Government of Madras.

EDUCATIONAL DEPARTMENT.

Read.	1910.	*Enclosures*
Regd.		*Spare copies*

G.O., &c., Nos. 341, 342, 13th June 1910.

N. P.

Trust-deed.

Accepting the proposals of the Director of Public Instruction to amend the form of the — to be executed by Managers of European schools in connection with building grants so as to limit the duration of the trust to twenty years and requesting him to submit a draft of the necessary alterations in the Code of Regulations for European schools.

Government of Madras.

EDUCATIONAL DEPARTMENT.

2

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GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

Read—the following papers :—

I

G.O., No. 198, Educational, dated 26th May 1909.

Read—the following papers :—

(i)

G.O., No. 236, *Educational, dated* 26*th April* 1909.

Abstract.—Approving the form submitted by the Director of Public Instruction of the trust-deed to be executed by Managers of European schools receiving building grant.

(ii)

Letter—from the Hon'ble Mr. A. G. Bourne, D.Sc., F.R.S., C.I.E., Director of Public Instruction.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 13th May 1909.
No.—Ref. on Cur. 4698/06.

With reference to the correspondence ending with my letter Ref. on Cur. No. 4698/06, dated 8th April 1909, in connection with the form of trust-deed for European schools, I have the honour to request that orders may be deferred pending the submission of a further communication on the following question.

Under rule 54 of the Grant-in-Aid Code, the claim of Government on a building for which a building grant was drawn lasts only for twenty years from the date of payment of the grant, and it ceases after that period. In the forms of the deeds given in Appendices O, P, Q and R the duration of the claim for enforcement of the provisions is therefore limited to twenty years. There is no corresponding article in section X, Chapter V, of the Code of Regulations for European schools and the provisions of the trust-deed (Appendix III to the Code of Regulations for European schools) seem to be binding for ever without reference to any limit of time. This distinction between non-European and European schools does not appear to be intentional, and it seems as unnecessary to look ahead for more than twenty years in the one case as in the other and I therefore propose addressing Government for the insertion of a clause in the Code of Regulations for European schools similar to that in the Grant-in-Aid Code in regard to the termination of the mortgage after the lapse of twenty years. I am consulting the Government Solicitor as to the alterations which will be necessary in Appendix III to the Code of Regulations for European schools.

Order—No. 198, *Educational, dated* 26*th May* 1909.

Recorded with reference to G.O., No. 236, Educational, dated 26th April 1909.

(True Extract.)

L. M. Wynch,
Ag. Secretary to Government.

To the Director of Public Instruction.

II

Letter—from the Hon'ble Mr. A. G. Bourne, D.Sc., F.R.S., C.I.E., Director of Public Instruction.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 27th April 1910.
No.—Ref. on Cur. 8782/06.

In G.Os., No. 72, Educational, dated 28th January 1908, and No. 385, Educational, dated 19th May 1908, maximum grants of Rs. 5,000 and Rs. 6,600 were sanctioned towards the cost of improvements and additions to the buildings occupied by the St. Thomas' Convent European Girls' High school and the St. Thomas' Convent Girls' Orphanage, San Thomé, Madras, respectively. Out of the above grants, an advance of Rs. 3,500 towards the former and of Rs. 2,000 towards the latter have already been paid. The buildings of the High school have already been completed but those of the Orphanage have not, and the management have applied for an extension of time in regard to the latter. The balance of the grants due on behalf of the schools has to be paid after the completion of the buildings and after the execution of the trust-deed. The management are prepared to execute the deed but they request that some limit of time may be fixed in the form of the deed in regard to the duration of the trust. A copy of the correspondent's letter No. 66, dated 10th March 1910, is submitted herewith. The form of the deed as given in Appendix III to the Code of Regulations for European schools creates a perpetual trust and this is felt as a hardship by managers of European schools. In my letter Ref. on Cur. No. 4698/06, dated 13th May 1909, I suggested that a limit of twenty years might be fixed as in the case of the deeds mentioned in the Grant-in-Aid Code, but Government were not pleased to accept the suggestion—*vide* G.O., No. 198 R., Educational, dated 26th May 1909. I request that the orders may be reconsidered as I now have the power in the alternative of granting exemption for the execution of any trust-deed whatever.

