Educational (190[illegible]) Department

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(Despatch abstract)

Building grants-in-aid.

Accepting with remarks the proposal of [illegible] for the substitution of a deed of acceptance in certain cases for the mortgage deed required to be executed by the managers of schools applying for building grants.

BACK PAPERS.

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

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ORIGINAL

Government {1904} of Madras.

EDUCATIONAL.

Recd. } 1904. *Enclosures*

Regd. *Spare copies*

ORIGINAL

G.O., No. 513, 16th August 1904.

N. R.

AUGUST.

Building Grants Agreements.

Accepting, with remarks, the proposal of the Director of Public Instruction for the substitution of a deed of acceptance in certain cases for the mortgage-deed required to be executed by the managers of schools receiving building grants.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

Read—the following papers:—

From the Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S., Director of Public Instruction, to the Secretary to Government, Educational Department, dated Madras, 23rd May 1904, C. No. 4644.

In October last, Government approved finally the draft forms of agreement required to be executed by managers receiving building grants under rule 119 of the Grant-in-Aid Code (*vide* G.O., No. 529, Educational, dated 26th October 1903). The managers concerned were shortly after furnished with copies of the deeds to be executed; but as they were obliged to obtain encumbrance certificates for the sites on which the buildings were erected, and take legal advice before executing the deeds, and as the deeds themselves had to be carefully scrutinized by the Government Solicitor, and doubtful legal points in some cases settled, it was found impossible to have any deed successfully executed before the end of the last official year. In view of a large amount of building grants (Rs. 31,687), sanctioned and authorized for payment during 1903–1904, lapsing, I requested special permission to pass the grants on the managers undertaking to execute the deeds of agreement before 1st June 1904. This permission was granted in G.O., No. 130, Educational, dated 24th February 1904.

2. I regret to say that until now not a single deed has been executed. On the other hand new and unexpected difficulties have arisen, not only with reference to grants already paid but also with reference to grants applied for since the commencement of the current official year,—difficulties which I desire to bring to the notice of Government.

3. In justice, however, to the managers who had promised to execute the deeds, I would say that none of those who had made the promise have repudiated their responsibility in the matter. It is true the Secretary of the United Free Church Mission of Scotland refused to sign the deeds, and still persists in doing so; but his case has already received the attention of Government and has been dealt with exceptionally (*vide* G.O., No. 166, Educational, dated 10th March 1904). With that one exception all the rest are willing to abide by their promise; but as the result of a long and tedious correspondence with the managers, in the course of which I have had to indent freely on the advice and assistance of the Government Solicitor, fresh difficulties have cropped up which have brought matters to a standstill at present.

4. I do not wish to recapitulate here all the difficulties that have been raised by the managers. Some of them are more imaginary than real. For instance, the chief objection to the Indenture forms raised by the Secretary, United Free Church of Scotland Mission, is that there is no provision in them for the release of the buildings mortgaged and for the reconveyance of the title-deeds after the expiry of twenty years. It is not intended that the Government should have control over the buildings after the expiry of twenty years, for the trust is expressly created for a term of twenty years only. As soon as the purposes of the trusts are extinguished Government is bound to release the property. This is implied in the very terms of the deed, but probably it would be clearer to insert a provision to the effect that at the expiration of twenty years the property will be reconveyed to the managers. The objection, therefore, of the Secretary, United Free Church Mission, is not a very serious one.

5. Some of the managers have worried themselves unnecessarily about the provision in the deed, prohibiting the diversion of the buildings to other than educational purposes approved by Government. With reference to this objection it has been pointed out that the form of agreement now prescribed only puts into legal form the provisions contained in rule 121 of the Grant-in-Aid Code, and which managers have always promised to comply within the declarations they have hitherto, without any hesitation, signed at the foot of the applications for building grants. From one point of view this might seem to be a reason for binding those who, while willing to make an irresponsible promise, shrink from so doing when a penalty can be enforced on its non-fulfilment. On the other hand it seems undesirable to interpret rule 121 too rigidly; so long as the school is properly maintained, we need seldom concern ourselves with what happens in the building at other times.

