

1913.
NEW ZEALAND.

ESTIMATES

(OPINION OF THE SOLICITOR-GENERAL RELATIVE TO THE).

Laid on the Table of the House by Leave.

MEMORANDUM FOR THE HON. THE PRIME MINISTER RE THE ESTIMATES.

Office of the Attorney-General and Minister of Justice,
Wellington, 18th September, 1913.

IN accordance with the request you made to me the other day, I have obtained the opinion of the Solicitor-General upon the question which has arisen in connection with the estimates presented to the House by the Hon. the Minister of Finance on the 6th August last, and now beg to enclose the same herewith for your information.

A. L. HERDMAN.

OPINION OF THE SOLICITOR-GENERAL RELATIVE TO THE ESTIMATES.

The Hon. the Attorney-General.

THE estimates now before the Committee of Supply of the House of Representatives and relating to the remuneration of the Public Service are based, in accordance with the usual practice, on the salaries paid during the last financial year, any increase being left to be dealt with on the supplementary estimates. On the 20th August, after the main estimates had been brought down, the Public Service Commissioner published his classification of the Public Service in accordance with the Public Service Act, 1912. This classification is now in force, subject, however, to any alterations which may be made therein by the Board of Appeal. The salaries fixed by the classification are different in very many instances from the salaries appearing in the estimates now under discussion in the Committee of Supply.

I am asked to advise as to the legality of the course so taken in bringing down the estimates, and my attention has been called to an opinion recently given on this point by Sir John Findlay, K.C., and Mr. C. P. Skerrett, K.C.

So far as that opinion is confined to the proposition that a vote on the estimates cannot alter any salary fixed by the Public Service Commissioner in pursuance of his statutory authority under the Public Service Act, I agree with that opinion. When the Commissioner has once fixed the salary of an officer by classifying him in accordance with the Act, the officer acquires a statutory right to be paid that salary, and this right cannot be affected by a reduction of the estimates. The House has, of course, full power to reduce the estimates, but such a reduction would amount merely to a refusal by the House to supply the Executive Government with the moneys necessary to enable it to fulfil its statutory obligations. These obligations would none the less remain in existence, and the Civil servant so affected would be entitled to take proceedings in a Court of law for the recovery of the salary assigned to him by the Commissioner. Apart from legislation, the difficulty so created could only be put an end to by the act of the Commissioner in dispensing by three months' notice with the services of the officer whose salary the House had so refused to vote.

If, on the other hand, the Committee of Supply voted a salary in excess of the statutory salary as fixed by the Commissioner, this vote would be entirely ineffective to increase that salary. The repeal of section 46 of the Public Revenues Act, 1910, by the Public Revenues Amendment Act, 1912, prevents any such increase of a payment the amount of which is limited by an Act of Parliament.

If, therefore, Parliament is desirous of increasing or reducing any salary fixed by the Public Service Commissioner, this must be done by express enactment, and not merely by a vote on the estimates. An express enacting clause in the Appropriation Act itself would of course be sufficient for the purpose.

The only qualification of the above rule is that which is provided by section 24 of the Public Service Act, 1912. By virtue of this section the Governor may, by message to the House of Representatives, recommend a rateable reduction or increase in the salary of every person in any division of the Public Service. If this recommendation is approved by a resolution of the House, it takes effect accordingly without any enactment to that effect. To this extent the statutory salaries of public servants may be affected without legislation enacted for that purpose.

In order to avoid misapprehension it is necessary to state that the foregoing observations as to the power of the Commissioner to fix salaries independently of Parliament apply only to the

