

# SECOND LEGISLATIVE COUNCIL

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

*Thursday, 13th July, 1961*

*The Council met at 2 p.m.*

## PRESENT:

**Speaker**, His Honour Sir Donald Jackson

**Chief Secretary**, Hon. D. M. Hedges

**Attorney-General**, Hon. A. M. I. Austin, Q.C. } *ex officio*

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)

„ V. S. Charan—Assistant Clerk of the Legislature (acting).

## ABSENT:

The Honourable the Financial Secretary, Mr. W. P. D'Andrade—on leave

The Honourable Dr. C. B. Jagan—Minister of Trade and Industry—on leave

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 Wednesday, 12th July, 1961, as printed and circulated, were taken as read and confirmed.

## ANNOUNCEMENT

## LEAVE TO MEMBER

**Mr. Speaker :** I beg to announce that the hon. Nominated Member, Mr. Tasker, has asked to be excused from today's sitting.

## PAPER LAID

**The Minister of Natural Resources (Mr. Benn):** On behalf of the Minister of Trade and Industry, I beg to lay on the Table the

Report of the British Guiana Rice Marketing Board for the period 1st October, 1959 to 30th September, 1960.

## ORDER OF THE DAY

## LEGISLATURE (DISQUALIFICATION) BILL

**Mr. Speaker :** Council will resume consideration, in Committee, of the following Bill:

A Bill intituled: "An Ordinance to make provisions 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 Council resolve itself into Committee to resume consideration of the Bill Clause by Clause.

Question put, and agreed to.

## COUNCIL IN COMMITTEE

**The Chairman :** At the adjournment, we were considering Clause 5.

**Mr. Burnham :** Shortly before the adjournment, or rather, I think, at the adjournment, I was making the point that Clause 5 seems useless and it certainly is an anachronism in these days. I think I did hear the Attorney-General say that he proposes to move an Amendment so that it would only be a contract for the sale of goods to the Government that would be dis-closable.

It seems to me that would hardly be the way out. And remembering, the case of the late Mr. Dharry, it is exactly that sort of contract that is likely to be unknown to a partner of a firm, the director of a company or manager of a company. It is exactly that type of contract which one may forget, which one may let slip, and which can carry with it such serious disqualification as that envisaged in Clause 5. I would certainly seek to impress upon the Government the necessity of deleting this Clause.

I remember that the Attorney-General, whenever he is in difficulty, either refers to the fact that the particular provision can be found in the United Kingdom legislation or in legislation in various parts of the Commonwealth, specifically in the West Indies Federation, but so far as my recollection goes, this Clause 5 is not original in any legislation that is extant today, and I desire to urge upon him the necessity of taking out this Clause. I cannot see why it was put in, because if tomorrow, for instance, a person is a member or chairman of a company and a pound of nails can be bought, as in Mr. Dharry's case, from some business in which he has some interest, that, I submit, would amount to a contract that is not disclosed and that, Mr. Chairman, would make him incur

the penalty envisaged which, I repeat, certainly was not originally envisaged for such a minor matter. [Interruption.]

As I was saying, Mr. Chairman, before the hon. the Attorney-General took time off to consult with his colleague and, as he would put it, to do his homework in class, certainly the purchase of small items, etc., was not envisaged as the type of contract which would disqualify a person, because what influence can a legislator bring to bear, what influence would he want to bring to bear so as to ensure, at any time, that a pound of nails is not purchased from a firm in which he has an interest?

Since there is no saving clause in this Bill which gives every Chamber the power by resolution, or order, to relieve a person of disqualification, one sees the utter confusion that will arise. May I put forward one further argument. Let us have the Statute Book burdened with this because we have a Government that will not listen to reason, but it is going to be revised after the 21st August. Why give us the trouble of having to come here and repeal this Ordinance which was only passed five or six weeks ago?

**Mr. Gajraj :** I am conscious of the fact that we have a lot of legislative work to get through before this Council is prorogued, but I cannot help agreeing with the hon. Member for Georgetown Central (Mr. Burnham) in his argument that there is no necessity for the provision which we find in Clause 5, para (a), on this question of Government contracts which will disqualify a Director of a company or a Manager of a firm for membership of the Legislature.

When I first read this provision I knew that such a provision existed before, but I had been thinking only in terms of contracts with Government given out by way of tender. But having learnt yesterday that the Supreme Court in its jurisdiction has ruled that an ordinary purchase and sale transaction is

a contract and therefore comes within the category of disqualification for membership of the legislature, I think we have to guard against such a thing happening, otherwise we will be saying that persons who are in business and may be Directors of companies or the Managers of firms should not sit in the Legislature; because it happens everyday that a Government Department sends a messenger around to buy some small article of merchandise from a store, and it is supplied on an order and charged to the Government for collection of the cash.

A person who is in the position of a Director of a company or a partner of a firm may hardly know of such a transaction in order to disclose it immediately as it occurs, if he has a seat in the Legislature. It will be found that such persons holding seats in the Legislature will find themselves disqualified from time to time and having to suffer the loss of time in defending themselves in an action brought against them for disqualification.

I feel that the point which has been made against this particular Clause may not have been brought home to or thought of by those who drafted the Bill. I therefore trust that, from the new point raised in the Council, it will be seen quite clearly that we have to bring ourselves in line with the realities of the situation and not impose legislation which will be difficult for us to honour.

**The Attorney-General** (Mr. Austin): I do not know whether the hon. Member for Georgetown Central has actually moved an Amendment. I cannot remember whether or not he did so yesterday. But the Government is prepared to move an Amendment to provide a monetary limitation so that the sale of nails and transactions of that sort will not disqualify a person if the amount is under \$500.

The points made by hon. Members on the other side of the Table are valid ones in so far as one does not want

[THE ATTORNEY-GENERAL]

this provision to be a "booby-trap." So if one can fix a limit which will ensure that a Director of a company or a partner of a firm should reasonably know that a substantial contract has been entered into by his company or firm with the Government, that should meet both sides.

I therefore move that Clause 5 (1) be amended by the addition of the words at the end "to be used or employed in the service of the public and when we come to subsection (2) to put in the definition of a Government contract a limitation of value.

**The Chairman :** There is an Amendment moved to subsection (1) of Clause 5 to the effect that the words "to be used or employed in the service of the public" be added after the words in the last line. So that Clause 5 (1) will therefore read —

"A person shall be disqualified for membership of either chamber if he is a party, or a partner in a firm, or a director or manager of a company which is a party to any Government contract, other than a disclosed contract, for the furnishing or providing of wares, merchandise or services to be used or employed in the service of the public."

**The Attorney-General :** I am sorry. I have been in consultation with my colleagues, and it has been decided that the value of the limitation should go into this Amendment; so it should read after the words "merchandise or services"— "of a value exceeding \$1,000 to be used or employed in the service of the public"

**Mr. Burnham :** I wonder whether the hon. the Attorney-General would tell us what is the purpose of his Amendment. Why does he want a limit on the purchases by the Government for the service of the public? I cannot see the Government purchasing goods for a

private individual. That is why, in a larceny charge where Government's goods are concerned, it is alleged that they are the property of the inhabitants of the Colony.

**The Attorney-General :** The reason is this: If the provision is left without those words a contract would disqualify whether the person is supplying goods to the Government or the Government is supplying goods to a person. It is intended that this disqualification be in respect of a contract where a person is supplying goods to the Government.

