

from my original minute of the 10th July, 1901, that, in my opinion, the six-months limit does not apply where the death occurs before the date of the report. In the case of Colonel Francis a Board duly appointed by the Governor under the Act reported on the 16th September, 1901, some months after the death, and the report is referred to in the Assistant-Controller's minute.

The regularity of the appointment of this Board is not questioned.

As the whole of the correspondence was before His Excellency when he issued his Warrant, I do not think that any further action is rendered necessary in consequence of the defect in the constitution of the first-mentioned Board.

FRED. FITCHETT, Solicitor-General.  
12/5/1902.

No. 24.

The Audit Office.

PLEASE see the further remarks of the Solicitor-General.

JAS. B. HEYWOOD.  
13th May, 1902.

No. 25.

The Hon. the Colonial Treasurer.

*Pension to Widow of Colonel Francis.*

THE approval of the Minister for the appointment of the Medical Board in question appears to have been his approval on the 6th June, 1900, of the Commandant's recommendation that it was "advisable to appoint a Medical Board to examine and report upon each case of disablement with a view to obtaining pecuniary assistance from patriotic benevolent funds." But the Board of Medical Officers which section 4 of "The Military Pensions Act, 1866," authorises the Governor to constitute and appoint is "for the purpose of examining every officer and man who is an applicant for a pension or gratuity under this Act." Thus the Medical Board appointed only on the foregoing approval of the Minister was not appointed for the purpose for which a Board of Medical Officers may be appointed under the Act; and it would seem doubtful whether the Governor has any such power of ratification as would remove both the objection that the Board which reported on the 21st February, 1901, was appointed, neither under the Act nor for the purpose of the Act, and the objection that its report is not one for the purpose of which the Act authorises the appointment of a Board of Medical Officers.

But in any case the Controller and Auditor-General feels that he ought to ask the Administration whether it will not put in order or revise what has been done, for the Warrant of the Governor as it now stands appears to the Audit Office to give reasons which are wrong for its conclusion that the pension may be granted.

14th May, 1902.

J. K. WARBURTON,  
Controller and Auditor-General.

No. 26.

Mr. Warburton.

*Pension to Widow of Colonel Francis.*

No reply having been received to your last minute on this subject, dated the 14th May, 1902, I think these vouchers should be returned to the Defence Department. Your minute was, however, addressed to the Colonial Treasurer.

J. C. GAVIN, A.C. & A.

7/7/02.

No. 27.

The Hon. the Colonial Treasurer.

FROM the absence of any reply to the Audit Office memorandum of the 14th May last, the Controller and Auditor-General presumes that it is not the desire of the Government that the vouchers for the proposed pension shall be passed on the Governor's determination as it stands at present.

J. K. WARBURTON, C. & A.-G.

7/7/02.

No. 28.

The Treasury, Wellington, New Zealand, 16th May, 1902.

The Hon. the Colonial Treasurer.

IF the point now raised by the Audit Office affected in any way the legality of the pension His Excellency might with propriety be asked to revise his Warrant; but as the Solicitor-General holds that it does not, I agree with him that no further action is necessary, and recommend that the Audit Office be informed accordingly.

So long as His Excellency's decision is in accordance with law the reason on which it purports to be based is immaterial. Moreover, in the present case it appears to me that the reason in question is not wrong as suggested by the Audit Office.

The Solicitor-General's opinion is that when the officer dies before the date of the certificate of the Medical Board under the Act the limit of six months imposed by subsection (b) of section 7 does not apply. In other words, the condition that the death must occur "within six months after" the date of the certificate means "not later than six months" after that date, and is consequently complied with when the death occurs before that date, as in Colonel Francis's case. Construed in the same way, the words in the Warrant "inasmuch as he died within six months after that date" are correct.