

CORRESPONDENCE

BETWEEN

THE GOVERNMENT AND THE SPEAKER

OF THE

HOUSE OF REPRESENTATIVES,

RELATIVE TO THE

NOTIFICATION OF VACANCIES AND ISSUE OF WRITS FOR
ELECTIONS.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON.

—
1868.

CORRESPONDENCE BETWEEN THE GOVERNMENT AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

No. 1.

Address from the Hon. Sir. D. MONRO to the GOVERNOR.

Nelson, 27th November, 1867.

WHEREAS it has been established to my satisfaction that the seat of William Sefton Moorhouse, Esquire, a Member of the House of Representatives for the Electoral District of Westland, has become vacant:

Now therefore I, Sir David Monro, the Speaker of the said House, do hereby address His Excellency the Governor of New Zealand, and state that such vacancy as aforesaid exists, and that the same was caused by the resignation of the said William Sefton Moorhouse.

As witness my hand this 27th day of November, 1867.

D. MONRO,
Speaker.

No. 2.

Copy of a Letter from the Hon. E. W. STAFFORD to the Hon. Sir D. MONRO.

(No. 1,405.)

Colonial Secretary's Office,
Wellington, 6th December, 1867.

SIR,—

I have the honor to acknowledge the receipt of your address dated the 27th ultimo, stating that the seat of W. S. Moorhouse, Esquire, for the Electoral District of Westland, in the House of Representatives, has become vacant, and that the vacancy was caused by his resignation.

The Government is advised that this address is informal, inasmuch as Mr. Moorhouse ceased on the passing of "The Westland Representation Act, 1867," to be Member for the Electoral District of Westland, and that district also then ceased to exist. The address should state that the Seat for the Electoral District of Westland Boroughs is vacant, and also specify the cause of such vacancy.

I have, &c.,

E. W. STAFFORD.

The Hon. the Speaker, House of Representatives.

No. 3.

Copy of a Letter from the Hon. Sir D. MONRO to the Hon. E. W. STAFFORD.

SIR,—

Nelson, 10th December, 1867.

I have the honor to acknowledge the receipt of your letter of the 6th instant, pointing out that Mr. Moorhouse is by Act of Parliament member for "the Westland Boroughs," and not member for Westland. Both Mr. Moorhouse, in writing officially to me, and myself, in forwarding his resignation, would appear to have overlooked the existence of the Act in question. With regard to myself, such was undoubtedly the case; and I can only express my regret that I should have committed the oversight. I have written to Mr. Moorhouse, requesting him, if he still wishes to resign, to amend the form of his resignation.

I wish, however, to take this opportunity of directing your attention to a point of some importance in a constitutional point of view. You commence your letter of the 6th by acknowledging the receipt of an address from me intimating a vacancy. If you will look at the form of the notification, you will find that I address not the Colonial Secretary but the Governor; and I do so in accordance with the provisions of "The Elections Writs Act, 1858."

In that Act the Governor is most distinctly indicated as the officer of the Colony with whom the Speaker of the House of Representatives is to communicate—and no doubt with the very evident intention of preserving the Legislature from the appearance even of that Executive interference which in all British constitutional arrangements has been so jealously guarded against.

I must therefore beg you to understand that the present correspondence between us is not to be treated as a matter of precedent. I feel indebted to you for having pointed out an oversight, and I will have it rectified; but at the same time I feel it my duty to observe that this has not been done in the manner prescribed by law, nor in accordance with correct Parliamentary usage.

I have, &c.,

D. MONRO,

Speaker, House of Representatives.

The Hon. the Colonial Secretary.

No. 4.

Copy of a Letter from the Hon. E. W. STAFFORD to the Hon. Sir D. MONRO.

(No. 21.)

Colonial Secretary's Office,
Wellington, 7th January, 1868.

SIR,—

I have the honor to acknowledge the receipt of your letter of the 10th ultimo, on the subject of your address, dated the 27th of November last, to His Excellency the Governor, reporting a

vacancy in the seat of Mr. Moorhouse in the House of Representatives, and of the error which I pointed out in my letter No. 1,405, of the 6th ultimo, in stating in that address the vacancy to have occurred for the Electoral District of Westland, which no longer exists.