6. Though some of the difficulties pointed out by the managers, like those referred to above, are more or less imaginary, still there are others of a real nature which cannot be so easily set aside and which stand in the way of the successful execution of the deeds concerned.

7. The foremost difficulty has reference to the determination of the legal owners of the properties concerned. The Grant-in-Aid Code, as the Government is aware, authorizes the managers alone and not the trustees or legal owners of the properties concerned to deal with the department in all matters concerning grants. It is the managers that apply not only for building grants but for other grants as well, and it is they that become entitled to these grants. But the indentures framed for signature in connection with building grants take for granted that these managers are "well and truly entitled and possessed of the pieces or parcels of land" and the buildings therein for which grants are applied. In other words, these indentures go on the assumption that the managers are also the legal owners of the properties concerned. This is not so in the majority of cases; and in the case of Missions especially, the managers are entirely distinct from the trustees or the legal owners of the property. The Missionary in charge of the station for the time being is the agent of the Mission and corresponds with the department in his capacity of manager, but he has no legal right to enter into any mortgage agreement of the kind contemplated in the draft deeds. Some Missions, like the C.M.S., and the Wesleyan, have formed Trust Associations at home, and their local representatives are given power-of-attorney to act on their behalf, but sometimes it happens that this representative himself is away on leave and has not arranged to have his power-of-attorney transferred to another. In such cases it is not possible to have the deeds executed without great delay, and the amount of correspondence involved will be very considerable. Moreover it is a question how far such a power-of-attorney would entitle the representative concerned to enter into a mortgage agreement. Where the ownership rests with a body at home which has not provided for a legal representative in India the case is still worse. One of the cases about which correspondence is going on at present is of this kind, and in reply to a request to submit the title-deeds for scrutiny and approval, the manager has stated that they are with the Mission authorities at home. Where Missions have not formed Trust Boards at home or have registered themselves as corporations in India under the Indian Companies Act, the difficulties in the way of execution of the deeds are enhanced still more. The fact of the matter is that the department is called upon now to deal with a large number of owners of property who have themselves not made satisfactory legal arrangements for owning property, and all the complicacy arising out of such a situation has to be faced by it at present. The letter from the Missionary Council on Aided Education which I am forwarding will give some idea of the complicated position of Missions in regard to the ownership of property.

8. Another real difficulty relates to the retention of the title-deeds by Government, and this is pointed out in the letter of the Council on aided education. Mission school buildings are erected usually on sites on which there are a number of other buildings besides, such as the Mission bungalow, dwelling-houses for Mission agents, &c., and the title-deeds in many cases, therefore, would relate not only to buildings for which grants are given but to other structures as well. The retention of such title-deeds by this office for a period of twenty years will certainly cause inconvenience to

managers, who may need them for reference and in transactions referring to other properties; and in the case where the deed retained refers to a number of pieces of property scattered in different places, the inconvenience will even be greater. I notice that in Bengal the title-deeds are allowed to remain with the mortgagor. I am not sure whether the object of the deed is not frustrated by this unusual course. However this may be, the difficulty referred to by the Council on Aided Education is real. It is true in future arrangements the difficulty may be obviated by requiring managers to obtain separate deeds for the buildings for which alone grants are given and for the sites on which these buildings are erected; but so far as Missions are concerned this will involve extra expense and trouble.

9. The question of the custody of the deed also requires very careful consideration. On an average between 120 and 140 applications for building grants are disposed of every year, and this number is likely to increase still further in future, owing to the more stringent application of rules relating to accommodation for purposes of recognition; and within a period of twenty years, at the lowest calculation, at least 2,000 documents of value will have accumulated in the office, for the safe custody of which the necessary arrangements should be made. And when it is remembered that these deeds will have to pass to and fro between the managers and this office, and between this office and the Government Solicitor, the responsibility involved in taking charge of them will be considerable.