**Mr. Burnham :** There is one other observation I want to make about Clause 5.

**The Chairman :** In relation to subsection (1)?

**Mr. Burnham :** No, Your Honour.

**The Chairman :** I am only dealing with subsection (1). The question is, "That subsection (1) be amended to add after the words in the last line the words "of the value exceeding \$1,000 to be used or employed in the service of the public."

Question put, and agreed to.

Amendment passed.

**Mr. Burnham :** With respect to subsection (2) there is provision for disclosure when one becomes a candidate, but there is no provision if such a contract takes place while one is sitting as a member of the Legislature. What happens when one is sitting as a member? The disqualification of subsection (1) immediately operates, and there is no means of circumventing that disqualification.

**The Attorney-General :** That is perfectly correct, and the answer is — I think my hon. Friend, the Chief Secre-

tary, explained it in his speech on the Motion for the Second Reading of the Bill—we are introducing this Bill under the authority given by section 9 of the British Guiana (Constitution) Order in Council of 1961, which has recently been made, and that authority only extends to prescribing disqualifications for candidature in so far as contracts are concerned. I think there was a lacuna in the draft, because whereas in so far as disqualifying offices is concerned we have power to legislate for that. We also have power to legislate for candidature, the vacation of seats in the Legislative Assembly and so on, but so far as contracts are concerned we only have legislative power to provide for the disqualifying of candidature.

It would be necessary, therefore, if the Legislative Assembly is to function satisfactorily, to pass a small Amendment to provide that this disqualification shall also apply to the vacation of seats. It is a technical flaw, but only a small one. My hon. Friend is quite right when he says that this is the position. It is not our fault; it is not a mistake by us.

**Mr. Burnham :** Sir, I am not going to quarrel or argue with the hon. Attorney-General, although I believe that there should not have been this lacuna. I was told by the Secretary of State for the Colonies that the draft would have been done by the Legal Department in consultation with the Attorney-General. Therefore, if one side made a mistake, the other side should have seen it and caused it to be corrected. However, we are but human.

They say that if no provision is made the 1953-56 Constitution shall apply. I do not have the 1953-56 Constitution with me, but I do not recall that a question of contract is embodied in it.

**The Attorney-General :** Yes, it is.

**Mr. Burnham :** Then that adds more force to my original contention. If you delete Clause 5, nothing happens at all; the contract no longer disqualifies. If the Attorney-General would only be reasonable and recognize that we, on this side, are not always out to attack the Government for its incompetence or ineptitude; but sometimes we are really out to see that the best possible thing is done in matters in which there should be no disagreement. The easiest solution is to delete Clause 5.

**The Attorney-General :** My hon. Friend and those who have supported him have done a valuable service by drawing Government's attention to the point regarding small contracts, and they have won the day on this point. I would, however, like to draw my hon. Friend's attention to Article 33(b) of the existing Constitution which provides that:

"No person shall be qualified to be appointed a Nominated Member of the Legislative Council, who, at the time of appointment —

"... is a party to, or a partner in a firm, or director or manager of a company, which is a party to, any contract with the Government of the Colony or on account of the public service, and has not disclosed to the Governor the nature of such contract and his interest, or the interest of any firm or company, therein."

Clause 5 in this Bill seeks to refine this provision that has not given any trouble during the life of this Legislature, and the "Opposition" having pointed out that difficulties arising from small contracts has refined it further and brought it into reasonable proportions. I hope my hon. Friend would not continue to press for the deletion of the Clause. We have met him on a substantial point. It is not the holding of the contract, but the failing to disclose the nature of such contract and his interest and so on.

**Mr. Burnham :** Perhaps the hon. Attorney-General has not had an opportunity to work in a firm. I have worked in a firm, and I know that my firm has had contracts with persons for over \$1,000 without my being aware of the matter. Another thing that strikes me about Clause 5(2) (b) is this: It states "within fourteen days". How is the phrase "within fourteen days" to be interpreted? Not more than fourteen days, or not less than fourteen days? I think it should be specific. If it means not less than fourteen days, then we are wasting our time with Clause 5 today because you cannot publish anything in the Gazette fourteen days before the 21st July at this stage.

**The Chairman:** I drew that to the attention of this Council on the 11th July, and I was told that there was sufficient time in which to do it.

**Mr. Burnham :** Government cannot hustle it, because we will not permit it to do so. Why not forget the whole Clause?

**The Attorney-General :** As my hon. Friend knows, fourteen days mean fourteen clear days, and we can still do it within fourteen days.

**Mr. Burnham :** Fourteen clear days make it worse, because fourteen days mean excluding the day on which it is published. I am in some doubt as to how "within fourteen days" will be interpreted by a Court. If you have to file a defence within six days, it means that you have six days. If you are to do something within a certain time prior to an event, the Court may interpret it as meaning not less than fourteen days. If the fourteen days after refer to a period anterior, it will make a difference. It is impossible for anyone to comply with this provision before the 22nd July. That is my information, and it is a moot point. You are begging for litigation.

**The Attorney-General :** The provision which we have already accepted is "fourteen days before", not at least fourteen days before. It means fourteen days before nomination day. Assuming for the sake of argument that nomination day was on the 15th July you would have to put in your notice in respect of a contract between the 1st and 14th July, that is to say, within fourteen days of the 15th July. It is not within a period of not less than fourteen days — that is not in the law.

**Mr. Burnham :** I concede that the Attorney-General's interpretation is a possible one. I only regret that he is not a member of the judiciary, because if a member of the judiciary is of a contrary opinion and he is not allowed to appeal, what happens? It is a moot point. I am not advocating one interpretation or the other; I am merely saying that there you have more than one possible interpretation, and we should make it a simple matter.

**Mr. Davis :** Sir, that is the same point I raised and which you drew to Government's attention. I received an evasive answer at the time. In the circumstances, I want to move the deletion of the words "the Gazette and", and the substitution of the words "seven days" for "fourteen days". My reason for this is that one may be able to get a notice in a daily newspaper, but it may be outside of the person's capacity to get it published in the Gazette in the prescribed time.

**The Attorney-General :** On a matter of such importance, I think it is necessary that it should go into the newspaper and also the Gazette. The Gazette is an official organ of the Government. With regard to the time, I see no reason why we should stick to fourteen days provided it is published in adequate time. I would suggest ten

days instead of seven days. I will move an Amendment to that effect.

**Mr. Jackson:** Sir, once again we have to draw attention to the foolhardiness on the part of the Government in refusing to accept a good Amendment from this side of the Council Chamber. It states: "the person causes to be published in the Gazette . . ." The word "causes" implies the person responsible for putting this information in the Official Gazette. Which person outside of the Government can cause anything to be put in the Official Gazette?

**The Attorney-General :** I am open to correction, but anybody wishing to put a notice, particularly one which is required by law in certain circumstances, would not be prevented from causing the advertisement to be made. I cannot say whether or not he or she will be charged.

**Mr. Jackson:** The Official Gazette is a publication by the Government and and no private individual has any authority to use the Gazette. This is a strange thought which has now been introduced that private individuals can cause advertisements to be inserted in the Official Gazette. Every letter which is printed in the Gazette is a letter published by the Government, as such, through its departments or its agencies. You have a very good chance of getting away from your incompetence.

**The Attorney-General :** We have gone some way towards meeting the hon. Member by varying the existing provision. We have said in this Bill "causes to be published", but I will give an undertaking that where there is a statutory requirement that something should be published in the Official Gazette, in certain circumstances, if the person to whom it applies seeks to have the requisite notice published, it will be published.

