

Law (Education) (1926) Department.

Ordy. SERIES.

G.O. No. 49

DATED 11-1-1926.

[Despatch Abstract.]

Tax. - Education.

whether it is legal to impose any
Condition when according sanction to the
levy of the - Advocate Genl. of the
Communicated to the D.F.

BACK PAPERS.

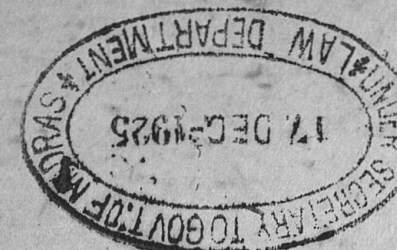
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Law (Education) Department

Memo No. 4792 A-1 D 17.12.25



Section 34 of the Madras Ely. Edn. Act, 1920, provides that, with the previous sanction of the Local Govt, ~~any~~ ^{the} local authority for which an Ely Edn. Fund has been constituted under section 32 may levy the education tax within its area.

2. The main purpose of the levy of the ^{education} tax is to ~~provide~~ ^{raise} additional funds for the expansion of elementary education and the opening ~~of~~ of new schools. When according sanction to the levy of the tax in the area of a local body, the Govt usually lay down ^{the} condition that the proceeds of the tax and the equivalent Govt contribution should not be diverted for the maintenance of existing schools or for raising the salaries of teachers.

3. Under the proviso to s. 37 of the Ely. Edn. Act, the Govt are bound to contribute from provincial funds the amount of recurring expenditure incurred from such funds during the financial year before the coming into force of the Act on education in ~~the~~ Ely. schools under the control of a local body. No such statutory obligation rests on the local body.

2
to continue to contribute the amount spent from ~~its~~ its general funds on elementary schools under its control in the year above specified. To ~~ensure~~ ~~the funds are not diminished~~ ensure that the funds available for elementary education are not diminished, the local body proposing to levy the education tax is required to give an undertaking that it will continue to contribute from its general funds the amount referred to above, and sanction to the levy of the tax is accorded subject to the payment of such contribution.

4. The question has been raised whether the Local Govt can legally impose conditions such as those ~~referred~~ mentioned above when according sanction to the levy of the education tax under s.34 of the Act. The Advocate-General is requested to advise the Govt on the point.

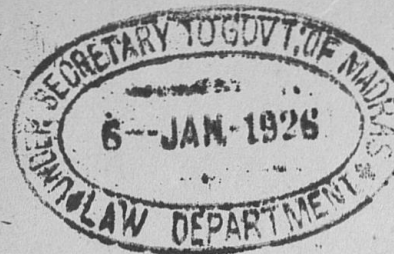
DESPATCHED

19 DEC 1925

To

The Government Solicitor.

Op No.4



3
28 38A
6.1.26.
O P I N I O N:

Ref: - Memorandum No.4792 A-1 dated 17th December 1925, Law (Education) Dept.

I think the conditions imposed are permissible.

Section 34 of the Elementary Education Act VIII of 1920 provides for taxation with the sanction of the Governor in Council. The Governor in Council may grant or refuse the sanction asked for. The grant or refusal must be based on considerations. What are they? The ultimate object is compulsory elementary education and all the provisions of the Act are intended to achieve it. The Governor in Council if satisfied that that object will be advanced by the proposed taxation will grant sanction and may refuse if of opinion that time for compulsion has not arrived or that the funds at the disposal of the local body are sufficient for its purposes at the time the sanction is asked for. How are these underlying considerations for grant or refusal to be ascertained except by the local body promising or the Governor in Council imposing a condition, that the funds when collected will be applied for certain purposes. A promise to apply the funds collected for specified educational purposes may in effect be nullified if the contribution previously made towards education were withdrawn. The Governor in Council therefore can say to the Taluk Board "You must use the funds collected by taxation for the expansion of education and the opening of new schools and you must also continue your old contribution towards education so that

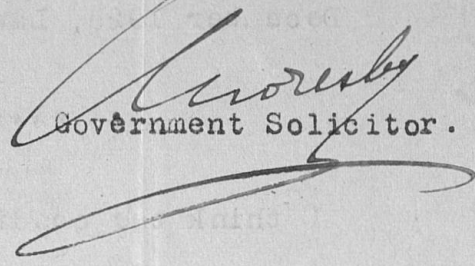
existing arrangements should be unaffected.

T. R. V. Sastri

Advocate General.

Madras,
4th Jan. 1926.)

(True Copy)


Government Solicitor.

4

Government Solicitor

1926

The Secretary to Government

Law (Education) Department

Madras

Reference dated the 1st December 1925

Received

No.

Forwarded with reference to

Memorandum No. 4792 A-1 dated 17th

December 1925 Law (Education)

Department Madras

[Faint, mostly illegible text in the bottom right section of the page, possibly bleed-through from the reverse side.]

LAW (EDUCATION) DEPARTMENT

From

C. Moresby,
Government Solicitor,
Madras.

To

The Secretary to Government,
Law (Education) Department,
Madras.

Madras dated the 4th December 1926 }
Received

No. 8

Forwarded with reference to
Memorandum No. 4792 A-1 dated 17th
December 1925 Law (Education) ---
Department Madras.

Government Solicitor.