10. The objection raised by the Council to the extra expenses which will have to be incurred in the way of registration fees, fees for encumbrance certificates, &c., has no force so far as large grants are concerned, but in the case of small grants the objection is valid; and if the suggestion I make below is adopted there will be no need for such expenditure. In this connection I would point out that the Council on Aided Education are mistaken in taking for granted that deeds will be demanded in the case of building village school-houses for which grants are given under rule 120 of the Grant-in-Aid Code. The condition regarding the execution of the deed of agreement is applicable only to grants drawn under rule 119.

11. I have illustrated the difficulties arising from the execution of the deeds chiefly with reference to Mission schools, because roughly speaking 66 per cent. of the grants given for buildings go to Mission bodies.

12. In view of the practical difficulties referred to above which stand in the way of the successful execution of the deeds concerned, I beg to make the following proposals:—

(i) In all cases where the grant does not exceed Rs. 1,000 the managers may be allowed by the Director to execute a deed of acceptance in place of a deed of trust. This is the practice in Bengal and Bombay. It seems unnecessary in the case of small grants to require managers to undergo the trouble and expense of executing the elaborate deeds proposed. About 69 per cent. of the building grants sanctioned every year range between Rs. 30 and Rs. 1,000. The interests of Government will, I venture to think, be safeguarded just as effectively by a deed of acceptance such as that in force in Bengal as by a deed of trust.

(ii) In cases where the grant exceeds Rs. 1,000, the execution of the deed of trust may be enforced, except in the case of a body, which manages a number of institutions or even a single institution of long stability, and which has been in receipt of considerable aid. In such cases the Government, on the recommendation of the Director, may allow a deed of acceptance to be substituted for a deed of trust, each case being dealt with on its own merits.

13. My reason for proposing this concession in the case of managers who form a corporate body and who regularly receive considerable aid from the department, is that the annual grants that they receive may be treated as security in the event of the building ceasing to be used for educational purposes; and where the managers have a number of schools under them, if the conditions under which the building grant given for one school are not fulfilled, the regular aid given for other institutions may be stopped. The hold which the department has over schools in the matter of recognition can also be availed of when the conditions under which building grants are given are infringed.

14. Of course the concession referred to above must be granted with great caution, and hence my proposal that the final decision should rest with Government. As grants exceeding Rs. 1,000 are sanctioned by Government, in recommending each such grant the Director may be required to report fully on the stability of the institution, the constitution of the management, the number of other institutions under the same management, and the amount of aid regularly drawn for the institution or institutions under that management. In all other cases where the proprietor is a single individual, or even in cases where the managing body consists of a committee which has only one single institution under it, and is not in receipt of considerable aid, the deed of trust must be insisted on if Government is to be completely protected against alienation and encumbrance of property. I append the rough draft of a deed of acceptance based upon the model of the Bengal deed. The Bengal deed is also given for purposes of comparison. I am not competent to speak with authority on the legal value of a deed of acceptance, but the fact of its being in use in Bengal shows that it has been found to be of service in place of a deed of trust. The wording of the draft deed, I submit, may be improved by the legal advisors of Government without interfering with its simplicity.

15. In the case of Local Boards and Municipalities, I am not quite sure whether they should not be exempted altogether from executing any deed. Even if they are not so exempted they will be entitled to the concession recommended in the case of corporate bodies having a large number of schools under their management.

16. After all, the elaborate deeds that have been prescribed, in the execution of which so many practical difficulties have arisen, are only a means to an end; and it is the conviction that this end can be secured by the adoption of a simpler and less cumbersome means that has induced me to make the above suggestions, and I trust they will receive the consideration of Government. At present all that I can say is that things are at a deadlock.

Enclosures.

Bengal deed.

