SECOND LEGISLATIVE COUNCIL

(Constituted under the British Guiana (Constitution) (Temporary Provisions) Orders in Council, 1953 and 1956).

Wednesday, 12th July, 1961

The Council met at 2 p.m.

PRESENT:

Speaker, His Honour Sir Donald Jackson

Chief Secretary, Hon. D. M. Hedges — *ex officio*

Attorney-General, Hon. A. M. I. Austin, Q.C.

The Honourable **B. H. Benn** —*Member for Essequibo River* (Minister of Natural Resources)

„ „ **Janet Jagan** —*Member for Western Essequibo* (Minister of Labour, Health and Housing)

„ „ **Ram Karran** —*Member for Demerara-Essequibo* (Minister of Communications and Works)

„ „ **B. S. Rai** —*Member for Central Demerara* (Minister of Community Development and Education).

Mr. **R. B. Gajraj** —*Nominated Member*
„ **W. O. R. Kendall** —*Member for New Amsterdam*
„ **R. C. Tello** —*Nominated Member*
„ **F. Bowman** —*Member for Demerara River*
„ **L. F. S. Burnham, Q.C.** —*Member for Georgetown Central*
„ **A. L. Jackson** —*Member for Georgetown North*
„ **S. M. Saffee** —*Member for Western Berbice*
„ **Ajodha Singh** —*Member for Berbice River*
„ **R. E. Davis** —*Nominated Member*
„ **H. J. M. Hubbard** —*Nominated Member.*

Mr. E. V. Viapree — Clerk of the Legislature (acting).
Mr. V. S. Charan — Assistant Clerk of the Legislature (acting)

ABSENT:

The Financial Secretary—Hon. W. P. D'Andrade—out of the Colony on official business
The Honourable Dr. C. B. Jagan, Minister of Trade and Industry—out of the Colony on official business
Mr. S. Campbell—Member for North Western District
Mr. Jai Narine Singh—Member for Georgetown South—on leave
Mr. E. B. Beharry—Member for Eastern Demerara
Mr. A. M. Fredericks—Nominated Member
Mr. A. G. Tasker, O.B.E.—Nominated Member—on leave.

The Clerk read prayers.

MINUTES

The Minutes of the meeting of the Council held on Tuesday, 11th July, 1961, as printed and circulated, were taken as read and confirmed.

ANNOUNCEMENTS

LEAVE TO MEMBER

Mr. Speaker: Hon. Members, the hon. Nominated Member, Mr. Tasker, has asked to be excused from today's meeting.

ORDER OF THE DAY

BILL—SECOND READING

PRIVATE BILL

BIBLE PROTESTANT CONGREGATIONAL CHURCH OF BRITISH GUIANA (INCORPORATION) BILL

Mr. Speaker: Mr. Davis to move the Second Reading of the following Bill:

> A Bill intituled "An Ordinance to incorporate the Bible Protestant Congregational Church of British Guiana and for purposes connected therewith."

Mr. Davis: Sir, I beg to move the Second Reading of a Bill intituled:

> "An Ordinance to incorporate the Bible Protestant Congregational Church of British Guiana and for purposes connected therewith."

This organization is a branch of an organization which is in New Jersey in the United States of America and it styles itself "The Bible Protestant Congregational Church of British Guiana". It is, principally speaking, an evangelist body and it hopes, after it has been properly constituted, to have as its head the Reverend Allan Carlyle Miller. I commend the Bill to this Council.

Mr. Gajraj: I beg to second the Motion.

Question put, and agreed to.

Bill read a Second time.

Mr. Davis: Mr. Speaker, I beg to move that the Council resolves itself into Committee to consider the Bill Clause by Clause.

Mr. Gajraj: I beg to second the Motion.

Question put, and agreed to.

COUNCIL IN COMMITTEE

Clauses 1 to 12 and Schedule passed as printed.

Council resumed.

Mr. Davis: I beg to report that the Bible Protestant Congregational Church of British Guiana (Incorporation) Bill was considered in Committee and passed without Amendment. I therefore move that this Bill be read a Third time.

Mr. Gajraj: I beg to second the Motion.

Question put, and agreed to.

Bill read the Third time and passed.

LEGISLATURE (DISQUALIFICATION) BILL

Mr. Speaker: Council will now resume consideration in Committee of the following Bill intituled:

> "An Ordinance to make provision for disqualifying the holders of specified offices and persons belonging to the regular armed forces of the Crown, or the Police Force, or interested in Government contracts, for membership of the Legislature".

The Chief Secretary (Mr. Hedges): I beg to move that the Council resolves itself into Committee to resume consideration of the Legislature (Disqualification) Bill, Clause by Clause.

COUNCIL IN COMMITTEE

The Chairman: The hon. Member for Georgetown North (Mr. Jackson) had moved that paragraph (a) of Clause 3 be

deleted when the adjournment was taken. Did the hon. Member finish what he had to say?

Mr. Jackson: No, Sir. I expected to hear from the other side this afternoon.

Clause 3—*Disqualification*

The Attorney-General (Mr. Austin): When we were debating this Clause yesterday, my hon. Friend, the Member for Georgetown North, said that certain categories of employees of the Post Office Department and its Telegraph Branch had special privileges which, he alleged, had been taken away by this Bill. Since then I have looked into the matter and the position, as I understand it, is this: Away back in 1953 a circular was addressed to Government Departments for the information of the members of those departments stating that certain categories of Government employees would be precluded from taking part in political activities, and those activities ranged from speaking on political platforms, holding offices in political organizations, writing to the Press, broadcasting on political subjects and canvassing for political candidates.

After this was known a line was drawn between the Public Service officers who were subjected to those restrictions (including all clerical grades) and those who held offices in the grades below and were not restricted. But as far as the Post Office and Telegraph Department is concerned, as the result of negotiations with the Chief Secretary's Office at the time, certain exceptions were agreed to. Those exceptions were grades which could really be termed minor or manipulative grades—persons who, in the course of the performance of their duties, are manipulative, such as operating telephones, or delivering letters.

They were post and telegraph clerks except when acting as postmasters, sorters, senior or junior technicians, linesmen, telephone operators and monitors. At one time the Supervisor of the Exchange was included but not now. When the list was revised in 1957, three more categories were added—mechanics, town postmen, and deposit tellers. The position is, those people who hold these offices were not restricted in their political activities and they are not today.

Political activities mean what I say—addressing political gatherings, writing to the Press on political subjects and canvassing for political candidates. It was a matter of policy, not law, of the Government that people who hold certain offices, namely, administrative, executive, technical and clerical ought not to do that, but the list of persons in the Post and Telegraph Department I have just read out, and the corresponding offices held in other Departments, can take part in those political activities today.

There is another political activity—standing as a candidate for the Legislature. From what I have heard there must be some confusion, because the position under the Constitution that exists today and which was in force at the time of the 1957 elections is that no person who holds or is acting in an office under the Crown can be elected to the Legislature. Before you are elected you have to be nominated, and at the time of nomination you have to swear to a statutory declaration, under the Representation of the People Ordinance which was in force at that time but has been repealed since, that you were not the holder of or acting in any office of emolument under the Crown.

So that, as far as the Post and Telegraph workers are concerned, they are free to indulge in political activities now, as they always had been. But while this Constitution was in force in 1957 as well as today, they cannot become candidates to the Legislature unless they have resigned or retired. That is so today, and it was so since 1957. So there is no question that this Bill is restricting the rights of subordinate members of the Civil Service.

The position in England is slightly different, because in England prior to 1957 when they passed the House of Commons Disqualification Act which provides the same disqualification we have today, namely, you cannot become a candidate unless you sign a declaration that you are

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not the holder of an office of emolument under the Crown. But before then, it appears that you can stand as a candidate while holding the office. But as soon as you are elected you have given it up. That procedure in England is changed now.

In England there are Civil Service Rules which state that, in so far as a number of offices are concerned, the civil servant cannot take part in political activities, stand as a candidate for Parliament, even though eligible. That law, which permitted those who stand for election to resign on being elected, has been repealed. In England today there is only the 1957 Act setting out disqualifications for election to the House of Commons.

Coming back to the disqualification of civil servants, I would stress that this Bill does not alter, in the slightest, the position with regard to civil servants, in whichever grade they are, standing for election to the Legislative Assembly under the new constitution.