**Mr. Jackson:** That undertaking, as far as the Attorney-General is concerned, is a good undertaking, but when we have no guarantee that there is competence in a department to deal with this matter as promptly as it ought to be dealt with — [**The Attorney-General:** "Oh!"] — We have all the evidence of the slowness of the machinery of Government. You cannot deny it. "I have given an undertaking", so says the Attorney-General, "that for the express purpose, a member of the public — a private individual — can have his advertisement put in the Official Gazette." He does not know whether it has to be paid for or otherwise. If a man goes in on the morning before the time limit and says: "All right, here is this for the Official Gazette"; the Commissioner of Elections then passes it to his next in command, and it goes down the line to six or seven persons. Then another person will have to take it to the printery, and it will have to be set up and proof-read. Mr. Chairman, how on earth can the Attorney-General's undertaking here be of any value to anybody at all?

**Mr. Gajraj :** Perhaps, I am too much on the practical side; but if you say, "within ten days", there will be one regular issue of the Official Gazette which will be on Saturday, 22nd July. [*Interruption.*] I have been reminded that there is an Extraordinary issue of the Gazette, but for an Extraordinary issue there will have to be the appropriate authority, and we will have to consider how many days' notice is to be given Government before a publication can be made in the Gazette or in the Extraordinary issue. So while it will be very reasonable, under normal circumstances —and perhaps it may be useful—to have such publication in the Gazette, it seems to me to be a little difficult. It will be like bringing forward Nominations Day by about ten days and might prevent someone who might wish to be nominated

[MR. GAJRAJ]

at the last moment from becoming a candidate, so as to comply with the requirement of this second one.

**The Attorney-General:** I adhere to the view that it is necessary to maintain publication in the Gazette. What the hon. Members opposite have said, so far as the Gazette is concerned, may well apply to publication in the daily newspapers. Advertisement notices which are sent to the Press do not always get into the next day's paper. That is my experience, but I will give an undertaking that the Government, when approached by a candidate to insert a notice in the Gazette in compliance with the requirement of Clause 5 of the Bill, will see that it receives expeditious attention and, if necessary, an Extraordinary issue of the Gazette will be made for the purpose.

I entirely agree with my friend, the hon. Nominated Member, Mr. Gajraj, who says it may well be that you may do it within four days and you will miss the Saturday's issue and that it will be necessary to have an Extraordinary issue. The Extraordinary issue is a part of the Gazette. There is no likely magic so far as the Gazette is concerned. I see the point raised; it is a fair one.

**Mr. Burnham:** Can the Government not see that an easy solution to this is to make the person's returns returnable to the Chief Secretary and make it the Chief Secretary's obligation to publish them? All this guarantee is all right. A private person has no authority to publish anything in the Official Gazette, and the Chief Secretary has the authority to say "no". If they really want publication, let the returns be returnable to the Chief Secretary or the Commissioner of Elections and then place the obligation upon the officers or Government corporation to publish them. You want publicity, but the best publicity you want is not available to the private individual in the law. In many branches of the law—the law

of Patents and Designs—you make certain returns to the Registrar of Patents and Designs, then it is obligatory upon him to publish them in the Gazette.

**The Chief Secretary :** I would willingly accept the hon. Member's suggestion, but this Chief Secretary is the last. The office goes out of existence next month.

**Mr. Burnham:** We need not mourn the loss of our passing brothers. I said the Commissioner of Elections is a Government officer; his department is a Government Department; he is a legal personality by virtue of the 1957 Representation of the People Ordinance; he is the person who should have this brought to his attention.

**The Attorney-General :** This point which the "Opposition" has got hold of is a small one. It has not given any trouble in the past. I do not see any objection to working out a formula by which a person wishing to publish a notice in the Gazette should give the notice to the Commissioner of Elections for publication in the Gazette. I think the anxieties which the members of the "Opposition" are expressing are entirely unfounded in practice. On the other hand, with the unfounded imagination as most of them have, it is understandable.

**Mr. Burnham:** If it is imagination, it is very frequently on the side of the genius, and I accept the compliment that geniuses are on this side. The fact that it has not given trouble in the past is no reason why we should not oppose it.

**Mr. Davis:** I wanted to make one more Amendment. After hearing—[*Interruption.*]

**The Attorney-General :** We are trying to work out the best solution possible. It is not a simple matter, and I do not know whether Your Honour will be prepared to deal with the Schedule, and then return to this Amendment.



**Mr. Burnham :** If the Committee agrees with that, I have an Amendment to move which is in fact the insertion of a new clause.

**The Chairman :** Yesterday we spent hours on one clause. I am not sitting in the night.

**Mr. Burnham :** I agree most heartily; I move that a new clause be added to read as follows:

"If in any case falling or alleged to fall within section 3 of this Ordinance it appears to the Chamber that the grounds of disqualification or alleged disqualification under this Ordinance which subsisted or arose at the material time have been removed or that it is otherwise proper so to do, the Chamber may by resolution direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of section 3."

Yesterday I pointed out that in the United Kingdom the House of Commons has the power to remove disqualification for good reasons. What this Amendment seeks to do is to place on the Legislature the duty of prescribing the expansion or limitation of the disqualifications. This Legislature is competent to decide in what circumstances disqualification may arise. If you are competent to decide that, you are competent to say in what circumstances disqualification may be removed. I do not know what is the fear of *ultra vires*. This Legislature is the supreme body so far as prescribing disqualifications is concerned. This Government, as soon as you suggest something, says it cannot be done. Off the bat the Attorney-General says he does not think it can be done. Has he considered it? Has the Government considered this aspect of the matter?

**The Attorney-General :** I would like the courtesy of the hon. Member to allow me to have a written copy of his Amendment. It is very difficult to follow such a complicated Amendment as the

one he wishes to move. The matter was considered before. I am not going to reject anything without considering it. At the moment this Council is authorized to pass legislation which prescribed certain offices for disqualification, but the hon. Member seeks to pass on the duty to prescribe to someone else, and he knows certainly well, as a lawyer, that it is one of the fundamental principles of law that a person to whom a function is delegated cannot delegate that function to anyone else. That appears to be the sense of his Amendment.

**The Chairman :** Perhaps we could proceed with another Bill, while the Amendment is being prepared and circulated.

Question put, and agreed to.

Council resumed.

**The Chief Secretary :** Sir, I beg to report progress and to ask leave to sit again.

Question put, and agreed to.

#### KITTY RAILWAY LANDS BILL

**Mr. Speaker :** The Minister of Labour, Health and Housing to move the Second Reading of the following Bill:

A Bill intituled: "An Ordinance to make provision for certain lots of land to be transported."

**The Minister of Labour, Health and Housing (Mrs. Jagan):** Sir, I have a Certificate of Urgency from His Excellency the Governor permitting the suspension of the Standing Rules and Orders to enable this Bill to be taken through all stages at this sitting, and I will hand it to the Clerk.

In moving the Second Reading of a Bill intituled: "An Ordinance to make provision for certain lots of land to be

[MRS. JAGAN]  
transported", I should like to explain to hon. Members that under the provisions of the Public Health Ordinance, Chapter 145, as well as the Local Government Ordinance, Chapter 150, no lot of land which is less than a quarter lot, or equivalent to 20 square rods, shall be transported.

