

(No. 86.)



1890.

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PARLIAMENT OF TASMANIA.

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MINISTERIAL AUTHORITIES *RE* ACCOUNTS :

CORRESPONDENCE.

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Presented to both Houses of Parliament by His Excellency's Command.



TASMANIA.

THE GOVERNMENT OF TASMANIA £r.

To R. C. PATTERSON, Esq., Hobart.

1890.	Public Works Department.	£	s.	d.
May 15th.	To amount of Progress Certificate No. 1 .....	£1820	17	0

R. C. PATTERSON.

Correct.

W. SMITH, *Secretary Public Works,*  
*For Engineer-in-Chief, absent.*

The Governor approves.

G. P. FITZGERALD,  
*For Minister of Lands and Works, absent.*

REFERRED to the Auditor-General. Section 18 of 52 Vict. No. 43 reads—"No expense, although duly provided for in the Estimates, is to be incurred by any Head of Department without the *Minister's* authority." Before payment is made by this office on authority of the Hon. G. P. Fitzgerald, I shall be glad to know whether the Auditor-General considers such authority sufficiently covers the provisions of Sect. 18 of "The Audit Act, 1888," which Act leads me to infer that all expenditure must have the approval of a Minister before payment. Accounts for a considerable sum now await liquidation.

J. E. PACKER, *Under Treasurer.*  
20. 5. 90.

THE approval of a Responsible Minister is evidently necessary; and, as the Honorable G. P. Fitzgerald does not occupy that position, the approval attached to this account cannot be considered sufficient authority within the meaning of Section 18 of Schedule 2 of "The Audit Act." As, however, delay in the payment of urgent claims may cause serious inconvenience, it is recommended that all such claims be paid, upon the understanding that Mr. Fitzgerald's approval may be taken temporarily, and that a Minister's approval for each payment will be obtained afterwards as soon as possible.

*The Under Treasurer*

W. LOVETT.  
20 May, 1890.

FORWARDED for the information of the Hon. the Minister of Lands and Works. It will be desirable to make a note of any urgent cases, so that a Minister's approval may be furnished as soon as practicable.

J. E. PACKER.  
21. 5. 90.

*Treasury, Hobart, 27th May, 1890.*

COPY of the Voucher on which the question was raised as to the sufficiency of the approval of the Hon. G. P. Fitzgerald to cover money payments during the absence of Ministers from Hobart, is forwarded herewith for the information of the Hon. the Premier. In submitting the Voucher, I venture to suggest that the point be set at rest by an appeal to the Law Officers of the Crown for their opinion.

J. E. PACKER, *for the Treasurer, absent.*

*The Hon. the Premier.*

THE Chief Secretary will be glad if the Auditor-General will confirm or otherwise the Chief Secretary's recollections—which the Under Secretary assures him with confidence are well founded—that it has been the practice of Administrations for Members without portfolios to sign such Treasury documents as that referred to herein, and signed, for the Minister of Lands, absent, "G. P. Fitzgerald."

P. O. FYSH.  
11. 6. 90.

ANTERIOR to the passing of the new Audit Act, 52 Vict. No. 43, the custom had obtained to pass expenditure approved by a Member of an Administration without portfolio, signing for a Ministerial Head of Department during his absence from office.

It must be explained, however, that in "The Audit Act" repealed by the present Act, the section providing the method under which expenditure could be authorised, the words "No expense, although duly provided for in the Estimates, is to be incurred by any Head of Department without the Governor's authority" were used, and the authority was worded "the Governor approves;" consequently, although it is understood that doubts existed as to the sufficiency of such authority, it had not been formally objected to by the Audit Department, as the supposed meaning of the provision was not definitely expressed, and as the Governor had apparently the right to convey his authority in the manner which had become the custom. In the present Act, however, the words in Section 18, Schedule 2, "without the Minister's authority," appeared to me, without doubt, to mean the authority of a Minister having control of Departments; opinion was accordingly given in the terms of my Memorandum of the 20th May.

W. LOVETT.  
12th June, 1890.

*The Honorable the Chief Secretary.*

*Premier's Office, Hobart, 14th June, 1890.*

#### MEMORANDUM.

THE following matter is referred by the Premier to the Law Officers of the Crown, with the request that he may be advised thereon.

The Hon. G. P. Fitzgerald is a Member of the Cabinet without portfolio: he was duly sworn as a Member of the Executive Council, and sits with his colleagues, the Ministers, as an integral part of the "Governor in Council." Any departmental duty discharged by him is part of the Ministerial responsibilities, and no official act of his can be separated from the acts of the Cabinet.