Mr. Burnham: Even assuming what the Attorney-General has stated is the law under the 1957 Constitution, he certainly has not made any point for preventing those persons who are allowed to indulge in political activities from becoming candidates because, if I remember correctly, yesterday both he and his colleague, the Chief Secretary, made the point that it is undesirable for persons who have access to information in the files to be allowed to get at the street corners to discuss Government's business and to criticize Government. This is an amusing situation we are going to have. It is typical of the situation created by this Government. You are going to allow certain members of the Civil Service who have access to files and documents—confidential and otherwise—to get at the street corners and say what they have to say on behalf of other people but not on behalf of their own candidature. Cannot this Government understand once you allow them there may be rejections? Allow them to be candidates.

And it is significant that in the 1957 Constitution there was a distinct prescription—a distinct disqualification—attached to membership of the Civil Service so far as candidature for the Legislature is concerned; but the Constitution which comes into operation in August this year takes a completely different approach and has a completely different turn. It leaves it to the Legislature to decide whether or not civil servants should be disqualified from running as candidates. It leaves it to this Legislative Council to decide what, if any, civil servant should be disqualified from running. Certainly, the draftsman or draftsmen—and as I understand it, the Attorney-General is one of these persons—of the Constitution did not propose or did not intend that civil servants should be automatically disqualified, and I would like the Government to reconsider this question.

The Attorney-General: Sir, what my hon. and learned Friend, the Member for Georgetown Central, said, first of all, was most confusing. I really do not think he understood, himself, what he intended to say. He said that people can get on a political platform and say things on behalf of others although they cannot stand themselves. But that is not possible, because under General Orders, which set out the limits within which civil servants can indulge in political activities in British Guiana, it is provided that all those who hold positions in the clerical grade or above cannot take part in any political activities. They cannot speak on any political platform; they cannot write on political subjects; they cannot canvass for political candidates and they cannot stand as candidates.

Those who hold offices below the clerical grade—and it appears also by negotiation they are deemed to include post and telegraph clerks and other corresponding grades in other departments—can get on a platform and speak, also write letters to the Press and so on. But they do so, I imagine, without any inside knowledge of matters that can come out by those who hold offices in the clerical grade and above.

Coming to my friend's second point that the Constitution is completely

changed from the old Constitution: that the old Constitution specifically excluded those holding offices of emolument under the Crown from membership or candidature of the Legislature; that this new Constitution—and what my friend says is correct in this instance—provided that the Legislature—for the sake of argument, this Council—can state the position to disqualify, this Government has put forward a Bill before Council which carries the same disqualifications, so far as civil servants are concerned. It is consistent in practice elsewhere, not only in the United Kingdom, and it is found to be in the interest of good Government. What my friend wishes to do is to persuade Council that a completely new line should be taken. And if I am right in reading his thoughts, he agreed that there are some who should not be allowed to stand as candidates or, indeed, participate in political activities, but below this limit people should be allowed to take part in political activities and, indeed, to stand for election; and if they do not get in they can continue in their offices, but if they got in they would resign but there would be special arrangements under the pension laws for them to resume their offices and not lose their previous service or pension service. That is not the view of the Government, and that is that. If it had been the view of the Government, it would have been in the Bill.

Mr. Burnham: For once, the Attorney-General has divined my thoughts. That is exactly what I am arguing—that we must have a break with the past—the disgusting past, the irrelevant past. That is all I am saying. It is no sense coming here and copying. I am surprised at these "air sack revolutionaries" sitting here and allowing these representatives of the old order to pump into their minds the desirability of copying what existed in the United Kingdom. The hon. the Attorney-General had promised to enlighten us, in general, and me, in particular, as to the reason.

The Attorney-General: It is not possible.

Mr. Burnham: He says it is not possible. It may be the ineptitude of the person, but he did promise to enlighten this Council as to the reason of the phrasing of paragraph (a) of Clause 3. Why did he have his colleague sign this Bill which says "while he holds or acts in any office" which is in contradistinction to the House of Commons Act, for the House of Commons Disqualification Act, it is the person who is employed and not the person who holds an office or acts. And as the hon. Member for Demerara River observed yesterday, even if one accepts the principle—and I hope the newspapers would report me correctly—of the political caponizing and not canonizing of regular civil servants, I do not think that that caponizing should be meted out to persons who are merely acting.

The Attorney-General: This is a small point, and I feel that there is no difference between the interpretation of the English provisions which are as follows:

> "A person is disqualified from membership of the House of Commons who, for the time being, is employed in the Civil Service of the Crown whether in an established capacity or not or whether for the whole of part of his time."

Now, what is the position in British Guiana? "A public officer" means the holder of any public office, and includes any person appointed to act in such office. I think in England the established service is the permanent civil service, and the person who is temporary is the person who is appointed to act in office; and we have exactly the same thing. We have not copied the word "employed" because our Disqualification Bill reflects the drafting of the Constitution, and I defy my hon. Friend that by not employing the word "employed" we are, in a way, restricting or, rather, increasing the disqualification as compared with the corresponding U.K. Disqualification legislation, which is the same thing.

Mr. Burnham: If it is the same thing, use the same words. Maybe, the Attorney-General is right—and he is right sometimes—when he says there may be no difference when there comes to be a judicial interpretation between the phrasing or the effect of the phrasing of the House of Commons Disqualification Act and our draft Bill.

[MR. BURNHAM]

Maybe he is right. It is not something I am willing to wager my reputation on, but why refer to the relevancy of the Constitution? We are seeking to get certain people to contest at Election and, as a result, I propose to move an Amendment, if this present Amendment for its rejection is not carried, to delete the words that have to do with acting.

Mr. Jackson: Mr. Chairman, I understood this afternoon that it is a matter of policy which permits one of certain categories of Government employees to stand upon a soapbox and speak for someone whose candidature he is supporting. I understood that the difference between these categories and those who are not given this permission is that these categories are lower in status than the clerical officer. I would have thought my hon. Friend the Attorney-General would have explained how the Post and Telegraph Clerk could be lower in status than a man in the clerical grade. On what level is he lower in status?

The Attorney-General: On a point of order. I did not say that a Post and Telegraph Clerk was lower in status. What I did say was that, as a result of negotiations, it was agreed that they should not be included in the clerical grade.

Mr. Jackson: The words used were "below clerical grades".

The Attorney-General: In a different context.

Mr. Jackson: I said yesterday that the Attorney-General only had part of the knowledge of the situation, and it is still clear to me that he only has a part of the knowledge of what is required for this discussion this afternoon. On the one hand, you have an exemption for Post and Telegraph Clerkships. On the other hand, you have the restriction ranging from a probationer in the Clerical Service right up to the top. Is it not clear that something is radically wrong? Why give the Post and Telegraph Clerk, who is higher in status than a Class II Clerk or a Probationer, the right to stand on a soapbox or political platform and speak on behalf of a candidate, while the Class II Clerk and the Probationer are denied that privilege? This appears to be unfair to the Class II Clerk and the Probationer.

Here you have an employee of the Government drawing emoluments from the Crown or State—an employee who is on the Pensionable Establishment enjoying all of the rights and privileges of a Class II Clerk, and you allow him to take part in political activities while you restrict the Class II Clerk and the Probationer. That is following the old pattern of things. We are now trying to regularise things and prevent the accusation of discrimination on the part of the Government.

Sir, nothing could be as untenable as certain restrictions in this Bill. We have been told this afternoon that if one who holds the post of Telegraph Clerk wants to contest the elections he would have to resign his post before he could do so. On the other hand, a schoolmaster can get leave to run as a candidate and contest the elections—whether he wins or loses—without losing his post as a schoolmaster. Let us take the headmaster at the Broad Street Government School for example. I am making this point because I want to hear what can stop the headmaster of the Broad Street Government School from deciding to become a candidate for the elections. Is he precluded from making such a decision? If he decides to run as a candidate, what are you going to do with him? You may say that he is working in a school managed or owned by the Government, but I would like to hear the answer to my question.