Enclosure.

Letter—from the Correspondent, St. Thomas' Convent European Girls' High School, St. Thomé.
To—Director of Public Instruction, Madras (through the Inspector of Schools, Madras).
Dated—the 10th March 1910.
No.—66.

I have the honour to bring to your notice the following requests, which I hope, will meet your kind consideration.

In the form of the trust-deed, which, according to article 62 (*b*) of the Code of Regulations for European schools, I have to submit before full payment of the building grants sanctioned in Proceedings, Ref. on C. No. 8782, dated 19th March 1908, for the school building and for Orphanage in P. Ref. on C. No. 5916, dated 11th July 1908, can be authorized, nothing is said about the limit of time during which Government will hold the property in security. The superiors of our congregation are very anxious to have to this effect some limited time specified and the managers of the school have therefore desired me to ask you, sir, kindly to allow us a fixed time during which we shall be under obligation by the trust-deed.

We have received our documents, powers of attorney from Europe and if you will kindly grant my request the trust-deed will soon be ready.

Order—No. 341, Educational, dated 13th June 1910.

Article 54 of the Grant-in-Aid Code lays down that if a building for which a grant has been drawn is, prior to the lapse of twenty years from the date of payment of the grant, diverted to other purposes than educational purposes approved by the Government, the manager shall refund such portion of the grant as may be determined by Government. In the forms of the deeds in Appendices O, P, Q and R to the Code, the time within which the claim of Government can be enforced under the provisions of the Code is limited to twenty years.

2. The form of the trust-deed which has to be executed by the recipients of building grants under the Code of Regulations for European schools given in Appendix III to that Code, however, creates a perpetual trust and binds the managers of schools receiving such grants for ever without any limit of time. In view of the representations of the Director of Public Instruction that this rule is felt to be a hardship by managers of European schools and of the fact that there is no necessity to make a distinction between European and non-European schools in respect of the duration of the trust, the Governor in Council is pleased to accept the Director's proposal to insert in the Code of Regulations for European schools a provision similar to that contained in the Grant-in-Aid Code limiting the duration of the trust to twenty years.

3. The Director of Public Instruction will be requested to submit for the approval of Government a draft of the necessary alterations in the Code of Regulations for European schools.

(True Extract.)

L. M. Wynch,
Ag. Secretary to Government.

To the Director of Public Instruction.
,, Accountant-General.

Endorsement—No. 342, Educational, dated 13th June 1910.

Copy to the Government of India, Home Department, with reference to paragraph 4 of their letter No. 428 (Education), dated 22nd May 1908.

L. M. Wynch,
Ag. Secretary to Government.

Educational Department.

NOTES CONNECTED WITH G.O., Nos. 341, 342, EDUCATIONAL, DATED 13th JUNE 1910.

I

Notes connected with G.O., No. 198 R., Educational, dated 26th May 1909.

[Subject.—*The form of Trust deed to be executed under the Code of Regulations for European schools.*]

Previous papers.

G.O., No.	123, *Edl., dated*	*14th April*	1869.
,, ,,	352 ,, ,,	*15th September*	1879.
,, ,,	565-66 ,, ,,	*19th November*	1903.
,, ,,	599 ,, ,,	*5th* ,,	1905.
,, ,,	220 ,, ,,	*26th March*	1906.
,, ,,	445 ,, ,,	*9th June*	1908.
,, ,,	236 ,, ,,	*26th April*	1909.

From the Director of Public Instruction, dated 13th May 1909, No. 4698.

The Director of Public Instruction requests that orders may be deferred on his letter R.C. No. 4698/06, dated 3rd February 1908, submitting for approval a draft form of the trust deed under the Code of Regulations for European schools. Orders have already been passed on the form of trust deed submitted by the Director of Public Instruction—*vide* G.O., No. 236, Educational, dated 26th April 1909. The Director's letter may therefore be recorded with reference to G.O., No. 236, Educational, dated 26th April 1909.