The constitutional objection which, while you admit the error, you make to the mode of its being pointed out, seems, so far as I can gather your meaning, to consist in the fact that the letter to you was not written by the Governor but by myself, and you base that objection on the ground that in "The Elections Writs Act, 1858," the Governor "is most distinctly indicated as the officer of the Colony with whom the Speaker of the House of Representatives is to communicate, and no doubt with the very evident intention of preserving the Legislature from the appearance even of that Executive interference which in all British constitutional arrangements has been so jealously guarded against."

I cannot understand the force of this objection in a constitutional point of view, and I must dissent from the inference on which apparently it is based. The Governor is the Executive, and any action taken by him independently of his Ministers, in reference to the address in question, as in other matters, is unconstitutional. Ministers, in that capacity, represent equally the confidence of the Crown and of the two Houses of the Legislature, and any attempt—were it ever made—to place in the Crown a power irrespective of responsible advice, would certainly conflict with British constitutional arrangements. In this instance, where a fatal error occurred in an address of the Speaker stating a vacancy in the House of Representatives, the Governor would, if I correctly apprehend your argument, be required either to issue an illegal writ, or personally, without responsible advice, to enter into a correspondence, possibly a controversy, with the Speaker. Such a course would not obviate the action of the Executive in such matters, but on the contrary, as the Governor is himself the Executive, he would be in such a case acting purely in an irresponsible Executive capacity, instead of one responsible to the Legislature.

In any Act of Parliament in the United Kingdom, as in New Zealand, in which the Queen or the Governor is empowered to do some Executive act, that power is exercised, in accordance with constitutional usage, on the advice of the Ministers of the Crown, although the constitutional usage in this respect has never yet been defined by legislative enactment.

Moreover, as the Governor cannot constitutionally act in any matter without the advice of his Ministers, so the fact of an address being sent direct to the Governor, in no way relieves Ministers from the responsibility of giving advice, as all public documents of whatever kind which may happen to be addressed to the Governor, are uniformly transmitted by him without remark to his Ministers, who make such reply as the subject may require.

I am unable, either, to admit that I committed any error in form in writing to you with reference to your address to the Governor. It has never been the custom for Governors to enter into direct official correspondence with the Speaker of either House of the Legislature. And I may observe that I have acknowledged the receipt of addresses from you notifying vacancies, in order that an accurate record of their receipt might be established, although the law does not require that they should be acknowledged.

The Hon. the Speaker, House of Representatives.

I have, &c.,
E. W. STAFFORD.

No. 5.

Copy of a Letter from the Hon. Sir D. MONRO to the Hon. E. W. STAFFORD.

SIR,—

Nelson, 10th January, 1868.

I have the honor to acknowledge by to-day's post the receipt of your letter of the 7th January, in reply to mine of the 10th December. I will not pretend to follow you into the interesting and important subject of the position of the Governor of a British Colony in which the system of what is called "Responsible Government" prevails. But as I see that you and I look at the question immediately before us from very different points of view, and as very probably this arises from the imperfect explanation of my meaning given in my former letter, I will now endeavour to make it more clear. I observe that we both regard the Governor as a Ministerial officer, whose duty it is according to law to do certain things upon our advice. In your view of the case, the Governor is to cause a writ to be issued upon being advised by his Responsible Advisers that he should do so. In my view of the case, the law has remitted this duty to the Speaker of the House of Representatives. For the purpose of declaring that a vacancy exists I hold myself to be the Governor's responsible adviser, and I regard his action in the matter when a vacancy has been reported to him as analogous to that which is performed in England by the clerk of the Crown in Chancery. As to the usual practice of Government and the relations between the Governor and his Responsible Advisers in the conduct of business, I do not doubt for one instant that you have stated it with perfect accuracy. But, for my purpose, it is not in the least necessary that I should know anything about it. I know nothing but my duty under certain circumstances to make an official communication to the Governor; and when I have done that, I expect the Governor to perform an Executive act. The responsibility of the matter is with me; and for its proper discharge I am accountable to the House of Representatives.