It has been the unchallenged practice throughout the period of our Constitutional Government for such a Member of the Cabinet to sign similar financial documents to that forwarded herewith.

In 1888 the Audit Act Regulations, which provided that "no expense," &c. "is to be incurred" without the Governor's authority, were amended by Act 52 Vict. No. 43.

As Ministers were charged with these duties imposed by law upon the Governor, they have uniformly affixed their signatures to such documents under the words "The Governor approves;" and, notwithstanding the amending Act, the propriety has not hitherto been recognised of abandoning that form and of substituting the word "approved." On the desirability of such a change an expression of opinion is sought.

The account herewith is for an expense duly provided for in the Estimates, and it has been incurred by authority of the Ministerial head of the Department. Must the authority by which the financial responsibility is ultimately discharged also be signed by the Minister? or if the preliminary authority for an expense incurred has been under the signature of the Minister, is it enacted that he and no one else shall sign the authority by which the obligation is discharged by the Treasury?

Is the signature of the Hon. G. P. Fitzgerald to this document, which is a payment on account of part of a contract, an incurring of expense under Regulation 18?

Will Regulation 18 permit of "the Minister's authority" being read so as to enable the Ministerial head of one department to sign for another Ministerial head the approval for the Treasury to discharge accounts, and may the preliminary authority by which, without exception, all expense is incurred, be signed in like manner?

It is intended that this matter, with the opinion of the Law Officers of the Crown, shall be referred to the Governor in Council, under Instruction 25, Schedule 3, of 52 Vict. No. 43.

P. O. FYSH.

*The Hon. the Attorney-General.*

REFERRED to the Solicitor-General.

F. STOPS, *Secretary.*  
16. 6. 90.

SEE opinion herewith.

ALFRED DOBSON.  
30th June, 1890.

RETURNED, with the opinion of the Solicitor-General.

F. STOPS, *Secretary.*  
30. 6. 90.

*Solicitor-General's Office, June 30, 1890.*

*OPINION upon Memorandum from the Chief Secretary, 14th June, 1890, re Audit Act.*

1. It was provided by Regulation 18 in the Schedule to 41 Vict. No. 16, that no expense, although duly provided for in the Estimates, is to be incurred by any Head of Department "without the Governor's authority," &c.

By Regulation 18 in the 2nd Schedule to 52 Vict. No. 43, the words "Governor's authority" are struck out, and the words "*Minister's authority*" are inserted in lieu thereof.

By this change in the law the old system under which the words "the Governor approves" were used is clearly abolished—in fact, the Governor has no power to approve or disapprove—the matter is solely a departmental one for the approval or otherwise of the particular Minister. In all matters where a course is plainly laid down by law I think it is expedient to follow the prescribed course; the risk of confusion and mistake is thereby obviated, and business is in the end facilitated. For these reasons I think it would be desirable to change the form of words now used, and to substitute the word "approved."

2. I do not think that the authority by which the financial responsibility is ultimately discharged need be signed by the "Minister" or by any person. It appears to me that *an expense is incurred* within the meaning of Regulation 18 at the time when that expense was duly authorised. For instance, when a contract is duly and lawfully made, it may be said that the expenditure for the contemplated work is "incurred" even before the work is executed, or the money under the contract earned or payable. The money must be set aside or provided for, and the moment the contract is signed the liability to perform it (*i.e.*, to pay ultimately) exists.

Though I come to this conclusion upon the strict construction of the Regulation, it need hardly be pointed out that, unless the ultimate authority or voucher for the payment of claims against the Treasury is approved or vouched as correct by some authority, great inconvenience and confusion would be the result. I do not apprehend that any change is desired to be made in the custom which has always prevailed, of having vouchers approved. The only question is, by whom and in what manner such vouchers should be approved? (*See remarks, No. 1, ante.*)

3. I think the expense can only be incurred by the authority of the Minister who has control over the Department in which the expense is incurred. Regulation 18 is actually part of "The Audit Act," and of just the same force as any other portion of the Act; and this Regulation says that "no expense is to be incurred by any Head of Department without the Minister's authority." I think this must mean the Minister who presides over the particular Department, and who on this account is seized with the knowledge of the particular matter which he authorises. Strictly speaking, therefore, the Attorney-General, for example, has no right to authorise any expense to be incurred by the Lands Department.