2. The draft below is for approval.

T.K.—20-5-09.

Did G.O., No. 236, Educational, dated 26th April 1909, issue in manuscript? Apparently not. Has the Government Order issued in print?

K. Rangaswami Aiyangar—20-5-09.

The Government Order was issued from the Madras office in print on the 22nd instant.

T.K.—24-5-09.

The Government Order has issued. It will have to be modified, with reference to the subsequent representation promised by the Director of Public Instruction.

K. Rangaswami Aiyangar—24-5-09.

The Government Order can always be modified subsequently. The draft may issue.

C. A. Souter—25-5-09.

Issue.

L. M. Wynch—26-5-09.

[G.O., No. 198 R., Educational, dated 26th May 1909.]

II

Notes connected with G.O., Nos. 341, 342, Educational, dated 13th June 1910.

From the Director of Public Instruction, dated 27th April 1910, No. 8782.

The Director of Public Instruction requests that the form of trust deed given in appendix III to the Code of Regulations for European schools may be amended so as to put some limit to the duration of the trust. He points out that the management of the St. Thomas' Convent European Girls' High school and the St. Thomas Convent Girls' Orphanage, San Thomé, Madras, are prepared to execute the trust deed, but that they request that some limit of time may be fixed in the form of the deed in regard to the duration of the trust. The form of the deed as given in appendix III to the Code of Regulations for European schools creates a perpetual trust and this, the Director of Public Instruction states, is felt as a hardship by managers of European schools.

Pages 45 and 46 of the book put up.

Cf. article 60 of the Code for Europeans.

2. The Director of Public Instruction also refers to his letter disposed of in G.O., No. 198 R., dated 26th May 1909, in which he suggested that a "limit "of 20 years might be fixed as in the case of the deeds mentioned in the Grant-"in-Aid Code" and states that the Government were not pleased to accept his suggestion. This statement is not, it is submitted, correct. In the letter referred to, the Director stated that he proposed to address Government on the subject of inserting a clause in the Code of Regulations for European schools similar to that in the Grant-in-Aid Code in regard to the termination of the mortage after the lapse of 20 years, that he was consulting the Government Solicitor on the subject and that pending the submission of a further communication from him orders on his letter disposed of in G.O., No. 236, Educational, dated 26th April 1909, might be deferred. But as G.O., No. 236, dated 26th April 1909, had issued before the receipt of his letter of the 13th May 1909, the latter was simply recorded with reference to that Government Order.

Page 2 of G.O., No. 198 R., dated 26th May 1909.

Vide G.O., No. 198 R., dated 26th May 1909.

3. It is for consideration whether the Director of Public Instruction's proposal may be approved. The reasons for the proposal are given in his letter on pages 1 and 2 of G.O., No. 198 R., dated 26th May 1909.

P.R.—9-5-10.

Please obtain and put up the old papers in which the limit of 20 years was prescribed for mortgage deeds to be executed under the Grant-in-Aid Code, also papers showing how a perpetual trust came to be prescribed in the case of European schools.

K. Rangaswami Aiyangar—9-5-10.

Please see the then Director of Public Instruction's (Mr. E. B. Powell's) letter printed in G.O., No. 123, Educational, dated 14th April 1869, which gives information as to the causes which led Government to fix a 20 years' limit in the trust deed. In paragraph 10 of the letter Mr. Powell observed :—

"The advance of education has been much retarded by the perplexing diffi-"culties encountered in connection with building grants, and as I am of opinion that "every facility should be afforded for securing them to managers of schools of likely "stability, I would beg to propose, taking into consideration the various impedi-"ments to obtaining a really valid agreement, that the system adopted prior to the "receipt of the opinion of the Advocate-General of Calcutta (in 1866) . . . "be reverted to and that . . the Grant-in-Aid Code Rules be so modified as to "leave to the grantee the option of refunding the grant made for building purposes "or of selling to Government the building and site and to make the obligation "terminable after a period of (say) 20 years as at Calcutta." This recommendation was accepted by Government—*vide* paragraph 2 of G.O., No. 123, Educational, dated 14th April 1869.