However, as hon. Members may be aware, the Government with its Planning Officer have recently been examining the problem of the Kitty Railway Lands. The Planning Officer has prepared a detailed plan, and it indicates that about sixty persons will be unable to obtain transport because the size of the lots on which their houses are built is less than 20 square rods. Strong representation has been made to Government by the sub-lessees of the Kitty Railway Lands asking that the lands on which their houses are built be sold to them separately to enable them to get leases from the Government. They fear that, if the land on which their houses are built is sold to other persons to be leased to them, they may suffer some form of exploitation from the persons to whom the land may be sold. They feel very strongly about it, and they desire to purchase the lots of land on which their houses rest.

In order to carry out this plan, Government has brought this Bill to the Legislative Council which will give these persons the right, if hon. Members agree, to purchase the lots as recorded in the plan which was drawn up by Mr. Phang, a Sworn Land Surveyor, and is in the Lands and Mines Department.

I would like to urge strongly that, while it is not Government's wish to reduce the standards which have been set and which seek to prevent congestion in our urban area, in this particular case where the houses have been built on the land by sub-lessees to the original lessee, the people should be given an opportunity to purchase the various lots of land on which their houses are built.

In view of the fact that this is such a simple matter, I hope that I have been able to explain their point of view and that Members will treat this as a special circumstances in order to ease the housing problem of approximately sixty persons.

**The Minister of Natural Resources** (Mr. Benn): I beg to second the Motion.

**Mr. Jackson :** Sir, the Minister of Labour, Health and Housing in moving the Second Reading of this Bill used the words "if passed". I think she need not have used those two words, because the numerical strength of the Government will ensure the passing of this Bill. Even though Members on this side of the Table may have very good reasons for opposing something in this Council, it does not necessarily mean that what we say will be accepted. She should have no fear whatsoever in this matter.

We, on this side of the Table, are well aware of the fact that this is something of long standing. For many years the people who occupied the land in the area which this Bill covers have been clamouring for outright ownership of the lots and sub-lots on which their houses have been built. Do you think that any Member sitting on this side of the Table would object to the principle, or the passing of this Bill which seeks to give complete ownership to those people? While I have no objection to the passing of this Bill, it does appear to me that the Government has omitted to take a step which should have been taken before the Bill was brought here.

observe that the newspapers have been carrying reports that the Government intends to sell the land mentioned in this Bill at a price with which the people are not in agreement. The newspapers have reported that the Government intends to sell the land at 17c per square foot, and this figure is

considered by the people to be extraordinarily high. If my information is correct, there was representation by the people on this question of price. I am taking this stand because I happen to know, and the records will bear me out, that before Campbellville was purchased the question of its purchase engaged the attention of this Legislature. It appears to me, that since we are being asked, as a Legislature, to approve of the change in the law to meet this specific circumstance, we should first have been given information as to Government's intention with respect to the selling price of the land.

If the people are dissatisfied with the price which the Government has fixed, then this Council is the place where this matter should be aired, since the land is not owned by private individuals but by the Government. I take this opportunity of bringing this point into the debate, so that it will be known that we feel that Government has ignored the Council with respect to its intention in so far as its policy is concerned and in so far as it relates to the price at which the land will be sold.

I expect the Minister in her reply to give information regarding the points I am going to raise. If the Government has fixed the price of the land at 17c per square foot, may this Council be informed on what basis the price has been fixed? Has there been a Land Valuation Committee, first of all, to determine how much Government paid for the land; how much Government spent in developing the area; and the difference between the total selling price of each lot and the cost plus development?

On the subject of the Land Valuation Committee, I shall refer to the *Hansard* of the 29th March, 1951, which deals with the sale of the land at Campbellville to Government. During the debate on the matter the present

Minister of Trade and Industry, then a Member of the Council, said at column 2025:

"A few days ago in this Council I tabled a petition to the Secretary of State for the Colonies asking that he intervene in this matter, and that a Land Valuation Committee be set up, and, having done that, that Committee should determine what is a fair price to be offered to the present owners of Campbellville and La Penitence . . . ."

Therefore, if this is the view which was expressed by Dr. Jagan when he was a Member of the then Council, it cannot be changed or ought not to be changed now that Dr. Jagan holds the very much more responsible post of Minister of Trade and Industry and is Leader of the Elected section of the Government. It seems to me, if ever there was a need for a Land Valuation Committee, that need is today — much more than it was in 1951. I am not dealing with who were the then vendors. I am dealing with a principle, here. I make this slight deviation because it is the habit of the Government to accuse members of the "Opposition" of supporting Bookers and sugar in matters in which Bookers and sugar are related.

I say it cannot be said in 1951 that there was development of any kind in the Campbellville area, as much as it can be said that since the occupation of the land on the railway section, which is now being offered for sale by the Government, there has been greater development of this area by these people who lived on the land for donkey's years, as we would say. It is therefore, to me, imperative that before we should have been asked to give our consent to the passing of this Bill, the Government ought to have taken the first step to appoint a Land Valuation Committee to determine, first of all, the cost of the area which, I would say, would have been a very difficult task since Government had bought the whole stretch of land after it was taken over. But that

[MR. JACKSON]

should not be any ground for preventing Government from taking this course of action.

Assuming that Government is the owner of this land—the acres which are involved are 82.44 acres — it should not be difficult for Government to even arrive at the purchase price, in the first place, because the value of land in the area then could have been determined by any Committee which was appointed for the purpose. The Committee would, also, have been able to analyse and determine to what extent the people — either those present or their parents or grandparents — had spent money to improve the land. Therefore, it would have been possible for the Committee to use its judgment to determine what is a fair price to be offered to the present owners. In this case, I would say what would have been a fair price to offer Government. If the Government has not been able to appoint a Land Valuation Committee to determine what is a fair price then, to me, it is wrong to fix a figure, arbitrarily, at 17 cents per square foot. This area of 82.44 acres gives a little more than 3½ million square feet. If we were to calculate 3½ million square feet at the figure of 17 cents per square foot, it would be very easy for us to determine the extent to which revenue would come in to Government by way of the sale of this land. Is that a fair price? Will it be a fair price?

It seems to me—if my calculation is correct, and I lay no claim to being a mathematician—that Government would receive nearly \$500,000 for these 82.44 acres of land. Why should Government get nearly \$500,000 for 82.44 acres of land, when it paid less for the land at Campbellville which was over this acreage by more than three times? Campbellville was bought for \$480,000. I am quoting the present Minister of Trade and Industry, because that figure also

appears in the *Hansard* from which I am quoting. It appears that the Government has not given any consideration to what should be a fair price for the land which it is now offering to the people who have been occupying it for a number of years.

As I said before, Campbellville was not developed as much as was the land along the railway line which is to be sold to the people living there. These people had to do a lot of work. I am sure they expended a lot of money on this land since they have been occupying it. Then, what should have been considered a fair price was less than 17½ cents per square foot. The basis upon which one determines the price of land is its purchase price plus its development cost; and, as I have said, the purchase price has to be based upon the prevailing price in the surrounding neighbourhood.

It cannot be denied that the railway land has been developed. It cannot be denied that it has been developed out of rates and taxes. The railway line land has formed part and parcel of the Kitty and Alexanderville Village District, and from the Estimates of the Village one would see that this is so. It is admitted that the Transport and Harbours Department, with respect to this area, makes a contribution of \$1,550; therefore, it must be admitted that the Kitty and Alexanderville Village Council spent money to develop this area—water, drainage and all conveniences. It is upon this premise I contend that the price of the land to be sold should be less than the price of the land bought by the Government.