In reply to my objection to Executive interference in the elections for the Legislature you observe that after all "the Governor is the Executive." You will perhaps pardon my reminding you that while it is perfectly true that the Governor is the chief Executive officer of the Colony, he nevertheless occupies a very different position from that of the ordinary Responsible Minister. In the first place the Governor is not only an Executive officer but he is also a branch of the Legislature. But in the second place (and this as regards the question immediately before us is the more important point) the Governor is a permanent officer, responsible to an authority outside the Colony, not subject to be displaced by a vote of the Legislature, and consequently free from all suspicion of party influences or bearings. And I have no doubt, as I said in my former letter, that these considerations were present to the mind of the Legislature when the Elections Writs Act was passed, and that they constituted the

reason for making the Speaker the ultimate tribunal to determine the fact of a vacancy, and the Governor the officer to give effect to it by issuing the writ.

If my view of the law be the correct one you are hardly justified in stating that "the Governor cannot constitutionally act in any matter without the advice of his Ministers," and that "the fact of an address being sent direct to the Governor in no way relieves Ministers from the responsibility of giving advice, as all public documents of whatever kind which may happen to be addressed to the Governor are uniformly transmitted by him without remark to his Ministers, who make such reply as the subject may require." The constitutional character of any proceeding depends upon its being in accordance with either custom or law. If the law assigns a certain duty to the Governor, and if it appear to be the fair and reasonable meaning of this law, that this duty should be performed by the Governor upon the advice of a certain party indicated in the statute, then it appears to me that it must be unconstitutional, or in other words not in accordance with law, that the Governor should invoke the advice or assistance of any other party. When the Speaker has declared to the Governor the existence of a vacancy, I hold it to be altogether unconstitutional either for the Governor to seek or for any party to tender any other advice.

I regret to be compelled to dissent from another statement of yours, that "it has never been the custom for Governors to enter into direct official correspondence with the Speaker of either House of the Legislature." As Speaker of the House of Representatives I have had the honor to receive many letters both from the late and from the present Governor of New Zealand.

Before concluding, I wish to take advantage of our correspondence on this subject to state that I consider the Elections Writs Act to be altogether faulty. No better proof could be desired of its defects than is to be found in this controversy which is going on between us. In my view of the matter, the Legislature should contain within itself every power necessary for constituting itself and preserving its action. It is a mistake, I think, to call upon the Governor of the Colony to perform a simply Ministerial act. It is still worse to invoke the action of a party Ministry in the question of an election to the Legislature. I beg leave to submit that our best course would be to copy the British practice. According to that, when the House is in session, it declares vacancies itself, and orders the Speaker to issue his warrant for a writ. During the recess, the Speaker, on his own responsibility, issues his warrant. The Ministry know nothing whatever of the proceeding. The Speaker forwards his warrant to the Clerk of the Crown in Chancery, and that officer issues the writ. Thus no conflict can arise between the officers of the Legislature and of the Executive.

I have, &c.,

D. MONRO,

Speaker, House of Representatives.

The Hon. the Colonial Secretary.

No. 6.

Copy of a Letter from the Hon. E. W. STAFFORD to the Hon. Sir D. MONRO.

Colonial Secretary's Office,

Wellington, 21st January, 1868.

SIR,—

I have the honor to acknowledge the receipt of your letter of the 10th instant, in reply to mine of the 7th, having reference to the issue of a writ, in consequence of the resignation by Mr. Moorhouse of a seat in the House of Representatives.

I am very unwilling to prolong this correspondence, nor would I have done so were it not that in your letter you assert that, under "The Elections Writs Act, 1858," you, as Speaker of the House of Representatives, are, in respect of the issue of writs, the Governor's responsible adviser; and with reference to the course pursued by the Governor, of referring all public documents addressed to him without remark to his Ministers, further state that "when the Speaker has declared to the Governor the existence of a vacancy," you "hold it to be altogether unconstitutional either for the Governor to seek, or for any party to tender any other advice." With such statements before me, I am compelled, however reluctantly on other grounds, to controvert opinions which I believe to be untenable in a constitutional point of view, and to reflect unjustly on the action of His Excellency and his Ministers.

