establishment of the position of the various parcels and associated plots of ground.

When the plan has been prepared it will be published, as laid down in the Bill, and anyone having interest in any land shown on the plan and who considers that the plan is incorrect in any manner prejudicial to his interests, has 60 days to advise the Director of Public Works in writing of the nature of his interest and the manner in which he considers the plan incorrect. After this time, any objections received will be investigated and if necessary, the plan amended. It will then be republished and any person still having an objection has 30 days to apply to the District Court for an order directing the Director of Public Works to amend the plan in any manner as the Court may think just.

There is provision in the Bill for an appeal against the decision of District Court by applying within 14 days to a Judge of the Supreme Court. The Judge's decision on such an appeal is to be final.

When all applications and appeals have been finally disposed of the plan will, if necessary, be further amended and the public given details of the final plan which will henceforth be accepted as the original plan.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons

The "Objects and Reasons" for the Bill were stated as follows: —

By a Crown Lease dated the 1st day of January, 1893 certain parcels of ground in the Pok Fu Lam Village area were leased to the persons named in a schedule to the lease for the terms of years and rents set out therein. It appears that certain other plots of ground were also leased in association with the parcels of ground mentioned in the schedule, these plots being leased for cultivation purposes and at rents additional to those charged for the parcels of ground.

2. At the time the lease was drawn up a plan giving a more particular delineation of the said parcels of land was deposited in the Land Office. This plan cannot now be found and is believed to have been lost during the Japanese occupation of the Colony.

3. The object of the Bill, therefore, is to enable another plan to be prepared which will take the place of the original plan and make the identification of the portions of ground leased in 1893 with those existing at Pok Fu Lam Village a straightforward matter.

WATERWORKS (AMENDMENT AND VALIDATION) BILL 1966

MR J. J. ROBSON moved the First reading of a Bill intituled "An Ordinance further to amend the Waterworks Ordinance and to validate surcharges under the Waterworks Regulations."

He said: —Your Excellency, the regulations made vide Section 29 of the Waterworks Ordinance lay down that surcharges will be made on all water accounts which have not been paid by the due date. I quote from Appendix I of the Regulations: —

"If any part of any account rendered in Form B remains unpaid after the date specified in the account for payment without surcharge, the amount remaining unpaid *shall*, if it does not exceed

five dollars, be increased by twenty-five cents, and if it exceeds five dollars, be increased by ten cents for every two dollars or part of two dollars".

It will be noted from this wording that firstly when the water account is more than \$5 the surcharge is a straight 5% of the Bill, and when it is less than \$5 the surcharge is more than 5%; and that secondly the surcharge is obligatory which means that, while on occasions there may be very good reasons why a water account has not been paid on time, no authority exists to waive the surcharge.

However, the legality of imposing the surcharge at all has now been raised for while Section 29 of the Ordinance permits the Governor in Council by regulations to provide for the fees, payments, and the price to be paid for water, it nowhere specifically empowers the imposition of a surcharge as such.

The Bill now before Council seeks to remedy these defects by amending the Waterworks Ordinance so as to: —

firstly remove any doubt of the legality of the imposition of surcharges;

secondly give the Accountant General discretionary powers in the imposition of surcharges; and

thirdly to validate the actions of the Accountant General in respect of surcharges collected prior to the passing of this amending Bill.

The opportunity has also been taken to simplify the assessment of surcharge to be imposed by making this a straight 5% of the water account in all cases. There are now few water accounts which are less than \$5 and this amendment will simplify the preparation of Bills.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a First time.

Objects and Reasons

The "Objects and Reasons" for the Bill were stated as follows: —

This Bill seeks to amend section 29 of the principal Ordinance to enable a standard 5% surcharge to be imposed under the Waterworks Regulations in respect of all overdue water accounts. This follows similar provisions in the Rating and Inland Revenue Ordinances. A consequential amendment is made to section 17, with regard to the recovery of the surcharge.

Doubts have been expressed in respect of the validity of surcharges under Appendix I to the Waterworks Regulations, and the opportunity has been taken to validate anything done under that provision prior to the commencement of this Bill.

SUPPLEMENTARY APPROPRIATION (1965-66) BILL 1966

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to authorize a supplementary appropriation to defray the charges of the financial year ended the 31st day of March 1966."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clauses 1 and 2, the Schedule and the Preamble were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY reported that the Bill before Council has passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

MEDICAL REGISTRATION (AMENDMENT) BILL 1966

DR P. H. TENG moved the Second reading of a Bill intituled "An Ordinance further to amend the Medical Registration Ordinance 1957."

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clauses 1 to 5 were agreed to.

Council then resumed.

DR P. H. TENG reported that the Bill before Council has passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

NEXT MEETING

HIS EXCELLENCY THE GOVERNOR: —That concludes the business for today. The next meeting of Council will be held on 26th October.