I am submitting that the Government should not make any profit on these lands, if the development of the lands has been taken care of by the people themselves. If this submission is of value, then it supports my contention that the selling price of the lands should be less than 17½ cents per square foot.

**Mr. Jai Narain Singh:** What I want to point out is this: I have very great appreciation of the efforts of those responsible for this Bill. This Bill only speaks of provision for lands to be transported. It mentions nothing about price, and I do not see anything in it to cause this long debate. This is all hearsay.

**Mr. Jackson:** Mr. Speaker, I said here in my opening remarks that this Council is being asked to break away from the existing law in order to deal with a specific problem — smaller lots than the law permits to be transported, in certain circumstances, to the people who occupy them. This Council is called upon to give those people the benefit of the action which has brought this about. It is to the credit of the policy of the Government that this Bill has to be brought before this Council. Therefore if one of the reasons for this Bill is the selling of the land by Government to the people, then I am submitting that we, in this Council, ought to be in a position to discuss all aspects of the matter before—

**Mr. Speaker:** I do not object to that, but to give a dissertation on what happened or appeared in the newspaper is not relevant. The hon. Member can oppose the Second Reading of the Bill, but cannot go into what has no relation to it. If the hon. Member thinks it is very important, and it does not come properly here, his position is to reject the Bill.

**Mr. Jackson:** One would not like to reject a Bill such as this. We cannot do that, and even if we want to oppose it, as I have said before, the Government has the majority of votes in its favour. It is a question that we have not been properly treated by this Government, and I submit for the records the point I have made. The Government has said that the Transport and Harbours Department paid \$1,550 to the Kitty and Alexanderville Village Council for village rates and taxes for this area, and I have also quoted from the *Hansard* to show—

**Mr. Speaker:** The hon. Member's time is up.

**Mr. Burnham:** I beg to move that the hon. Member be given a half-hour more.

**Mr. Tello:** I beg to second the Motion.

Question put, and agreed to.

**Mr. Speaker:** We will stop here, and come back after we have concluded the other Bill. Council will now go back into Committee and resume consideration of the clauses of the Legislature (Disqualification) Bill.

#### LEGISLATURE (DISQUALIFICATION) BILL

Council resolved itself into Committee to resume consideration of the Legislature (Disqualification) Bill.

#### COUNCIL IN COMMITTEE

**The Chairman:** When consideration of the Bill was adjourned, the hon. Member for Georgetown Central (Mr. Burnham) had moved an Amendment to the Bill by the addition of a new Clause 6, the text of which has been circulated to hon. Members.

**The Attorney-General:** I regret to say that the Government is unable to accept the Amendment for the reason that it has no power to legislate in that way. What the Amendment seeks to do is this: It states that disqualification is prescribed, but if a person who happens to be disqualified is elected or appointed, the Chamber can consider his case and, if it thinks fit to do so, disregard the disqualification for the purpose of Clause 3 of this Bill.

The whole point of this Bill in relation to Article 58 (1) and (2) of the Constitution, is that so far as candidature

[THE ATTORNEY-GENERAL]

is concerned the disqualification must be fixed and certain at all times. There is no question of it being fixed provisionally and subject to consideration by the Legislature at any future date. So far as the Bill provides for the vacating of the seat of a member of the Assembly or the Senate, that disqualification has to follow the declaration of candidature or appointment to the Senate.

The Constitution does not provide that we can lay down disqualification which is subjected to limitation or modification by a Chamber. This disqualification has to be prescribed in this Bill. The practical effect of the Amendment is to encourage civil servants to stand for election knowing in their hearts they will be disqualified, but hoping that the Chamber after election day will say: "Do not worry; we disregard the disqualification". It will encourage civil servants to contravene the General Orders, which are the domestic rules of any Government Service.

The General Orders say that civil servants should not run for election or stand as a candidate, and if they do they are liable to disciplinary action. So, while we appreciate the sentiments of the hon. Member in moving this Amendment, it is not within the competence of the Legislative Council to allow the Amendment that he has placed before us.

**Mr. Burnham:** In the first place, the disqualification must be fixed and must be applied with equal force to the Legislature of British Guiana, as they do in the House of Commons in the United Kingdom. I am not surprised to find that the hon. the Attorney-General does not agree to the insertion of a saving or discretionary power, but let me remind him that Ordinance No. 3 of 1957, prior to its Amendment, made provision for certain returns, election offences and illegal practices, and the

Supreme Court had the discretion to disallow a disqualification if it were thought fit and proper to do so.

The most alarming argument by the hon. the Attorney-General is that this legislation does not leave the question of disqualification to the Legislature. That has always been from time immemorial. The circumstances in respect of which a person may be disqualified are clearly set out in legislation, but it leaves the discretionary power in some authority. In this case I am suggesting that the authority with the discretionary power should be the Legislature.

But the hon. the Attorney-General is not satisfied with that argument and comes forward with another one, that the Amendment will allow civil servants to escape disciplinary action. Assuming that is the case, under the clause a civil servant can have his disqualification removed by the Legislature, but that does not prevent the Public Service Commission from disciplining him. It merely prevents him losing his seat. If the Public Service Commission wishes to rob him of his pension rights or to demote him it can, but the exercise of discretion by the Legislature will have absolutely nothing to do with that. However, the Legislature, being supreme, can put the Public Service Commission in its place.

The underlying argument of the hon. the Attorney-General is morality and not legality. The Public Service Commission may feel it is immoral for a civil servant to run for election to the Legislature, and insists on his disqualification, but the Legislature, which is the final custodian of morality may feel differently. This disqualification is a carry-over from the old days, setting out a yardstick of morality which in many cases in these days does not work satisfactorily. Both arguments of the hon. the Attorney-General are not worthy of the breath in which they are uttered.

Then we come to this *quasi* legal argument. I use the word '*quasi*' advisedly. So unsure is the Government about this matter that, like a drowning man, it catches at a straw. Here is the *quasi* argument: We are not competent. Why are we not competent?

Article 58(1) of the Constitution states:

"No person shall be qualified to be elected to be a member of the Legislative Assembly who—

- (b) is disqualified for membership of the Legislative Assembly by any law of the Legislature enacted in pursuance of the next following paragraph";

Let us assume that a person who suffers from that disqualification cannot be elected. What is the purpose of an election petition? Is it not something to bring to light a disqualification which may not have been obvious, and ask a Court to adjudicate whether the disqualification existed at a particular time and to declare the election void? We know that a person who is disqualified should not be elected, but it is for the Court to decide. The Court can be approached even after the elections to adjudicate on the question of whether the disqualification was at the material time and so on. What is nebulous about that? That is the way in which things were done for thousands of years before the Attorney-General and I were in knee pants.

In Clause 6 I see "disqualification or alleged disqualification", and it is for the Court to adjudicate. Article 58(2) of the Constitution states:

"The Legislature may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the Legislative Assembly by virtue of—

- (i) holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law:

- (ii) his belonging to any of the armed forces of the Crown specified by such law or to any class of person so specified that is comprised in any such force; or
- (iii) his belonging to any police force specified by such law or to any class of person so specified that is comprised in any such force".

What is the power given by Article 58 (2)? It has the power to legislate and provide that, subject to such exceptions and limitations as may be prescribed. In other words, this Council has power to pass this particular type of legislation; its power is wide and unlimited; it can say definitely that A to Z disqualifies a person, and it can say that A to Z disqualifies save in certain circumstances. Is there anything clearer than that?