I may point out with reference to this question that it makes no difference whether a Minister is a member of the Cabinet with or without office: a Minister without office is just as much what is called a "responsible Minister" as a Minister with office.

Ministers were called "responsible" in England because they were answerable for all acts of Government that could in any way be traced to their advice or co-operation. They were amenable to Parliamentary censure or impeachment, or to ordinary process of law. In modern times an adverse vote is the general way in which Ministers are held responsible.

Ministers in Tasmania are also answerable for every act of Government. The payment of a salary cannot make any difference.

No doubt, Ministers with a portfolio have more to lose if they have to vacate office upon an adverse vote, but the Minister without a portfolio is also answerable or responsible for advice or co-operation in acts of Government.

Probably the Auditor, upon further consideration of the matter, will be satisfied in future to accept under Regulation 18 the signature of any Minister without a portfolio, inasmuch as such a Minister has as much authority to sign under the Regulation as any other. As I have pointed out above, if the Regulation is strictly construed then *no* Minister can sign for another; but such a strict construction would very much impede business, and would necessitate an alteration in the law.

4. I may point out that Instruction 25 of Schedule 3 only applies to questions arising out of the *Instructions* in Schedule 3, and that no power is given to the Governor in Council to decide questions arising upon the Regulations in Schedule 2.

ALFRED DOBSON.

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*Chief Secretary's Office, Hobart, 19th July, 1890.*

In acknowledging receipt of the Solicitor-General's opinion on a case put in a letter from the Honorable the Premier, dated 14th June last, the Auditor has the honor to remark:—

1. In the opinion given by the Auditor on 20th May on a question raised by the Under Treasurer, the words "responsible Minister" were used in the sense applying to responsibility in having control of Departments, and the Honorable G. P. Fitzgerald was not considered to hold that position because no intimation had been given by *Gazette* notice or otherwise that a Commission had been issued by His Excellency the Governor appointing Mr. Fitzgerald a Minister with such control as was the case with respect to the other Ministers. The Parliamentary or Constitutional meaning of the term was not considered, as this was thought to be not applicable to the question. Following the former practice as far as it was thought the new Audit Act permitted, the authority of one Minister acting for another was accepted; but it now appears, by the opinion of the Solicitor-General, that any expense connected with certain Departments can only be legally incurred under the authority of the Minister having control of such Departments. This being the case, it would not be proper, in the Auditor's opinion, to continue this practice. He does not therefore feel he would be justified in passing such authorities in future; and, looking at the gravity of the position, it is hoped that the matter will be referred for the consideration of Parliament during the present Session with a view to amend the Audit Act in order to meet possible future contingencies.

2. It has been understood by the Auditor that no legal obligation existed under which the authority by which the financial responsibility is ultimately discharged by the Minister, but it has always been the custom to require the final approval of a Minister before payment is made under the original authority by which an expense is incurred; and if it is necessary to have the authority of the Minister in charge of a Department when the expense is incurred, it follows naturally that the ultimate approval should be signed by the same Minister. There are many evident reasons which render it necessary that the custom of obtaining the approval of the Minister in the latter case should be continued, and it is only necessary particularly to point out how desirable this is in the case of contracts, when it frequently happens that the Minister becomes acquainted with circumstances which render it necessary to stop payment for any breach of the conditions, or other reasons arising which the Minister should properly have the opportunity of considering before the final discharge of the expense originally incurred.

3. The use of the term "the Governor approves" on vouchers should evidently be discontinued, and the word "approved," as suggested by the Solicitor-General, substituted: would the Honorable the Chief Secretary therefore be so good as to arrange with the Honorable the Treasurer to have this necessary alteration effected?

W. LOVETT, *Auditor-General.*  
18th July, 1890.

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FORWARDED to the Honorable the Attorney-General, in order that a Bill may be prepared for submission to Parliament during this Session to meet the circumstances disclosed in this correspondence.

P. O. FYSH.  
19. 7. 90.

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*Chief Secretary's Office, Hobart, 21st July, 1890.*

MEMO.

WHENEVER approvals are given by Ministers for payment of public moneys the word "Approved" must be used, as required by Regulation 18 in the Second Schedule of "The Audit Act, 1888," 52 Victoria, No. 43, instead of the words "The Governor approves."

Will the Honorable the Treasurer be good enough to see that this approval is given in future on all vouchers?

P. O. FYSH.

*The Honorable the Treasurer.*

[Similar to the Honorable the Minister of Lands and Works and the Honorable the Attorney-General.]