I cannot admit that the Legislature has, in "The Elections Writs Act, 1858," or in any other Act, placed, for any purpose whatever, the Speaker, to the exclusion of Ministers, in the position of an adviser of the Governor, or has reduced the Governor (that is the Crown) to the position, as you state, of a Clerk of the Crown in Chancery in England. The conclusions to which such an interpretation of the law would lead are equally repugnant to the principles of Constitutional Government, and irreconcilable with the proper status of the Crown. If, for example, as might have been the case in the instance out of which this correspondence arose, the Speaker had persisted in calling upon the Governor to issue an illegal writ, the Governor would have had no power, as he has in respect of his Ministers, to remove him and appoint another Speaker, nor would the Speaker have been, like Ministers, responsible to all three branches of the Legislature, nor, in any constitutional sense, even to one branch. It would also be anomalous to hold that the House of Representatives could make the Governor personally responsible for declining to act on the advice of the Speaker, and could at the same time altogether ignore his regular Responsible Advisers.

You contend that if the law assigns a certain duty to the Governor it is the fair and reasonable conclusion that the duty should be performed by the Governor, on the advice of a certain party indicated in the Statute, and that it would be unconstitutional, or, as you say, in other words, not in accordance with law, that the Governor should invite the advice or assistance of any other party. This expression of your opinion appears to me to illustrate the fallacy under which you labour with respect to the whole question of the action of the Governor in connection with the wording of laws and executive practice in a country governed constitutionally, as is New Zealand. The basis of Constitutional Government, and an universally received axiom, is, that the Crown can only act through its Ministers, for the manifest reason that the Crown cannot be made, except by Revolution, responsible

for its action. Nor does the wording of Acts which may assign certain duties to be performed by the Crown, apparently unassisted in any way, contravene this axiom. In England, the Sovereign, in New Zealand, the Governor, is by precise words in Acts of Parliament, specially and alone authorized to exercise certain powers, but although so specially authorized, can never—as is well understood and intended by the Legislature when passing these Acts—exercise the specified powers, except with the advice of Constitutional Ministers.

You also seem to infer that if the Governor acts on the advice of Ministers some injury to the Legislature might arise from what you term their “party leanings,” and you urge (apparently as a necessarily consequent protection to the Legislature) that the Governor should be bound to act on the advice of the Speaker alone in certain cases. But you appear to overlook both that Ministers are directly responsible to the Legislature for their advice, and that the Speaker, who might have party-leanings, would be for the advice he might give, altogether irresponsible either to the Crown or the Legislature, not being for the duration of each Parliament removable by either.

With respect to your remark as to the customary mode of addressing the Speaker of the House of Representatives, I can only state that, as far as I am aware and can ascertain from the official records, the custom has been to conduct, through the Colonial Secretary’s Office, what may properly be termed official correspondence between the Governor and the Speaker of either House of the Legislature. Certainly there is no record of a Governor having ever personally corresponded with a Speaker in reference to issue of writs.

Referring to the latter portion of your letter in which you state that “the Legislature should contain within itself every power necessary for constituting itself and preserving its action,” I would observe that I do not conceive you to mean by those words that you would limit the undoubted prerogatives of the Crown of summoning and proroguing the Legislature, of calling Members to the Legislative Council, and of dissolving at its pleasure the House of Representatives. Assuming that not to be your intention, I am glad to be able generally to concur in your opinion that the practice of issuing writs for elections should be assimilated in New Zealand to that in force in the United Kingdom, which is not the case at present; but to effect this the law must be altered. While therefore expressing my opinion as to the practice which the law at present in force in New Zealand necessitates, I in no way wish to commit myself to an approval of that law, but, on the contrary, as I have just stated, I would willingly see it changed in the direction indicated.

The Hon. the Speaker of the House of Representatives.

I have, &c.,

E. W. STAFFORD.