I repeat that this Council is competent to indicate clearly what the disqualifications are and it can state what limitations, if any, should be imposed. This pseudo-generic legal argument by the Attorney-General should not have been foisted upon the laymen of this Council. I say that it is misleading, and a refuge when there is no legal argument for passing this Amendment.

**The Minister of Community Development and Education (Mr. Rai):** Sir, even if this Council were competent to pass this legislation, I would say that it does not serve the purpose that my hon. Friend has in mind. This Amendment seeks to give a Chamber to be constituted after September, 1961, the power to say that a person who was disqualified at the time of his nomination is no longer to be regarded at the material time as being disqualified. There are other legal remedies to challenge such a person. In the first place, a person may take the matter to the Court on a writ of mandamus compelling the election officer to strike off the candidate's name.

Secondly, after the election is over, a person can apply to the Court by way

[MR. RAI]

of an election petition and say that the candidate was either disqualified at the time he was nominated, or during the time of his nomination and election. It will not serve the purpose that my hon. Friend has in mind. According to this Amendment the Council may waive the disqualification, but, as I have pointed out, before the House sits on the matter the application may be made to the Court for a mandamus to have the candidate's name struck off the list of published candidates.

**Mr. Burnham:** Sir, as I understand the argument by my hon. and learned Friend, the Minister of Community Development and Education, that also applies in the United Kingdom with equal force in the provision which we seek to have included in this Bill. Secondly, we must understand that a writ of mandamus is not issued as a matter of course. My hon. Friend may seek to confuse the layman who does not know what he is talking about, but I consider that the high prerogative of a writ of mandamus is not issued as a matter of course. Thirdly, the fact that the Legislature will be competent to change the disqualification is a fact which will lead any Court worthy of its salt to exercise its discretion in issuing a writ of mandamus to the returning officer before election day to strike out the name of a particular candidate. I repeat that it applies in the United Kingdom, and it seems as though it serves a purpose there but not here. There is always a period between nomination day and election day in the United Kingdom and in British Guiana.

The Attorney-General's argument has a little more reason and logic than the Minister of Education's, but it is a moot point. The Minister says that the Amendment would serve no useful purpose, but why can't it apply with the same equal force as in the United Kingdom? It applies with equal force in

Trinidad, the West Indies and in the United Kingdom, but it must not apply in British Guiana. I say that a writ of mandamus should not be granted because the Court may well be acting in vain.

Therefore the Minister of Community Development and Education, for the first time that he has contributed to the debate, has not assisted us in any way. It is better he has left his colleague, the hon. Attorney-General, to battle helplessly against the "Opposition" and use the Government's force of numbers to throw out the Amendment.

**The Chairman:** The Question is, "That the new Clause 6 be inserted."

The Committee divided and voted as follows:

For	Against
Mr. Bowman	Mr. Hubbard
Mr. Jackson	Mr. Gajraj
Mr. Burnham	Mr. Ajodha Singh
Mr. Kendall. - 4.	Mr. Saffee
	Mr. Rai
	Mr. Ram Karran
	Mrs. Jagan
	Mr. Benn
	The Attorney-General
	The Chief Secretary.-
	10.

**Did Not Vote**

Mr. Davis. -1.

**The Chairman:** The Amendment is lost.

**The Attorney-General:** Will the hon. Nominated Member, Mr. Davis, accept ten days?

**Mr. Davis:** I will accept ten days as far as the publication in the Gazette is concerned.

**The Attorney-General:** Sir, I beg to move the following Amendments to Clause 5 (2) (b): Substitute the word "ten" for the word "fourteen" in the second line; delete the words "the Gazette and" in the fourth line; and insert the words, "and to be delivered to the Commissioner of Elections for publication in



the Gazette," after the word "newspaper" in the fifth line. Clause 5 (2) (b) would then read:

" . . . the person causes to be published in one daily newspaper and to be delivered to the Commissioner of Elections for publication in the Gazette a notice setting out the nature of such contract and his interest, or the interest of any firm or company aforesaid, therein."

**Mr. Burnham:** Sir, may I ask the hon. Attorney-General the same question that he asked me a moment ago? Will he give us this Amendment in writing, so that we can study it and appreciate its full significance?

**The Chairman:** The Amendments are very simple; I will read the Clause, as amended, to you ———

" . . . the person causes to be published in one daily newspaper and to be delivered to the Commissioner of Elections for publication in the Gazette a notice setting out the nature of such contract and his interest, or the interest of any firm or company aforesaid, therein."

**Mr. Burnham:** I am grateful to Your Honour for reading it; I understand it now. However, this Amendment would not meet all cases, and I think there should be a further Amendment to the subsection. Now, the relevant day is not really nomination day but election day. I object to the word "nomination."

**The Chairman:** Those who are in favour of ten days, please say "Aye"; those against please say "No". I think the "Ayes" have it.

Amendment affirmed.

**The Chairman:** The next Amendment is that the words "the Gazette and" should be struck out. And the proposal is that ",and to be delivered to the Commissioner of Elections for publication in the Gazette" should be inserted after the word "newspaper".

Question put, and agreed to.

**Mr. Burnham:** The next point relates to nominations. Since nominations take place between 9.00 a.m. and 11.00 a.m. on a particular day, a man is free to decide at anytime up to 11.00 a.m. on Nomination Day that he is going to be a candidate; but because of this and because, as has been explained by the Attorney-General, the term in this context means "clear days", he will be automatically disqualified.

In other words, he is robbed of a right which he should enjoy, because Nomination Day ceases at 11.00 a.m.; but since he has to cause this to be delivered not later than the day, he is put in the position where Nomination day is one day earlier than that put by the Government Order. I suggest that the words "for the receiving" and "his nomination for" be deleted. Let us give him so many days before Election Day, which should be perfectly reasonable.

**The Attorney-General:** The position is that on Nomination Day, in pursuance of the Representation of the People Ordinance, the Returning Officer has to receive nominations of any duly qualified candidate and, indeed, the candidate has to make a statutory declaration that he is qualified on that day.

**Mr. Burnham:** What sort of argument is that? That position always existed, and yet you have election petitions to the effect that a person is not qualified. I am merely saying that it puts a person at a disadvantage and in the position of not making up his mind on the Governor's Proclamation. I cannot see the point in the statutory declaration. What I am saying is: you are taking away a theoretical right — [**The Attorney-General:** "You are wrong".] Making it 10 clear days before Nomination Day robs a man of his right of deciding on Nomination Day to be a candidate.

**The Attorney-General:** It is conceivable that a person may be returned as a Member of the Council on Nomination Day, if the election to the Electoral District is not contested, and the Returning Officer so declares him.

**Mr. Burnham:** It is free to anyone who is an Electoral Officer in any particular Electoral District. But the Attorney-General must understand that the Returning Officer's functions are not judicial but executive. That declaration may be a lying declaration, and the Returning Officer has no other power than to return him; then it is open to the Court to decide that the man should not be returned and there must be a by-election in the circumstances.

**The Chairman:** The Question is, that the words "for the receiving" and "his nomination for" be struck out.

Amendment negatived.

**The Chairman:** I am going to put Clause 5, as amended.

Question put, and agreed to.

#### FIRST SCHEDULE

**The Attorney-General:** I wish to move an Amendment by inserting after the words "General Manager of the British Guiana Rice Development Company, Limited", the words "Member of a local valuation panel established under the Local Government (Valuation of Property) Ordinance, 1959." The reason for that is, it is a *quasi-judicial* office which should be put in.