I would also like to know what could stop the headmaster at Malgre Tout School, which has recently been taken over by the Government, from running as a candidate for the elections? Is he a Government employee? What is the position of headmasters in all of the schools taken over by Government, if they decide to run as candidates at the elections? Let us regularise this matter and put it on a basis which would make every one recognize that there is no discrimination. If we are talking of levels, let us put a level. The Post and Telegraph Clerk is your level so far as the Post Office is con-

cerned. So far as the Post and Telegraph Clerk is concerned, he is higher in status than a Class II Clerk because he draws a higher salary. What is your pattern?

I repeat that a schoolmaster is free to participate in politics; all he has to do is to get leave. At one time we made a recommendation that obtained in the United Kingdom where an employee of a certain category was given the right to contest the elections. He was given leave prior to his nomination, and if he lost the elections he could return to his job. I am almost certain that in such circumstances an employee would be given a certain period of time to say whether he would return to his job or continue with politics. We have been told now that the law has been altered in England. We are now going into a field where some of us are still trying to maintain a condition which is untenable in many respects.

The Town Postman is on the Established Services and he is pensionable; the Rural Postal Assistant is pensionable; the Post and Telegraph Clerk is pensionable. I repeat that the post of Rural Postal Assistant is pensionable and he is below the status of a Class II Clerk in salary, but they have the same place on the Establishment. The Town Postman is no longer somebody whom you can chase away at will; he is also on the Fixed Establishment. What is your position? Why treat one set of people better than the others? Can't Government see the position?

I would have thought that since we are faced with a situation and we do not want to make this a matter of policy; since we are no longer going to have the Crown as our guiding factor in all respects, let us do the things that suit us. It must be remembered that policies change with changing times and people. The decision of the Administration yesterday may not be the decision of the person who is in control of things today. That is an important factor in this case, and I feel that we should put our views in the law so that tomorrow things cannot be changed with the mere stroke of the pen. That is why I feel that it would be just and proper for the Government to put its policy into the law. I cannot see what makes it so difficult for the Government to accept our request.

The Attorney-General: The first point I would like to deal with in relation to the last speaker's submissions is the question of Post and Telegraph Clerks vis-a-vis other Clerks in the Service. I am not familiar with the nature of their work, but I believe it is largely manipulative. There are Clerks engaged in telegraph work, operating telephones at the Post Office, selling stamps, money orders and so on.

The reason for the discrimination is that whatever status they hold in the civil service the nature of their work is different from that of a Class II Clerk and above that. Their work is manipulative and they have to be good at it; it is technical and does not include any element of discretionary work such as dealing with files and that sort of thing, and they are closer to the industrial part of the Service. There is a clear distinction between the categories of Government employees, and the distinction supplies the reason why they are allowed to take part in political activities and other Clerks are not. Their work is mechanical and manipulative; no policy comes into it, and they never see a file with any policy in it. You cannot see a policy in a five-dollar postal order or a five-cent stamp.

My hon. Friend raised the question of teachers, but they are in a different position. So far as pension is concerned, they come within the Teachers Pensions Ordinance and not the ordinary Pensions Ordinance that applies to other persons in the Civil Service.

I am not here to give a legal opinion whether teachers in schools operated by the Government are civil servants or not; whether the teachers in the fifty-one schools that have recently been taken over, as far as the control and management by the Government are concerned, are members of the Civil Service or not. But the fact is, since they are for the sake of argument, they come under the Teachers Pensions Ordinance. They can resign for the purpose of standing as candidates and after they have been elected and they decide not to continue their political career, or if

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they are defeated at the next election, they can go back and not lose their service.

Mr. Burnham: Since the exposure of files seems to be the criterion, the hon. the Chief Secretary must admit that this disqualification is too wide, because those persons in manipulative grades are not exposed to files. There is nothing to be lost by allowing them to stand as candidates even while earning emoluments under the Crown. There is absolute logic in the contention, and I am certain that the hon. the Attorney-General appreciates the point and would like to retrace his steps. He should be large enough to retrace his steps and remove paragraph (a) of Clause 3.

The sole purpose of the present argument is this exposure to files which makes a public servant infectious for the political candidature. I may observe that Queen's College Masters are not exposed to confidential files and Government Medical Officers are not. I may point out that in 1957 a Commission—I do not remember the name—came to this country and recommended that persons like Queen's College Masters and Government Medical Officers should be allowed to seek candidature for membership of the Legislature. I see the hon. the Attorney-General is consulting his political colleague who, I hope, will impress upon him the logic of the political question that those in manipulative grades do not see files and should be exempted from disqualification in paragraph (a) of Clause 3.

The Attorney-General: What my hon. Friend is suggesting or seeking to do, I do not think he is going about it the right way. He knows that the category of civil servants he has in mind, if elected, will have to resign. There is not much difference between standing as a candidate and being elected and actually sitting as a member of the Legislature, so far as resignation is concerned. What is important is the question that even if he does resign he can go back into the Service, either because he has lost the election or has won the election.

He said the only reward was that they could return and claim there was no break in their service for pension purposes. But we are not talking about pensions now. That is a matter which should be brought up under a matter of pensions. That is where my hon. Friend is confused. There is nothing wrong with the provision as it stands today. If a postal clerk has to resign, if elected, he may as well resign when nominated. What is important is, whether he has to give up his political career either because he has completed his term by reason of election or because he leaves the Legislature, he gets his pension rights. That is an entirely different matter and is not within the scope of this Bill. I suggest it should be taken up another time.

Mr. Burnham: I am not agreeing to the hon. the Attorney-General suggesting what I should do. I am not confused. All I am arguing is, if you disqualify certain civil servants from running as candidates or being members of the Legislature, they will have to resign for a period, but if they are of a certain age once there is a break in their service they cannot re-enter the Service unless in extraordinary and special circumstances.

Secondly, if you disqualify them, they have to resign to be nominated. If they were not disqualified they could take leave to be nominated and carry on their campaign, and if they are successful there should be a domestic arrangement whether they are considered to be on leave without pay for a certain period. I am not talking of pensions now. That is another matter.

But what you are asking the civil servant to do under this Disqualification Bill is to take his courage in his hands and decide to resign so as to be nominated. If he loses and is over a certain age he cannot re-enter the Service. If he has not enough pensionable service, he would not get a pension after he resigns. Certainly the hon. the Attorney-General in a simple matter as the question of pension should expect me to make such an observation since exposure to files is the criterion, and should agree that those not exposed to files should not be disqualified from being candidates at elections.

Mr. Bowman: Sir, I said yesterday that in my opinion this Bill is too rigid,

and, in spite of what the hon. the Attorney-General has said, I still maintain the view that a definite line of demarcation should be drawn. This Bill purports to prohibit certain categories of civil servants and those who are termed civil servants in the clerical department from taking an active part in politics. I feel that all Heads of Departments, the first assistant and the second assistant, should be exempted and allowed to participate in elections without losing the right to resume their jobs in case they lose the elections.

The hon. the Attorney-General referred to England. I appreciate the customs of the United Kingdom, but we are not prepared to follow all the customs and practices of England. If we like making changes of our own we should do so. Apart from that, in this Bill, paragraph (a) of Clause 3, the questions which I raised yesterday concerning those who hold or are acting in any appointment, have not been answered to my satisfaction. I want to quote an example. Some time ago an ex-magistrate—I say ex-magistrate because he had resigned—was re-employed to act despite the fact that there are many solicitors, who are quite capable of filling magisterial posts. If such a person were acting now he would be disqualified if he wanted to run for and win a seat in the Legislature. I am sure most hon. Members here realize whom I am speaking about. That ex-magistrate was re-employed to act as a magistrate for a period. If, during his acting period, he decided to contest the elections under the Party to which he is attached, and two days after the elections his acting appointment comes to an end, is he to be disqualified? That is an example, and there are others.

There is another aspect. Let us take the regular civil servant. If he takes his long vacation leave now—he is supposed to spend it abroad but some civil servants, I know, spend it at home—fights the election and loses or wins, why should he not be given back his job? Those are things the Government should consider instead of other categories and acting appointments. I am asking the hon. the Attorney-General to review this particular point so as to permit persons to exercise the right of being candidates at election. The Police is the law-enforcing body of any Government. Without the Police Force we would not have law and order. I am not saying that a policeman should be allowed to be a candidate for election, but there are other categories which should be allowed and, I think, this Government will be well advised to consider this matter.