Better ask the
Adv. Gen. on this
specific point

V.T.K.
13.12

When giving sanction for the levy of
education cess by Taluk boards, we
add a paragraph to the effect that
the proceeds of the tax should be
spent on expansion & not in
revising the scales of pay of teachers
employed in existing schools.

2) Is this legal? Or is it mere
advice? If the latter, should it
not be worded as such?

Please examine. D.P.I. raises
this point.

V.T.K.

9.12

The D.P.I. has raised the question in his
letter No. 2478 B of 1-12-25. (p. 4 of CF on the dotted file)

2 Under section 34 of the Edu. Act, the previous
sanction of Govt. is necessary to the levy of education
tax by a local authority. It does not appear that the
Govt. can ^{legally} impose conditions when according sanction.
The Adv. Gen. - General's opinion at (H). The conditions
are mere administrative instructions.

3 Proposals for the raising of the salaries of teachers
may, however, be vetoed by the Govt. when passing orders
on the elementary education fund budgets of local bodies
under section 38 (2) of the Act.

~~The D.P.I. (D.P.I.) may be consulted~~

M.Y.
12/12/26

Draft submitted
16/12

6-1 CF

[C. no. 38A] further Advocate Genl no. 8 (opinion no. 4) 24.1.26 pp 3-4 CF

The Advocate-Genl. considers that if the Gov^t can legally impose conditions then according sanction to the levy of the tax. A copy of the ~~Adv~~ opinion on pp 3 & 4 of may be communicated to the D.D.

~~Case~~ Draft order Submitted

$\frac{77.176}{5.1112}$

Scott. II- (a)-36,502 27-11-23. (6)

Law (Ed.) DEPARTMENT

	Date.	Initials.
When received for Fair-copying.	11/1/26	SR
When copied	12/1	PD
When examined		
When signed		
When despatched		

Tax-education

~~Opinion of the Advocate General~~
Whether it is legal to impose any condition
when according sanction to the levy of the —
Advocate Genl's opinion communicated to the
Spt.

READ AGAIN G.O. No., dated 192

” ” ” ” ” 192 .

READ ALSO:—

C. No. 4792A From the South Solicitor, No. 8, dated 4-1 1926.
38A

192

..... 192 .

ORDER.

Me's

No. 49, dated 11-1- 1926

Revised

A copy of the opinion of the Advocate General No 4 of 4.1.26 is communicated to the D.P.D. for information

DESPATCHED

12 JAN 1926

CP
7/1/26
146
8/1/26

Re DDD (with cpy of memo no
4292A-1 of 17.12.25 + of the Adv
Cable & Genl's opinion).
Copy to the Law (Drafting) Section
(do)
Cpy for stock file (do)

This should be
a' stitched with
No 4942
Question
No. 11-1-26.

Government of India Act--section 80-C

Whether there can be conditional sanction of
or sanction with alterations in a bill and whether reasons
for refusal of sanction should be given.

Opinion

24-1-25

T.R.V. Sastri (A.G.):--- Section 80 C of the Govt
of India Act contemplates only the grant or refusal of
sanction to a proposed bill. There cannot be a conditional
sanction or sanction with alterations. It does not provide
for a return of the Bill for re-consideration with recommended
amendments as does section 81 A(1) in respect
of Bills passed. Nor does it provide for giving reasons
for refusal of sanction as does section 81(4) in the case
of the withholding of assent by the Governor General. An
invitation to ask for sanction of a Bill in an altered or
modified form can only be private or informal. The giving
of reasons for refusal of sanction is not prohibited by
the Act and it depends entirely on the pleasure of the
Governor whether in any case he considers it necessary
or expedient to give reasons. If the Governor chooses
to give his reasons, they will necessarily contain indica-
tions as to the lines on which the Bill must run if it is
to command the Governor's approval and secure his sanction

7

OPINION of the Advocate General No.553 dated 9th October 1922.

X

X

X

Under section 73 of the D.M.Act and s.70 of the L.B. Act, Officers and servants have to be appointed by the Chairman or President in accordance with the establishment schedule and with regard to any rules which the Govr in Council may, have made in this behalf. At first sight, it may appear that the rules that may be made by the Governor in Council under sections 73 & 74 of the D.M.Act and sections 70 & 71 of the L.B. Act may comprise such a direction as is referred to in the memorandum under reference; but having regard to the general scheme of both the Acts dealing with Local self-Government and their underlying idea that the councils and the boards should be autonomous in such matters, and having regard, moreover to the juxtaposition of the words 'establishment schedule' and the further clause 'any rules that the Governor in Council may make in this behalf' the better construction, in my opinion is that a rule requiring the observance of the principles enunciated in G.Os.No.613 Public dated 16-9-21 and No.658 Pub dated 15th August 1922 is not such as the Local Govt may make.

The principle of construction in such cases is that the spirit and meaning of the Act must be considered as well as the words--vide Jessel M.R. in R.Bathleen Hospital L.R.19 Eq. 457 at 459 where it is stated that there is such a thing as construing any Act according to its intent though not according to its words--see also 1898 A.C. at 575-76.

When given for copying _____
When copied _____
When examined _____
When signed _____

192

READ AGAIN G.O. No.
192

DATED

CURRENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED OF, BRING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.—

A = Copy in full.
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Q = Copy heading only.