Question put, and agreed to.

Amendment carried.

**Mr. Davis:** I wanted to make an Amendment much earlier than that. At the top of the page where it states "Member of an assessment committee . . ." I

wanted to move that the word "Member" be deleted and the word "Chairman" substituted therefor. My reason for moving that Amendment is that the Chairman of a Rice Assessment Committee is usually known as a Rice Magistrate, and I feel that he is the only person who should be named in this Ordinance, as has been done here.

**The Attorney-General:** The Rice Assessment Committee, as its name implies, is a committee of several people. The Chairman is a magistrate, but the other members are representatives of landlords and representatives of tenants as well as certain public officers, and they have as much say in the determination of any case that goes before the Committee as the Chairman, and I think it would not be proper to exclude them.

**Mr. Burnham:** Public Officers will have all right to be excluded through the phrase "public officers". The hon. Nominated Member, Mr. Davis, has in mind those persons who are not public officers; therefore this particular argument of the Attorney-General does not meet the case.

Question put, the Committee divided and voted as follows:

For	Against
Mr. Davis	Mr. Hubbard
Mr. Jackson	Mr. Gajraj
Mr. Burnham	Mr. Ajodha Singh
Mr. Kendall — 4.	Mr. Saffee
	Mr. Rai
	Mr. Ram Karran
	Mrs. Jagan
	Mr. Benn
	The Attorney-General
	The Chief Secretary — 10.

Amendment negatived.

**Mr. Jackson:** I beg to move that the words "Chief Justice", "Puisne Judge", "Commissioner of Title", "Magistrate", and "Rent Assessor" be deleted on the ground that it is unnecessary to name them since they have been covered al-

ready by Section 3 (a). These are all people—members of the Service—who are receiving emoluments under the Crown.

**The Chief Secretary :** The Judges are not considered civil servants. They are dealt with separately.

**Mr. Jackson :** They are spoken of as holding offices under the Crown. This Bill is providing for a different Constitution than the one we have at the moment. What are they going to be after the 21st of August, 1961? I cannot see the Crown being in opposition to this amendment. These people are provided for and are taken from under paragraph (a) of Clause 3 of this Bill. May I ask where those people—the Judges, Magistrates, Rent Assessor, and Commissioner of Title come in if they are not under paragraph (a)?

**The Attorney—General :** They hold judicial posts.

● Question put, and negatived.

**Mr. Burnham :** I move that before “Manager of the B.G. Rice Marketing Board” the words “The Chairman and” be inserted.

**The Chairman:** The Amendment reads “The Chairman and Manager of the B.G. Rice Marketing Board”.

● Question put, the Committee divided and voted as follows :—

For	Against
Mr. Bowman	Mr. Hubbard
Mr. Davis	Mr. Gajraj
Mr. Jackson	Mr. Ajotha 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.

**Mr. Burnham :** I beg to move another Amendment—that there be added the words “The Chairman and” before the words “General Manager of the British Guiana Rice Development Company, Limited”. I must say it seems to me that certain offices are being taken, which is incompatible with the duty of the Legislature. This is one of those incompatibles.

**The Attorney—General :** I would point out to the hon. Member that Article 115 (7) (c) provides that the holding of public offices does not include any member of a Board, official committee or similar offices, so that the Chairman and members of Boards are excluded from being disqualified on the ground that they are holding a public office. The point made by the hon. Member about discrimination in respect of the holders of certain public offices is not true. They are picked out on the ground that it is undesirable that any member of the Legislature who holds such office should be subjected to patronage by the Government. Patronage is one of the things to be avoided.

**Mr. Burnham:** It is definite that Article 115 (7) (c) is not relevant. It has to do with public offices, but it has nothing to do with drawing emoluments under the Crown or holding office without profit. If the hon. the Attorney-General's argument is right, why then do they include in the Second Schedule a member of the Electricity Corporation? If Article 115 (7) (c) is applicable or relevant, why is it necessary to put a member of the Electricity Corporation as one of those disqualified? Why is this inconsistency?

[MR BURNHAM]

We are not talking about public offices but about persons holding places, or positions, or offices for profit.

**The Chairman:** The question is, "That the words "The Chairman and" be placed before the words "The General Manager of the British Guiana Rice Development Company, Limited" in the list of Offices not disqualifying for membership of the Legislature."

Question put, the Committee divided and voted as follows —

For	Against
Mr. Bowman	Mr. Hubbard
Mr. Davis	Mr. Ajodha Singh
Mr. Jackson	Mr. Saffee
Mr. Burnham	Mr. Rai
Mr. Kendall—5	Mr. Ram Karran
	Mrs. Jagan
	Mr. Benn
	The Attorney-General
	The Chief Secretary —9.

**Did Not Vote**

Mr. Gajraj—1

**Mr. Chairman:** The Amendment is lost.

**Mr. Jackson:** I want to move an Amendment to Schedule (1), but before doing so may I ask for guidance from the hon. the Attorney-General?

**The Chairman:** Let me know what is the Amendment.

**Mr. Jackson:** I want to insert in Schedule (1) "Chairman and Members of the Electricity Corporation" The reason for that—

**The Chairman:** Is there any other Amendment?

**Mr. Jackson:** I have no other.

**The Chairman:** Has any other Member any further Amendment to this Schedule? [Pause] The hon. Member can proceed.

**Mr. Jackson:** It seems to me that if you can put a member of an Assessment Committee which operates in a very small field, under pain of disqualification, there is no reason why the Chairman and members of the Electricity Corporation should not be included in this list. If anyone wishes to reject this Amendment, then it cannot be viewed from the standpoint of policy but from a pattern which does not conform to principle. I say this although a layman, and it can be considered possibly as rashness, but we should insist on our laws being fair, reasonable and just to every inhabitant.

**The Attorney-General:** The Government cannot agree that the Chairman and members of the Electricity Corporation be added to the list. They are not holding a judicial office as in the case of members of an Assessment Committee.

**Mr. Burnham:** The hon. the Attorney-General is one of the most specious debaters I have ever known. A judicial office is not the only criterion. The Manager of the B.G. Rice Development Company, Limited, is not holding a judicial office. I accuse this Government of seeking to protect certain of its stooges in office. The hon. the Attorney-General should be ashamed to allow himself to be used for this purpose to put forward such specious arguments. The Chairman and members of the Electricity Corporation should be added to the Schedule.

Question put, the Committee divided and voted as follows:

For	Against
Mr. Bowman	Mr. Gajraj
Mr. Jackson	Mr. Ajodha Singh
Mr. Burnham	Mr. Saffee
Mr. Kendall—4	Mr. Rai
	Mr. Ram Karran
	Mrs. Jagan
	Mr. Benn
	The Attorney-General
	The Chief Secretary —9.

*Did Not Vote*

Mr. Hubbard  
Mr. Davis.—2.

**The Chairman:** The Amendment is lost.

First Schedule, as amended, put, and agreed to.

## SECOND SCHEDULE

**Mr. Jackson:** I beg to move the deletion of the words "Member of the British Guiana Electricity Corporation" because it appears that this Government is discriminating in its attitude with respect to the people who should be disqualified and others who should be allowed, in certain circumstances, to remain free to take part in elections. I can see no justifiable reason for disqualifying a member, or the manager of the British Guiana Rice Marketing Board who has no judiciary function whatsoever. The General Manager of the British Guiana Rice Development Company, Limited, has no judicial work to do. If this Government is determined to see justice done to one and all, it should not include these two posts.