The Attorney-General: As to the first point made by the hon. Member for Demerara River, I am sure he will agree with me that anybody who holds a judicial office must be outside politics and not over-manifest his political allegiance. The point is that you have to get a broad line somewhere, and the line is drawn at the holding of or acting in a public office; and whether or not your acting appointment happens to be terminated two days after Nomination Day, it is just too bad. It is impossible to legislate for every conceivable circumstance. There are always "hard luck" stories wherever you get rules and regulations but, by and large, a line is drawn, which the majority toes.

As I said yesterday, there is no distinction, so far as Government can see, between a person who acts in an office or the substantial holder of that office. Very often he draws the same pay, he has the same duties and responsibilities and he has the same decisions to make. He is part of the Civil Service, whether he acts or whether he holds the substantive post. But what I seem to glean from the hon. Member's remarks is this: that he cannot see the sense of having the dis tion apply to candidature of the ture, although he sees the point in having it if the person is elected and takes his seat; and I must say that that has given me some concern myself because, obviously, what you have to do is to prevent anybody in the Legislature from exercising or, rather, using information that he has got in the Civil Service, in the Council, but it applies during the period of candidature as well as when the election heat is on. Every night, candidates are on the hustings of their constituencies and I think it is necessary that, even at that time, they should not hold an office which will enable the electorate to say: "Well, look he is a civil

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servant standing up there. Have we an impartial Civil Service, for we see civil servants standing out on the hustings and pouring out what they know by virtue of their jobs?"

As regards what my hon. and learned Friend, the Member for Georgetown Central, said in his last remark, the Government has considered this carefully when the Bill was drafted, and I have consulted one or more of my colleagues to see whether or not the case of the "Opposition" is a good one, and Government cannot see anything that justifies any modification in this Bill.

Mr. Jackson: Mr. Chairman, I accept the last remark. It did not take one too long to know what the last words after "consultation" would have been. For if what was referred to is consultation, well, that is something which one should ignore completely. It is a great shame on the part of Government to regard what was done just now as "consulting". I saw the Attorney-General move over to the Minister of Natural Resources, who gave the sign of "no" with a shake of the head. Is that consultation? I would have thought if one is to consult somebody, one would have taken the course of action which one has always known—a kind of temporary suspension for a few minutes and consider the point. But this is irrelevant at the moment.

I am still having some doubts as to whether what was said here this afternoon is the right thing, because my memory has taken me back to the fact that in the House of Commons there are two post office workers who are members of the House—Wallace and Williams. I am wondering whether they had to resign before they became members of the House of Commons or whether what I said before still exists, with respect to what has been regarded as people from the manipulative grades? Wallace and Williams are not members of the Civil Service, so to speak, in the United Kingdom. They would not have to deal with the files of administration. They would not see confidential, official documents. And while I have my doubts that Class II clerks have access to the files referred to, I am prepared to accept that they are in possession of confidential files. But we are talking of people who are not in the line of dealing with policy, but who are servants or instruments of policy—who have got only to issue money orders or deliver letters or sell stamps. They are purely manipulative in their responsibility; and since they are purely manipulative in class and category, they are permitted to go and speak on behalf of Mr. "X" or Mr. "Y" or Mr. "Z." They cannot reveal what is in a confidential file or document; and these are the people who are restricted. They have, as a matter of policy, the right to speak, the right to go campaigning for candidates of their choice. These people are not highly placed in the administrative class. They do have to suffer the experience of being directed what to do and not challenge what has been the direction. They are robots, so to speak, in some respects, because they carry on like that.

How do you expect a man who expects to hold the post of Permanent Secretary to be given the right to contest election? Let us concede that. There should be a limit; but these people have nothing at all. They have nothing more to do than to sell stamps. A clerk at the Transport and Harbours Department has nothing more to do than to clip tickets. "Open vote" clerks at the Public Works Department or the Department of Agriculture have not got access to confidential documents. It was the premise you supported yesterday that because of the fact that they are going to enter these administrative fields they could not be allowed. It is still your premise. Well, here are individuals who have not got a ghost of a chance to enter these fields. Well, treat them as they are at all times. Is it that you have put yourself where you cannot really defend yourself but remain stubborn because you have the numbers? You cannot defend it any longer.

Mr. Burnham: I would like to make this further point. The hon. Attorney-General seeks to persuade this Council that what is being done here is the same that obtains in the United Kingdom. It is not so. In the United Kingdom in the House of Commons Act of 1957, there is disqualification for membership of the House.

The United Kingdom does not have a Constitution similar to the Constitution which British Guiana will have. In British Guiana's Constitution, which is promulgated for August 1961, Article 58 says that all persons shall not be eligible to be elected if they are disqualified for membership. In the United Kingdom there is nothing like that at all. In the United Kingdom, disqualification is not to being elected; disqualification is with respect to membership. So that the United Kingdom civil servant can properly stand and he can be elected. And then the House of Commons Disqualification Act, 1957, goes on to say that if he is elected, then his election shall not be void.

So far as the civil servant is concerned, it will be a nullity not void. Section 6 (2) of the House of Commons Disqualification Act, 1957, states:

> "If in a case falling or alleged to fall within the foregoing subsection it appears to the House of Commons that the grounds of disqualification or alleged disqualification under this Act which subsisted or arose at the material time have been removed, and that it is otherwise proper so to do, the House may by order direct that any such disqualification incurred on those grounds at the time shall be disregarded for the purposes of this section: "

So what happens in the House of Commons is that if a person falling in the category of a disqualified person goes to the elections his election is not a nullity, and, then having been elected, before sitting in the House of Commons, he can resign the post which would have disqualified him from sitting in the House of Commons. The House of Commons has the power to do that. Section 6 of the House of Commons Disqualification Act, 1957, can relieve him of that disqualification and allow him to sit in the House, therefore his election is not void.

In British Guiana in the Bill which has been promulgated by this Government, once you fall in the category to which I have referred your election is declared a nullity and the Legislature cannot cure that disqualification even if that disqualification may have been removed by the time you go to sit in the House. I wonder whether the Attorney-General will tell us if he has considered this aspect of the matter?

The Attorney-General: I am at a loss to understand or reconcile what the hon. Member says so eloquently about the requirements of the House of Commons Disqualification Rules. There is a provision which we also have and we say that:

> "A candidate's consent to nomination shall contain a statement that he is aware of the provisions of the House of Commons Disqualification Act, 1957, and that, to the best of his knowledge and belief, he is not disqualified for membership of the House of Commons."

We have seen that a person who is disqualified for membership of the House of Commons is not employed by the Civil Service either in a special capacity or in a whole-time or part-time job.

According to Snowfield on Parliamentary Elections—

Mr. Burnham: Where are you quoting from?

The Attorney-General: The Third Edition, 1959, which states that a candidate has to make a statement that so far as he knows he is not disqualified. A person being a civil servant in whatever capacity would not be able to make this statement which, I believe, is made at the time he is still holding his office which is a disqualifying office.

Mr. Burnham: That is not statute!

The Attorney-General: We have found that the provision to which I have just referred is a new provision which was added to the Representation of the People Act, 1957—I think 1949. I am not sure whether this provision was added to the Representation of the People Act, 1949, or the House of Commons Disqualification Act, 1957. I think it is the latter, but I cannot check on it at the moment. It certainly seems that in order for a civil servant to make this statement he would have to resign, or retire from his office before he becomes a candidate for the House of Commons.

Mr. Burnham: There is a tenet of law —every lawyer knows it—that subsidiary legislation cannot change substantive legislation. The subsidiary legislation to which the Attorney-General refers is the Representation of the People Act, 1949, and the substantive legislation can be found in Section 6 of the House of Commons Disqualification Act, 1957. I do not care what appears in the Regulations. Every lawyer will know that what is in the Regulations cannot change substantive law.

Section 6 of the House of Commons Disqualification Act, 1957, states:

> "(1) Subject to any order made by the House of Commons under the following provisions of this section,—
>
> (a) if any person disqualified by this Act for membership of the House of Commons, or for membership of that House for a particular constituency, is elected as a member of that House, or as a member for that constituency, as the case may be, his election shall be void; and
>
> (b) if any person being a member of that House becomes disqualified by this Act for membership of that House, or for membership for the constituency for which he is sitting, his seat shall be vacated.
>
> (2) If in a case falling or alleged to fall within the foregoing subsection it appears to the House of Commons that the grounds of disqualification or alleged disqualifications under this Act which subsisted or arose at the material time have been removed, and that it is otherwise proper so to do, the House may by order direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of this section:...."