Cf. also article 54 of the Grant-in-Aid Code.

2. A similar limit of 20 years is not contained in the form of the trust deed given in the Code of Regulations for European schools. In the draft Code which was forwarded to this Government, for remarks, with Home Department letter No. 429, dated 14th July 1903, as well as in the Code as finally approved by the Government of India, which was brought into effect from 1st April 1906 (G.O., No. 220, Educational, dated 26th March 1906), the form of trust deed given in appendix III of the Code did not prescribe any limit of time as in the Grant-in-Aid Code.

Stitched with G.O., Nos. 565-566, Educational, dated 19th November 1903.

Stitched with G.O., No. 599, Educational, dated 5th September 1905.

P.R.—30-5-10.

Please see appendix III to the Code of Regulations for European schools, which gives the form of trust deed to be executed by managers of schools under articles 56 and 62 of the Code when they receive building grants from Government. The deed imposes the condition that "in case the said trustees or their "successors in that office shall at any time fail to maintain and keep in good and "substantial order and repair and condition the buildings to be erected . . . or "if the said school should *at any time* cease to exist, or cease to be conducted in "accordance with the foregoing rules, then and in any of such cases to forthwith "make sale and absolutely dispose of the said hereditaments and premises, and "apply the proceeds of such sale . . . ."

Pages 45 and 46 of the book put up.

Pages 11 and 12 *ibid.*

Page 46 *ibid.*

2. Under the Grant-in-Aid Code which applies to non-European schools, the Manager of a school aided with building grants executes a mortgage deed on the security of the building and stipulates that the mortgagor "will not prior to the lapse of 20 years from the date hereof "divert or allow to be diverted the said buildings to other than educational purposes "approved by the Government of Madras . . . and will, in the event of the "said buildings at any time prior to the lapse of the said period ceasing to be "required for the purposes of the said school or being diverted to other than "educational purposes approved by the Government of Madras, forthwith repay to "the Secretary of State . . . ." The form of mortgage bond is given in Appendices O and P, while Appendices Q and R are forms of deeds of acceptance to be executed by Missionary Managers, who are not the legal owners of the property and who cannot therefore execute a mortgage deed.

Cf. the form on pages 28 and 29 of Grant-in-Aid Code.

Pages 25 to 33 of the Grant-in-Aid Code.

Pages 34 and 35 *ibid.*

3. The European Code was issued in 1906, but previous to that the rules of the Grant-in-Aid Code were applied to both European and non-European schools. The rule above referred to, which limits the liability of the mortgagor to use the buildings for educational purposes for a period of 20 years was first introduced into the Grant-in-Aid Code in 1879 and continued to govern all cases of building grants to European as well as non-European schools. It is, however, not possible to trace how in the European Code, which was framed by the Government of India, a perpetual trust has been created in the case of European schools. If it is decided to alter appendix III as suggested by the Director of Public Instruction the alteration should be sanctioned by the Government of India as it involves a fundamental departure from the general principles on which the Code has been constructed—*vide* paragraph 4 of Sir Harold Stuart's letter on page 3 of G.O., No. 445, Educational, dated 9th June 1908.

G.O., No. 220, Educational, dated 26th March 1906.

Vide G.O., No. 352, Educational, dated 15th September 1879.

K. Rangaswami Aiyangar—1-6-10.

I can find nothing in these papers to show why a distinction was made between European and non-European schools in respect of the period for which the trust continued. The correspondence in G.O., No. 123, Educational, dated 14th April 1869, however, shows that it was as a concession to non-European schools, with a view to remove some of the difficulties felt by the management in the acceptance of grants, that the duration of the trust was limited to 20 years. The correspondence connected with the draft Code of European schools contained in G.O., Nos. 565–566, Educational, dated 19th November 1903, gives no indication, as far as I can see, why the trust in this latter case was to be perpetual. But on the other hand, one of the main objects in providing a separate code for the two classes of schools was to secure a higher standard of efficiency and stability in the European schools. The normal building grant given to European schools is half the total cost, and, in some cases, two-thirds may be given, whereas the grant in the case of non-European schools does not exceed one-third.