**Mr. Bowman:** I am supporting the deletion of the Second Schedule, because of the fact that I have a clear case in mind. In 1957 a Bill was introduced in this Council which called for the appointment of Parliamentary Secretaries under a very flimsy pretext. The hon. Member for Georgetown North opposed it, and said that the Government was creating jobs for its lackeys. Up to today that Bill has not been brought back to this Council. One can say that provision is made here to make room for Government lackeys, and that is why I am supporting the Motion.

**The Chairman:** The Question is, "That the words "Member of the British Guiana Electricity Corporation" be deleted from the Second Schedule".

The Committee divided and voted as follows:

*For*

Mr. Bowman  
Mr. Jackson  
Mr. Burnham  
Mr. Kendall—4.

*Against*

Mr. Hubbard  
Mr. Gajraj  
Mr. Ajodha Singh  
Mr. Saffee  
Mr. Rai  
Mr. Ram Karran  
Mrs. Jagan  
Mr. Benn  
The Attorney-General  
The Chief Secretary—10.

**Did Not Vote**

Mr. Davis—1.

**The Chairman:** The Amendment is lost.

**The Chief Secretary:** I beg to move the following Amendment to the Second Schedule which has been circulated to hon. Members:

After "Member of the British Guiana Electricity Corporation" insert the following:

"Member of any board, panel, committee or other similar body (whether incorporated or not) established by any law for the time being in force in British Guiana, other than an office mentioned in the first schedule to this Ordinance".

**Mr. Burnham:** Mr. Chairman, I do not know what is the Amendment.

**The Chairman:** It was circulated a few days ago. You can have my copy, if you need one.

**Mr. Burnham:** I am grateful to your Honour for your generosity.

Question put, and agreed to.

Second Schedule, as amended, ordered to stand part of the Bill.

Council resumed.

**The Chief Secretary:** I beg to report that the Bill has been considered in Committee and passed with Amendments. I now move that that the Bill be read the Third time.

Question put, and agreed to.

Bill read the Third time and passed.

**LEGISLATURE (APPOINTMENT,  
ELECTION AND MEMBERSHIP  
CONTROVERSIES) BILL**

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

A Bill intituled: "An Ordinance to make provision with respect to the reference to and determination by the Supreme Court of questions concerning the validity of the appointment or election, or affecting the tenure of office, of members of the Senate or Legislative Assembly or a Speaker of the Assembly who is not elected from the members thereof".

Council resolved itself into Committee to consider the Bill clause by clause.

**COUNCIL IN COMMITTEE**

Clause 4.—*Presentation and service of representation petition.*

**The Attorney-General:** My hon. and learned Friend the Member for Georgetown Central said that he felt that under Clause 4, as drafted, any person entitled to vote in the whole country can present a representation petition in respect of the election of a candidate in one of the electoral districts, but, looking into the Clause carefully, the election referred to is one in an electoral district. When we refer to the elections, it means 35 separate elections in 35 electoral districts, so that when we say in Clause 4 (1) (b) (1)

"a person who voted as an elector at the election or who had a right so to vote;"

it means the election in an electoral district. There is no doubt about it that in another electoral district he is not entitled to make a representation petition in respect of any district.

**The Chairman:** The Question is, "That Clause 4 stand part of the Bill".

Agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 22.—*Equality of votes.*

**The Attorney-General:** My hon. and learned Friend, the Member for George-

town Central, suggested that in the event of a tie of votes between the candidates the decision should not be by lot but by re-election. I am afraid the Government cannot accept such a suggestion. This is what obtains everywhere else; it obtains in the present procedure of the Representation of the People Act, and it obtains in England. I think it would be very expensive to have a re-election, and the result may not be any more satisfactory. I, therefore, ask the hon. Member not to press his Amendment.

**Mr. Burnham:** I cannot see any justification for not having a by-election. In some cases it may not really matter. If the difference between two parties at the next election is something like 20-50 the lot may not materially affect the representation of the respective parties in the Legislature, but if there is a difference of 18-7 and one of the 18 was the subject of a tie you might have a different constitution. It seems to be all right in the United Kingdom where you have 600 seats and there is hardly likely to be a decisive one seat, but, with such a small Legislature as is envisaged in the new constitution, it seems to me that leaving it to the luck of a draw is to make the House a gambler's den.

**Mr. Jackson:** I cannot see why the question of settling this matter should be left to the drawing of lots. If you are going to have lots drawn, then you are not reflecting the will of the electorate. All elections are called for to secure an expression of the majority of the electorate. That is what has been overlooked. You ask the people to express their will of choice of a particular candidate for a particular electoral district, but if there is a tie, it is suggested that this should be broken by casting lots.

The only logical, moral and legal way to decide which of the two candidates should be returned is to go back to the electorate. It is not fair to have a matter of this kind decided on the basis

of casting lots and, as the hon. Member for Georgetown Central has said, it may result in the selection of one whom the electorate does not favour. It is a small number of seats in a small Legislature, which is something, perhaps, the Government did not think about, and it is a matter which the electorate should decide.

**The Attorney-General:** My hon. Friend, the Member for Georgetown Central, suggested that section 30, which prescribes that an election shall be void if a corrupt or illegal practice was committed in connection with the election of the candidate, places an enormous onus on the candidate if his election is subjected to any wrongful act of his agent. I was not able to clear the matter on the spot, but subsequently looking into the existing Ordinance I find that this is a re-enactment of section 96 (1) (c) of the Representation of the People Ordinance of 1957.

Hon. Members will recall that it was necessary to take out of the Representation of the People Ordinance all provisions relating to elections and re-enact them in this Bill. Clauses 30 (1) (c) is the former section 96 (1) (c) of the Representation of the People Ordinance of 1957.

**Mr. Burnham :** The fact is, not whether it is within the Ordinance of 1957, that does not justify it, and it certainly seems to me wrong to make a candidate liable for the acts of his agent. If you are a candidate in a large area like Rupununi or the North West District some of your agents are hundreds of miles away and it would take you six weeks or months to visit them. If they commit an illegal practice, it seems wrong that the election should be voided. The fact that it was in the 1957 Ordinance is no reason for keeping it in this Bill.

I agree that where corruption has been committed by the candidate or his agent with his knowledge and consent his election should be void as long as his knowledge and consent can be proved. It does not matter whether the person who committed the corrupt and illegal practice is the candidate or his recognised agent. How the hon. the Attorney-General can square his remark with the intention of section 72 (3) of the Representation of the People Ordinance, that a candidate can be exempted from liability, I cannot understand. If I remember correctly, that has been repealed. That has been deliberately done to prevent amendment and also the proviso to section 74.

**The Attorney-General :** Section 72 (3) of the Representation of the People Ordinance is re-enacted as clause 36 (1) (b) of this Bill.

**Mr. Burnham :** Very well, Mr. Chairman, I am satisfied.

Question put, and agreed to.

Clause 30 passed as printed.

**The Attorney-General :** I move that the Council resume.

Council resumed.

**The Attorney-General :** I beg to report that the Bill was considered in Committee with Amendments, and I now beg to move that the Bill be read the Third time.

**The Chief Secretary :** I beg to Second the Motion.

Question put, and agreed to.

Bill read the Third time and passed.

**The Chief Secretary :** I move that the Council adjourn to tomorrow at 2 p.m.

**Mr. Speaker :** Council stands adjourned to tomorrow, Friday, 14th July, 1961.

*Council adjourned accordingly*