This is pellucidly clear and very simple. This House of Commons Disqualification Act, 1957, is eight years subsequent to the Representation of the People Act, 1949. In any case the Regulations made under the latter Act could not even *pro tanto* repeal legislation passed by the Legislature. I wonder whether the Attorney-General would take time off to discuss with his colleagues the points I have raised?

The Attorney-General: I do not need any time. This provision was inserted as a result of the House of Commons Disqualification Act, 1957. Although it adds Rules, the Rules in this case are not subsidiary legislation but are part of the Representation of the People Act, 1949, and form a schedule to the Act. It is merely that they happen to be called Elections Rules. There is no question of my trying to suggest that subsidiary legislation can alter the meaning of a substantive Act. What I am saying is that there is a provision in the 1957 Act which alters the 1949 Act to provide that when a person becomes a candidate he has to give this undertaking. I shall read Section 11 which states:

> "The Second Schedule to the Representation of the People Act, 1949 (which contains Parliamentary Elections Rules and Local Elections Rules) shall be amended by the addition at the end of Rule 9 of the Parliamentary Elections Rules of the following paragraph, that is to say—
>
> (2) A candidate's consent given under this rule shall contain a statement that he is aware of the provisions of the House of Commons Disqualification Act, 1957, and that, to the best of his knowledge and belief, he is not disqualified for membership of the House of Commons."

I, myself, feel that it is open to argument whether or not my friend's interpretation of Section 6 is right. Merely to say that you can go and stand for election while holding an office which disqualifies you, and then say that the House of Commons can say it is not void and you can become a member of the House of Commons is still open to argument. It is unethical; it is only used in unusual cases. When a person is disqualified by his office and he becomes a candidate he has to make a statement in keeping with the relevant provision.

Mr. Burnham: I remember once my jurisprudence told me that the Legislature can make a man a woman and a woman a man. Whether or not a person is subject to this disqualification, the House of Commons is patent to declare that the disqualification shall not apply for purposes of one losing one's seat in the House. The question of morality is another matter.

Members of the House of Commons may decide to remove or change certain things, but the question of the election is another matter.

Under Section 11 of the House of Commons Act, 1957, if a person makes a declaration falsely, knowingly, recklessly and all those other things—even if he does those things the House of Commons is patent to say that despite that he can still become a Member of the House. Do not introduce morals here; this is law.

Let us take the hon. Attorney-General's statement that the saving to be found in Section 6 (2) of the House of Commons Disqualification Act, 1957, is only intended for rare and remote cases. Let us assume that he is right and there is merit in his argument, the fact still remains that there are cases in which the House of Commons can exercise its power to relieve a man who was disqualified at the material time and say he is no longer disqualified. Even if that is not in the Bill before us today, my previous statement still holds good that obviously this Bill has not been carefully considered. It is to say that the position which obtains in the United Kingdom in the House of Commons Disqualification Act, 1957, will not obtain here if this Bill is accepted. Our Legislative Council will not be able to give any relief to disqualification or to a person who is disqualified at the material time.

Sir, I am sorry that you are sitting in the capacity of a Speaker and cannot assist the hon. Attorney-General.

The Chairman: I am not here to give a judgment in this matter; I am going to put the Amendment. The Amendment is "That Clause 3 (a) be deleted."

Question put; the Committee divided and voted as follows:

For	*Against*	*Did Not Vote*
Mr. Bowman	Mr. Hubbard	Mr. Davis—1
Mr. Jackson	Mr. Tello	
Mr. Burnham	Mr. Gajraj	
Mr. Kendall—4	Mr. Ajodha Singh	
	Mr. Saffee	
	Mr. Rai	
	Mr. Ram Karran	
	Mrs. Jagan	
	Mr. Benn	
	The Attorney-General	
	The Chief Secretary—11	

The Chairman: The Motion is lost.

Mr. Jackson: I beg to move an Amendment to paragraph (a) of Clause 3—the deletion of the words "or acting in." I move that Amendment because I hold it is unfair to consider any man who is acting in any position whatever as holding a post in the Establishment of the Government. He is not in permanent employment in the Service. It is unfair that he should be brought under this provision whereby he cannot take part in political matters and run as a candidate for election to the Legislature.

Let us assume that someone comes from the University College of the West Indies who has qualified in some field which he has been studying. He returns to the Colony and, perhaps, is given a temporary appointment; he possesses some flare for politics, is he to be denied an opportunity to contest a seat because he happens to be temporarily employed by the Government? There is a very clear definition of the Established Civil Service and the unestablished one, and since it is also clear that there is a distinct difference between employment of a permanent nature and one of a temporary nature, it is clear that this effort on the part of the Government to include someone in temporary employment in the list of those who cannot take part in politics is wrong.

I am afraid I cannot accept that a person in an acting capacity has the same responsibility as one permanently in the job. The hon. the Attorney-General mentioned just now that an acting magistrate has the full powers of a magistrate. I agree that it is untenable for a person acting in a judicial appointment to be allowed to stand as a candidate for election to the Legislature. Anyone acting in an established post has the full responsibility of that job, and he gets an acting allowance for it. The hon. the Chief Secretary gave a poor example when he referred to the magistrates. This provision does not affect the magistrates because they are distinctly disqualified under the first Schedule. Therefore the question of an acting man would not apply in the case of a magistrate.

The Chief Secretary: It may be a poor example, but an acting Permanent Secretary has the full responsibility of that job. He has to advise his Minister and it is not just doing half the job.

Mr. Jackson: Mr. Chairman, that is a bit naive. Government does not take a man off the street and place him to act as a Permanent Secretary; he rises right up to that post in the Service. So again that is a poor one. I have never seen, up to now, any person taken into the Public Service at that point straight from off the road. You must have him trained as a cadet to serve in that capacity. Government is in need of doctors, and it is on account of Government's policy that it does not get doctors to remain on the job.

If a doctor is asked to step in and assist for six months or a year, that is another aspect to be considered. Whether a person acting for a specified time on a project is also to come under this restrictive provision is another matter. You ask doctors to come into the Service to work because there is a shortage, and then you include them among those disqualified by virtue of their permanent appointment. Is it right to employ a man on the Boerasirie Scheme lasting three or four years and who, when the work is finished has no more job, and then tell him he should not take part in politics or stand as a candidate when he is so employed? He has no pension to get from such service. He will have to serve seven years before he is given a gratuity. [*Interruption.* I did not resign; I retired. So let us not talk of resignation.

The Chairman: We want to get through this Bill.

Mr. Jackson: I never interfere with others when they are addressing this Council. The Ministers set an example in this Council for bad behaviour. They demonstrate general disrespect for the Chair more than any other Member does. I challenge anyone to say I do the same thing.

Mr. Chairman, as I have been saying, it is unfair to regard a man, who is taken on to serve Government for a short period of time, whether he be a professional man or a labourer, and who knows that the job on which he is engaged is to end in a period of time, as a civil servant in the sense as a man who is working for a career. A civil servant is a man who enters the Service as a professional or a clerk and enjoy the rights and privileges of sick leave, casual leave and vacation leave after serving three or four years. He can also get special leave if the need arises.

Those facilities are there for those persons in the established Service, but they are not there for the man who is engaged to work six months or more in the service of Govermnent. How can Government say that such a man is in the same category as a civil servant? A barrister-at-law may be called upon to act as a magistrate, but to be permanently appointed he has to go before the Judicial Service Commission and he may never be given consideration for having acted, as the Commission has to examine whether he is efficient in his profession and several other things. Can you regard that barrister who is acting as a magistrate in like manner as a permanent employee of Government?

Perhaps, on account of the dullness of mentality of those on this side of the Council we cannot see it. Perhaps, we cannot understand Government. Here is a barrister called upon to act as a magistrate for six months, and, during the period of his acting there is Nomination Day and Election Day but he cannot be allowed to take part in the elections as a candidate because he is then drawing a salary from the Government.