2. It is, I submit, desirable to retain the present rule, which is at once a safeguard of the interests of Government and a stimulus to the management.

3. The Director has not, I submit, made out a case for the proposed alteration; nor does his correspondent's letter give any reasons why the management should object to execute a trust-deed binding in perpetuity. He simply says he would like a limit of time; but he gives no reasons.

4. This is not, I submit, sufficient for us to go to India upon; but if it is deemed desirable to consider the proposal further, I submit that we should first ascertain the practice prevailing in the other Provinces.

S. H. Slater—6–6–10.

Seeing that from 1879 to 1906, the rule was the same both for European and non-European schools and that a mortgage for 20 years only was required, it is not easy to understand why European schools should now be required to execute a perpetual mortgage.

The difference in the rates of grants to European and non-European schools hardly seems to me to be an adequate reason.

Moreover the Director of Public Instruction is now given the discretion of not requiring any mortgage at all.

There does not seem to be any need to refer the case to the Government of India and ask them whether there are any special reasons for maintaining the distinction.

In their letter read in G.O., No. 445, Educational, dated 9th June 1908, the Government of India struck the words in article 14 of the European Schools Code, which required the previous approval of that Government to any amendment in the Code, and I submit that the amendment made in G.O., No. 445, Educational, enabling the Director of Public Instruction to dispense with the trust deed altogether was a much more fundamental one, than that now proposed, viz., to limit the operation of the trust deed to 20 years in the case of European schools and put them on the same footing again as non-European schools in this respect.

L. M. Wynch—7–6–10

The objections to making this agreement to bind the managers of schools for ever seem quite reasonable. I do not think we need ask India. There is no principle involved. The principle that the school managers must be bound down for a reasonable time is maintained. The change may be made as proposed, a copy of the Proceedings going to India.

M. H[ammick]—8–6–10.

Please draft.

L. M. Wynch—9–6–10.

The draft order placed below is submitted for approval.

P.R.—9–6–10.

K. Rangaswami Aiyangar—10–6–10.

Issue.

S. H. Slater—10–6–10.

L. M. Wynch—11–6–10.

[G.O., Nos. 341, 342, Educational, dated 13th June 1910.]

Educational Department.

7

C.No.866, from the D. P. I. No.8782, dated 27th April 1 9 1 0.

8P

ORDER: N° 361 8/13. 6. 10
P.S.

Article 54 of the Grant-in-Aid Code lays down that if a building for which a grant has been drawn is, prior to the lapse of twenty years from the date of payment of the grant, diverted to other purposes than educational purposes approved by the Government, the Manager shall refund such portion of the grant as may be determined by Government. In the forms of the deeds in Appendices O, P, Q and R to the Code the time within which the claim of Government can be enforced under the provisions of the Code is limited to twenty years.

2. The form of the trust deed which has to be executed by the recipients of building grants under the Code of Regulations for European schools given in Appendix III to that Code, however, creates a perpetual trust and binds the managers of schools receiving such grants for ever without any limit of time. In view of the representations of the D.P.I. that this

rule-

[E. & L. 89]

500—15-3-09.

PRESS SLIP.

ORDINARY. **PREFERENCE.** **URGENT** (*a*).

EDUCATIONAL ~~LEGISLATIVE~~ DEPARTMENT.

9

Current No....., dated.....19

G.O., No. 341 / 342, dated 13 — 6 — 19 10.

(*b*)

Number of MS. pages sent { Correspondence including order or orders (*b*1) / Notes.....

Docket. Trust-deed - Accepting the proposal of the Director of Public Instruction to amend the form of the ____ to be executed by Managers of European Schools in Connection with building grants so as to limit the duration of the trust to twenty years and requesting him to submit drafts of the necessary alterations in the Code of Regulations for European Schools

(*c*) Number of copies required when struck off (*not including copies for volumes and editors' table which are retained in the Press*).	Complete correspondence and orders.	Notes
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P.T.O.

TO PRESS, MADRAS / OOTY.

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