Professional and Clerical Divisions of the Public Service. In respect of these divisions salaries are determined by the Commissioner alone, and Parliament merely votes the money necessary to fulfil the statutory contracts so made by the Commissioner. In respect, however, of the Administrative Division and the General Division the law is otherwise. In the Administrative Division the Commissioner has no voice in fixing salaries, and these depend solely on the estimates, in accordance with the former practice. In respect of the General Division it is provided by section 22 of the Act that the salaries are to be such as are determined by the Commissioner and provided in the annual estimates. In this case, therefore, the determination of the Commissioner is of no effect save so far as the salary so determined is approved by the House in passing the estimates. The function of the House is not merely to supply money for the payment of such salaries, but also to determine what these salaries are to be. The salary so voted by the House cannot be greater than that determined by the Commissioner, but it may be less. A similar provision is made in section 20 with respect to those officers of the Professional Division whose salaries exceed £700 a year. The reason for the distinction so made by the Act is that in respect of the Clerical and Professional Divisions the powers of the Commissioner are limited by the scheduled scale of salaries, whereas there is no scheduled scale for the General Division, and the power of the Commissioner to fix such salaries is therefore made subject to the consent of Parliament.

The foregoing considerations, however, in no way affect the question as to the legality or regularity of the course taken by the Government in respect of the estimates not before the Committee of Supply. In my opinion there is nothing in the Public Service Act, 1912, which in any way affects the established practice of the House with respect to the preparation, presentation, or passing of the estimates. The Public Service Commissioner has nothing to do with the estimates. The purpose of passing estimates is to authorize the expenditure of public money by the Executive Government. It is by this means that the Government obtains the supplies necessary to enable it to fulfil its legal obligations and to perform its functions. Save in special classes of cases, these estimates in no way determine what the legal obligations or liabilities of the Government are, or affect the rights of private persons to receive payment of public moneys. There is no reason why the Government should in its estimates ask at one and the same time for the whole of the supply which may be necessary during the entire financial year. The established practice in the past has been to insert in the main estimates merely the salaries as paid during the previous financial year, leaving all increases to be voted on the supplementary estimates. There is nothing in the Public Service Act to prevent the continuance of this practice. In the present instance, indeed, the adoption of this course is not merely lawful but practically necessary, for the classification of the Public Service by the Commissioner is not yet complete. It is as yet merely provisional, for every portion of it is subject to appeal to the Board of Appeal and may be altered by that Board. Until these appeals have all been disposed of, it is impossible for the Government or for the House to know what the statutory salaries of officers of the Public Service are, and it would seem very probable that this state of things will continue until after the passing of the Appropriation Act for the present year. The only duty of the Government, therefore, is to take care that in the main and supplementary estimates combined such supplies are obtained as will be sufficient to enable payment to be made in full of whatever salaries may be ultimately fixed in the final classification of the Public Service. In the meantime, and pending the passing of the Appropriation Act, the statutory salaries as fixed in the classification list will be paid in full out of imprest supply in the ordinary course.

The suggestion that the Public Service Act, 1912, requires the estimates for the present year to be based on and conformed to the salaries as fixed under that Act involves the inadmissible conclusion that the introduction and consideration of the estimates and the passing of the Appropriation Act must be delayed until the Board of Appeal has finished its work and finally determined all the salaries in the Public Service, an event which might not happen until after the close of the session or even the end of the financial year.

An additional reason for the adoption of the present course is that the statutory salaries commence only on the 20th August, the date of the publication of the Commissioner's classification. Salaries for that portion of the present financial year which elapsed before the 20th August must be voted on the estimates in the ordinary manner, and the Public Service Act, 1912, has no application. It is true that in the memorandum attached by the Commissioner to the classification list he indicates that these salaries will take effect as from the beginning of the present financial year, but I am not aware of any authority for so making the classification retrospective in its operation. If this is intended, a clause to that effect should be inserted in the Appropriation Act.

I may add that there is no legal necessity for the details of the statutory salaries of the Clerical and Professional Divisions to appear in the estimates at all. In future years, therefore, when the classification of these divisions is complete, it will be lawful either to vote an aggregate amount to meet these salaries or to continue the present practice of voting each salary individually. In the present year, however, the latter is the only practicable course.

I have to advise accordingly that the course taken by the Government in the present case is in accordance with law.

JOHN W. SALMOND, Solicitor-General.

Crown Law Office, 18th September, 1913.

Approximate Cost of Paper.—Preparation, not given; printing (1,400 copies), £2.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1913.