The Attorney-General: This is perfectly right; perfectly understandable. I have two officers acting as Crown Counsel in my department. Indeed, they came in from private practice and are acting as Crown Counsel, and they are doing it very well. They perform the same duties, accept the same responsibilities as other Crown Counsel; they are paid the same and are subject to General Orders and all other orders.

They are as if they were confirmed in their office; otherwise, anybody seeing them in the office would say they are officers of the Crown—members of the Civil Service—whether they are acting or not. The hon. Member spoke of "anybody employed in the Government" —I think he referred to or suggested a labourer—but may I say that the disqualification relates to the holding of an office which is, in fact, in the Estimates; and labourers who are taken on by the Public Works Department and paid by an open vote, cannot stand for candidature. As regards persons who are taken on in connection with drainage and irrigation schemes, those jobs are carried out largely by contractors. For instance, Paulings have constructed the Black Bush Scheme, and they are also doing the Tapakuma; but although Government pays Paulings, the employees of Paulings are not holding offices under the Crown.

Mr. Jackson: That raises the question: What is meant by the holder of an office in the Public Service?

The Attorney-General: The holder of an office in the Public Service is a person who is appointed to an office which, as I say, is in the Estimates and is appointed by the Crown which uses certain channels of appointment; one, of course, is the Public Service Commission. There is also the Police Service Commission, and in certain junior grades, it is the Heads of Departments.

Mr. Jackson: The information is given that one holds an office when there is money on the Estimates so provided, but I do not think that is correct. When a man goes on vacation you do either of two things. The man who is acting is called a supernumerary officer because he is now being paid from another vote as distinct from the vote which provides for the substantive holder of the office. The holder of a post is a man who is appointed in that post, permanently. The difference is there. I referred to the case of a magistrate who is gone on six months' vacation and a barrister-at-law is put to act for him; by no stretch of imagination can he be regarded as a employee of the Crown. [**The Attorney-General:** "Yes."] An employee as far as your Regulations go, can never include such a person, because the definitions of an employee have been laid down. You are trying to be objectionable to what is reason. That is what has been happening here this afternoon. If you are going to say that because a man is brought in to act for "X" days that man is also an employee, then you really have the boot on the wrong foot.

Mr. Tello: Since the hon. Member for Demerara River had made this point in speaking on the principle of the Bill, I was looking forward to this Amendment but, fortunately, it was made and I am supporting it. I want to explain exactly what I am supporting. I see, here, the words "while he holds or acts in". I presume that if a civil servant is acting in a category higher than his substantive post, even if this Amendment succeeds, it would not withdraw the disqualification. But, as I understand it, the intention of the Amendment relates to any person who has been appointed to act for a short period. If that is the intention, I will wholeheartedly support the Amendment, because it would not be fair to deprive a useful person, who acts for a short time for the Crown, the opportunity to serve in a legislative capacity. If that is the intention, I will support it.

I hope I understand the Amendment correctly because that was what was conveyed to me by the hon. Member for Demerara River in a personal conversation, and I told him I would support the Amendment. And I want to say that I do not agree with the hon. the Chief Secretary or the hon. Attorney-General that because a person acts for six months or even a year, his responsibility is on par with the other man who holds the substantive post. When a man offers his services to the Crown as a career, it is quite a different matter from when a man comes in the Service to fill a gap. I feel that that person has made a tremendous sacrifice and, as such, should not be debarred from serving the Colony and nation as a legislator.

Mr. Gajraj: I am afraid I cannot agree with those who support this Amendment to exclude such persons who are in an acting capacity in the Civil Service. One must realize that the citizens of a country have two choices open to them. One is the choice of joining this exclusive class of the 'elite', as we had been told in this Council, whereby their services are given to the Government of their country. When they choose that part of the Service, then they must be satisfied to know, from the start, that they cannot, at the same time, have a right to take part in the other part of Service, that is, the part that is outside of the Civil Service and which can include any other form of endeavour, ending with political life and coming to assist in governing the country by means of their political actions. To my mind, as a layman, I cannot see the two groups being allowed to intermingle. If one were to do that, then one finds that the loyalty which one expects to find in the Civil Service can be breached, and you will find, then, that those who are on the political side will, themselves, condemn this breach of loyalty in the Civil Service.

On the other hand, we hear arguments in the Council that persons who are members of the Civil Service should be allowed to try their luck in the political field and if they are successful they can either seek leave to be absent from their jobs for a period of time or, alternatively, resign from such service; for the impression which is created in the minds of those who are listening is that participation in the political life of the country is either more remunerative or more satisfactory to the individual. If the individual does think so, then he or she must make a firm choice. Choose the side which is more remunerative or attractive. But if one wishes to have the security and dignity of the Service, then one must take one's stand and stay there. I hold the view that anyone who wishes to accept an acting appointment, must likewise be debarred from taking part in politics, because the mere fact of one accepting an acting appointment indicates the desire to choose the Civil Service as a career rather than the political field as an alternative.

Mr. Jackson: When we seek to get persons in the Civil Service to enter into the political field, we are introducing nothing new in thought and act; for if the speaker who has just taken his seat had listened to the Government side, he would have remembered they said that in the United Kingdom this has been the pattern and I, myself, had called the names of two persons who are still in the House of Commons even though they have taken their career in the post office of the United Kingdom.

We have said before, that this is something we have examined—not today. In 1952, we examined the pattern and said that what obtains in England must also obtain in this country. That has been the pattern which has been used in this Council time and again. It happens in England, but some people think it is not good enough for British Guiana.

I want the hon. Nominated Member, Mr. Gajraj, to know that this is something we have been striving to obtain. We have followed the people in the United Kingdom, therefore we are not erring. There is certainly a distinction between a man on the fixed Establishment and one who comes in to help Government for a short period.

Sir, there are several people in the Attorney-General's Department and other Departments who are assisting Government because it is difficult to find adequate staff. Is it the intention, because they have responded to Government's appeal, to deprive them of their right to take an active part in politics? I cannot see how Government can classify the two categories of people in the same manner. It must be remembered that because a man is acting in a post it does not necessarily follow that he will get the job when the post has to be filled.

On the other hand, even where a man goes on leave for six months there can be no guarantee that the acting officer will be given the job when the post has to be filled.

There are several instances to which I can refer in this connection. I remember that there was a barrister-at-law who was acting as a magistrate for years, but he saw the appointment of a very brilliant politician as the Senior Magistrate despite the fact that he was acting for several years without being appointed. He was working in the hope of being appointed as a magistrate. He left the Service and, eventually, he was recalled and appointed a magistrate. I am sure hon. Members know of the case to which I have referred.

The Chairman: I think it was six or seven years after that he was appointed a magistrate.

Mr. Jackson: He was acting for years, but Government appointed someone who had never acted as a magistrate before. The point I am making is that the mere fact that one is acting in a post is no guarantee that one will be appointed to the post. That is my answer to Mr. Gajraj.

The Chairman: I shall put the Question.

Mr. Bowman: Sir, I would like to say a few words.

The Chairman: Then you will be the last person to speak.

Mr. Bowman: There seems to be some need for Government to try to differentiate between acting appointments and permanent appointments. In this Council we have two acting appointments, but what we have in mind is not men who have been shifted from one Department to another to replace officers who have gone on leave. I am thinking of men who have been recalled from retirement to act for permanent officers. The present Clerk and Assistant Clerk of this Council are acting officers, but I am not thinking about this type of acting. Why should people who have been called from retirement to act in posts in the Government Service be deprived of their right to take an active part in politics?

I can quote two examples. Yesterday I said that I am a Member of the Public Accounts Committee. I can remember that the Head of the Customs Department told the Committee that he was experiencing great difficulty in obtaining trained men on his staff in the jerquing section. He said that there was a backlog for several years in his Department, and he had suggested that certain retired officers should be recalled to assist in training the young officers. [*Interruption.*]

The Chairman: I understand that there is a certain amount of business which Members would like to complete by a certain time, but if Members prolong this matter we might not be able to get through our business. If time is no object, then it is for Members to decide whether or not they desire to complete certain urgent matters today.

Mr. Bowman: These P.P.P. members —only last week they had a big thing at Port Mourant. I repeat that a Head of a Department had recommended that certain men should be called out of retirement to assist in training young officers at the Customs.

Let us take the Transport and Harbours Department. I remember that a Station Superintendent was recalled from retirement to act. If such men are acting temporarily and their period of acting would come to an end within a few days before the elections, why should they be deprived of their right to take an active part in politics? I think the Government should reconsider this Bill. I want to appeal to my revolutionary colleagues because they were the first set of people who injected this idea in my mind that civil servants should be given the right to take an active part in politics. They cannot deny that; they have been advocating this for many years, and I am ashamed to see that they have changed when the idea came from them.

The Chairman: The Question is, "That the words "or acts in" be deleted."

Question put, and negatived.

The Chairman: The Amendment is lost.

Mr. Jackson: Sir, I beg to move a further Amendment to paragraph (a) by the insertion of the words "Provided that this paragraph shall not apply to disqualify a person whose post is not in the clerical or administrative establishment," after the word "Commonwealth"; at the end.

The Members of the Government have already said that their objections to the points of view are based upon the people who are on the Clerical and Administrative Establishment. The people who are in the manipulative grades are not the ones who see policy statements or documents which are confidential, and there is no objection to their taking part in political affairs up to the points which have been mentioned here this afternoon.

The Attorney-General: What I said was that members of the Service whose duties brought them into contact with policy decisions of the Government should not take part in any political activities, but that those who are in the manipulative grades could take part in political activities short of becoming candidates. There is plenty of scope for them in making political speeches, writing to the press, canvassing for parliamentary candidates and so on, but not standing for election to the Legislature.

Mr. Burnham: The Attorney-General has repeated what is known; that opinion we understand and understood for at least the last 2½ hours, but what we seek to press home or to impress upon his mind is: We hear of this marriage; the twain shall be one, therefore the hon. Attorney-General will have to take his licks while his political colleagues remain silent here and say something else outside of this Chamber. The hon. Attorney-General must not point to his colleagues. What is the reason for preventing a member of the Civil Service from taking an active part in politics as given by the hon. Attorney-General and the hon. Chief Secretary? They say that some members of the Civil Service have at their disposal certain files which contain confidential matter, or that they have access to those files.

If that is the *raison d'etre* of the rule, certainly it applies with equal force to standing for candidature as to campaigning and speaking at the street corner. No one can deny that. However limited administratively are the categories of civil servants allowed to stand at the street corner and campaign for the elections, why should Government permit that? So says the hon. the Attorney-General—I quote—"these persons do not have access to files, attending to confidential matters, etc." There would be no impropriety; no proof of partiality. Why this change of front when it comes to those persons who desire to run as candidates? If this is not obtusism, what is?

But the hon. the Attorney-General moreso claims for this Amendment that anyone who votes against it is just being obtuse. Government just wants to throw its weight around. You permit them to write to the newspapers on political matters openly, and to give to a candidate whatever information is at their disposal, or to use that information at their disposal in support of the candidature of another person, but they cannot be candidates themselves.

The Chairman: It does appear that nobody else desires to speak and, therefore, I will put the Amendment which reads—

> Insertion of the words "Provided that this paragraph does not apply to disqualify a person whose post is not in the clerical or administrative establishment," after the words "Commonwealth" at the end of paragraph (a)

Therefore the paragraph as amended will read—

> "(a) while he holds or acts in any office of emolument in the service of the Crown in a civil ity in respect of the Government of Briti iana or any other territory or country in the Commonwealth. Provided that this paragraph does not apply to disqualify a person whose post is not in the clerical or administrative establishment."

Question put; the Committee divided and voted as follows:

For	*Against*	*Did Not Vote*
Mr. Bowman	Mr. Hubbard	Mr. Davis—1
Mr. Tello	Mr. Gajraj	
Mr. Jackson	Mr. Ajodha Singh	
Mr. Burnham	Mr. Saffee	
Mr. Kendall—5	Mr. Rai	
	Mr. Ram Karran	
	Mrs. Jagan	
	Mr. Benn	
	The Attorney-General	
	The Chief Secretary—10	

The Chairman: The Amendment is lost.

The Question is, "That Clause 3 stand part of the Bill."

Mr. Burnham: I want to move an Amendment to Clause 3, that Clause 3 be renumbered 3 (1) and there be inserted a new subsection (2) to read as follows:

> "except as provided by this Ordinance a person shall not be disqualified from membership of either reason of his holding an office or f profit under the Crown or any other place or office."

The purpose of this Amendment is to make this Ordinance exclusive; to make it the one Ordinance in which one would find the disqualifications for membership of either Chamber as the Legislature of this country. First of all, the Amendment introduces a certain tie and makes it easier for a person to know or ascertain whether or not he is disqualified. If this is not done, as has been done in the House of Commons (Disqualification) Act of 1957, there may be tucked away from view such legislation in some other Ordinance.

For instance, the Electricity Corporation Ordinance has a disqualification which may not easily come to the attention of the politician or would-be candidate. Therefore, if you make this Ordinance a conclusive one wherein are all disqualifications passed by this Legislature, it would make it easier for one seeking to be a member of either Chamber to know the disqualifications.

The only other disqualifications that would apply would be such as are contained in the Constitutional Instruments. So one would know very clearly to look at the Constitutional Instruments and the Legislature (Disqualification) Ordinance of 1961 for all disqualifications. I propose later during the course of the discussion on this Bill to move an Amendment giving power to some authority to add to the Schedule. If some new Bill is passed establishing any body or Board, and it is thought that a member of that body or Board should not be allowed to be a member of either Chamber of the Legislature, the proper authority can add to the Schedule.

I claim no originality either for this Amendment or for the other Amendments which, will follow this one. I do not see anything controversial in the Amendment, because any lawyer will recognize that it is always best to have to look at as few documents or enactments as possible to discover the law on a particular subject, and any layman would appreciate that. I remember it was explained that one of the reasons for subsection (4) of section 1 of the House of Commons Disqualifications Act of 1957 is the one I now give; that it is better to have one piece of legislation to look at so as to discover easily what the position of the law is.

The Attorney-General: The Constitution provides for disqualifications for membership of the new Legislature and this Bill is the law. What my hon. Friend has in mind is that there are certain Ordinances, for instance, the Credit Corporation Ordinance says not that a member of the Credit Corporation cannot be a member of the Legislature, but that no Member of the Legislature should be a member of the Corporation. This is the only law which can prescribe what offices disqualify a person from being a Member of the Legislature, but that no member of the Legislature should be a member of the Corporation.

So there is no necessity for my hon. Friend's Amendment. Moreover the Legislature can at any other time pass another law amending this one, if it wishes to add disqualifying offices. It is not necessary to say that this is the only law relating to disqualifying offices, as no other law can. But any other law can say that the holder of a particular office should not be a Member of the Legislature.

Mr. Burnham: Honestly I do not understand what the hon. the Attorney-General is saying. It does seem as though the hon. the Attorney-General is out to reject any suggestion made. Can you imagine such a state of mind where you can provide for additions to the Schedule by the proper authority and you reject such a suggestion going through. What a rigmarole?

The hon. the Attorney-General has objected to this sub-section. Why? Not because it is bad, but because it is not necessary. It shows that what he says about careful consideration is nonsense. What the Constitution has said is not that the British Guiana Legislature shall prescribe, in one enactment, the disqualification. Let me read for his benefit, Article 55 (c). It states that a person is qualified for such registration by virtue of any law of the Legislature. That is so far as voting is concerned.

Now, Article 58 (f) states that a person is disqualified for membership of the Legislative Assembly by any law of the Legislature. It does not state that any law must be one document, one Bill or one Ordinance. In other words, we can go through now, and we may find in some obscure Ordinance, which has slipped the attention of the Attorney-General and his most competent staff, that there is prohibition against persons who are holding certain posts from being Members of the Legislature. I know there is provision in the Electricity Corporation Ordinance, but all I am saying is: Let us get the position clear.

The type of oversight to which I refer would be covered if we were to enact, here, something comparable to Section 6 (2) of the House of Commons Disqualification Act of 1957. Can the Attorney-General not see the force of this argument? There is nothing political in this. This is just to clean up the mess. This is the sort of thing which is done by any proper draftsman of the type. This is what was done in 1957. Does the hon. Attorney-General really delight in following in this sort of mess? There is nothing political in this. This is very obvious.

The Attorney-General: One Legislature cannot bind another, and it is not possible to say that this law is the only law that will set out the disqualifying offices. There is nothing to prevent another Legislature in the future, or the same Legislature at the same sitting from setting out the disqualification offices. The law says that any Legislature may prescribe the disqualifying offices; and it is quite improper to restrict a Legislature in this way.

As I have indicated, it is probable that a Legislature will recognize that this law, setting out the disqualification offices, contains too many offices, and if any is to be taken out, it will be taken out.

So far as the Electricity Corporation is concerned, as my friend will recall, the Electricity Ordinance of 1957 states that membership to the Board is not deemed to be an office of emolument under the Crown.

Mr. Burnham: When I heard the hon. Attorney-General say one Legislature cannot bind a subsequent Legislature, I am reminded of my lecturer in Real Property when he said to one of his students: "My dear boy, you have a marvellous insight of the perfectly obvious." Everyone knows that you cannot bind a Legislature; that a Legislature can say at a particular time, that this is the law. The same thing that applies here, applies in the House of Commons. In other words, until the Legislature changes its mind, it has spoken categorically and authoritatively. He must not come here with those things. It is either that he forgot, or his draftsman who sits behind him is advising him badly, and just because of that, it is bad.

It is for the hon. the Attorney-General to admit that it is an oversight. If we had a comparable provision in our Bill with Section 6 (2) of the House of Commons Disqualification Act of 1957, it would be covered. I do not claim to know. No one can carry in his mind, all the Ordinances. The most careful research man cannot reveal all the disqualifications. Therefore, let us make it clear here. The provision of Article 58 (b) of the Constitution, does not

say once you pass this Bill here today that there should be no other Bill on the Statute Book which will affect a person's qualifications to be a Member of the House. A law is a law. In other words, this which we pass today is a law. Another passed another day will be another law, until one repeals the other. If all are extended and there is nothing contradictory between them, each one will apply, so far as disqualification is concerned. This is a lawyer's point. The best of us can make mistakes—the best of the best draftsmen in the world. Because there is this possibility, they seek to put in Clause 4 of the House of Commons Disqualification Act. Mr. Chairman, how are we going to look at the world when we cannot even understand this?

The Attorney-General: The difference is, the House of Commons Disqualification Act was based on a Constitution which was not written, and it was necessary to put that provision in the English Act. It is not necessary to put it in the British Guiana Ordinance because it is already in our Constitution. We cannot say it again. There is nothing in the English Constitution which resembles ours.

Mr. Burnham: There is a difference but that is a difference which we lawyers would call an immaterial difference. It is absolutely bad law. If a Judge were to interpret this 58 (b)—"is disqualified by any law"—. is the Attorney-General really telling this Council and myself, that a Judge can only look at this Bill which is only passed today? Mr. Chairman, it is a pity you are only sitting there as Speaker and not Judge, otherwise you would have assisted them.

Question put; Council divided and voted as follows:

For	*Against*
Mr. Bowman	Mr. Hubbard
Mr. Davis	Mr. Ajodha Singh
Mr. Tello	Mr. Saffee
Mr. Gajraj	Mr. Rai
Mr. Jackson	Mr. Ram Karran
Mr. Burnham	Mrs. Jagan
Mr. Kendall—7	Mr. Benn
	The Attorney-General
	The Chief Secretary—9

Amendment negatived.

Clause 3 passed as printed.

Clause 4—*Exception.*

Mr. Burnham: I do not quite follow the merit or wording of subsection (1) of Clause 4. It seems to me a little involved. I wonder whether the hon. the Attorney-General will assist us.

The Attorney-General: This Clause was designed to cover Ministers of this Government who may be considered ineligible by reason of holding offices of emolument in the service of the Crown under Clause 5 (a), but the point is they will not be ineligible because they hold offices which were enacted by law prior to the coming into force of this Bill pertaining to membership of the Chamber and that law is the Constitution.

The Chief Secretary: I beg to move an Amendment to Clause 4, subsection (1), by the substitution of the word "made" for the word "enacted" in the first line of paragraph (a).

Question put, and agreed to.

Amendment carried.

Clause 4, as amended, passed.

Clause 5—*Government Contract.*

Mr. Burnham: I do not know if I can speak on this now.

The Chairman: Yes.

Mr. Burnham: Mr. Chairman, it seems to me that in the context there is no reason for this Clause 5. In the absence of any right of the Council to dissolve or relieve anyone from disqualification we should not have this Clause 5 here, because it makes disqualification not for an individual act but for the act of the firm of which a person is a partner or a company of which he is a director or manager. If either be a party to a Government contract and he does not disclose that contract he is disqualified. With the ramifications of a business there

[MR. BURNHAM]

are many a partner of a firm or director of a company who may not be aware of the fact that his firm or company is a party to a contract with the Government.

If one is a director of a company it is quite possible that someone in the company can do a lot of business with the Government and he is completely unaware of it. It seems to me that this disqualification should not exist any longer. In the United Kingdom they have abolished the disqualification of the contract, and I cannot see why this Government is keeping on this particular provision which is from the old times, when industry and commerce were not so developed, when control over business was individual. But as business has become more complicated one cannot see this disqualification continuing. I wonder if the hon. the Attorney-General can tell us why this provision is put into the Bill. I am sure he cannot tell us—take his tongue out of his cheek and give us a reasonable answer.

The Attorney-General: As my hon. Friend, the Member for Georgetown Central, has said more than once, we copy British legislation slavishly. I can assure him that we have not done so in this case. We have acted on his advice, and this Government feels that whereas in England they have dropped the disqualification for holding Government contracts, nevertheless now is not the time to do it here.

The hon. Member says it is extremely difficult for a partner of a firm or a director of a company to know all the transactions entered into by that firm or company. But surely in British Guiana—let us look at the local context—any firm or company under contract to supply goods or service to the Government the partner or director is indeed likely to know of the contract and if he is a member of the Legislature he should make it his business to know and to instruct those in the company or firm to inform him when any contract is made with the Government. It is not the holding of the contract that is the disqualification, it is the failure to disclose it, and the Government feels that at this time this form of disqualification which, in point of fact, is not a disqualification unless there is failure to disclose it, should continue.

Mr. Burnham: I wonder whether the hon. the Attorney-General is aware that it has been judicially held in a case in which a Local Authority purchased nails from a shop owned by a member of that Local Authority that the transaction amounted to a contract of sale and purchase. As a result the owner lost his seat as a member of the Rose-Hall Village Council. If it can happen with the sale of nails in a shop, what about a company? Is the director of a company going to be there to know whether or not a Government Department sends for goods? The thing is utterly preposterous.

If one looks at Bill No. 27 which was passed yesterday, the Court on the presentation of a Representation petition has not got the discretion to exercise against the disqualification since neither under the Legislature (Appointment of Membership Privileges) Ordinance can the Court exercise the discretion nor under this Bill, if it becomes law, can the Chamber exercise the discretion to absolve a person who may genuinely not know and failed to disclose it? Neither the Court not this Council has the power to absolve anyone who has lost his seat. Certainly that cannot be the intention of the Government.

Maybe the Government feels at first blush that it would be a good thing to maintain the provision with respect to the declaration. I know that the Government has not carefully considered the implications in this provision. I wonder whether Government will still insist on this Clause 5, now that certain aspects have been drawn to its attention?

The Attorney-General: Sir, the Amendment which I shall move at the earliest opportunity to this Clause seeks to make it clear that the contract which would disqualify a person who did not disclose his connection with the firm would only be in respect of the supply of goods to Government, so that any contract by the

Goverment with a Member of the Legislature could not disqualify him. The example which my hon. and learned Friend has just given would possibly disqualify a supplier of nails to the Government. If it can be shown that the director obviously did not know or could not have known about the contract, I am amenable to the view that as the Constitution stands it would be possible to introduce legislation to rectify the matter. Anyway, we need not take our fences until we reach them.

The Chairman: I think we had better stop at this point.

Council resumed.

The Chief Secretary: I beg to report progress, and ask leave to sit again. I think we should adjourn until 2 p.m. tomorrow.

ADJOURNMENT

Mr. Speaker: I am asking hon. Members to be good enough to make an effort to get here on time, so that we can have a quorum at two o'clock. Council is now adjourned until 2 p.m. on Thursday, 13th July, 1961.

Council adjourned accordingly, at 5.15 p.m.