We, whose names are entered in the margin, and whose signature appear at the foot hereof hereby accept the special grant of Rs. only, sanctioned by Government through the Director of Public Instruction, Bengal, for the $\frac{\text{school}}{\text{college}}$ at in the district of in the Director of Public Instruction's memorandum No. , dated the , and in consideration of such grant, we hereby severally and individually, and also with the intent of binding (so far as we can) our successors in office, agree that Government shall, if the $\frac{\text{school}}{\text{college}}$ is at any time hereafter abolished, receive a fair share of any balance at the credit of the said $\frac{\text{school}}{\text{college}}$ at the time of its abolition, as well as of sale-proceeds of any school buildings or furniture in or towards the erection or purchase of which the above or any previous grant may have been in whole or in part applied. The decision as to what is a fair share of such credit balance and sale-proceeds, respectively, shall rest, in the case of dispute, with the Director of Public Instruction, Bengal, whose decision in regard thereto shall be final and binding on all parties.

Committee of Management. Members.

Proposed deed of acceptance.

We, whose names are entered in the margin, and whose signature appear at the foot hereof hereby accept the special grant of Rs. only, sanctioned by Government through the Director of Public Instruction, Madras, for the $\frac{\text{school}}{\text{college}}$ at the district of in the Director of Public Instruction's Proceedings No. , dated the , and in consideration of such grant, we hereby severally and individually and also with the intent of binding (so far as we can) our successors in office, agree that Government shall, if the $\frac{\text{school}}{\text{college}}$ is at any time hereafter abolished or the building diverted to other than educational purposes approved by Government receive a fair share of the sale-proceeds of the school building towards the erection of which the grant has been paid. The decision as to what is a fair share of the grants or of the sale-proceeds due to Government shall rest with three arbitrators, one to be appointed by the Director, another by the manager and the third by the two arbitrators so appointed. In the event of the manager failing to appoint an arbitrator, the decision of the Director shall be final and binding on all parties.

Committee of Management. Members.

From the Rev. F. W. KELLETT, Secretary, the Missionary Council on Aided Education, to the Director of Public Instruction, dated Royapetta, 9th May 1904.

We desire to address you with reference to the new indenture which has been drafted for signature by managers applying for building grants.

And first we would state that we can quite sympathise with the feeling of Government that led it to draft such an indenture, and nothing is farther from our minds than to evade any legal or moral responsibility that the acceptance of building grants casts upon us. We quite recognise the right of Government to take fitting steps to secure itself against any abuse of the grant-in-aid system by the improper alienation of sites or buildings towards the obtaining of which it has given a grant.

Moreover cases in which the indenture would have to be enforced against any of our schools would, we believe, never occur—or rarely and under very exceptional circumstances—so that we are unwilling to seem to boggle at it at all.

With such feelings it has naturally been our wish to fall in with the plan devised by Government for protecting itself, and we have been reluctant to raise any objection to it. But we find that the plan involves such practical difficulties that we are under the necessity of asking you to consider them.

In the first place there are legal difficulties. Mission property is held in various ways. Sometimes it is the individual missionary who holds it; sometimes a body in this country, a "Mission", a Board of Trustees, an Association; sometimes a body at Home, a Missionary Society, a Board of Trustees, an Association, a Church. When the ownership is at Home, there is usually a power-of-attorney given to some one in this country, but this power may be limited. This state of things would not of course interfere with the right of Government to insist on an indenture being signed.

But where the legal owner is a body at Home, it involves the necessity of our obtaining permission to sign the indenture. It has been drawn up by Government naturally enough from its own point of view. But after all Government aids only at most in the proportion of 1 : 2, and the Mission may reasonably ask that its rights shall be safeguarded too. The education of the country under the grant-in-aid system is a partnership between Government and private bodies or individuals, and it can only be carried on successfully if each partner feels that his interests are considered by the other. Naturally if such an indenture is demanded by Government, the bodies aided by it may feel themselves bound on their side to seek legal recognition from Government of their rights too. In one Mission at least in which the indenture has already been sent to the Home Committee, that Committee has referred it to its Solicitor and is awaiting his report.

But assuming that this or some other indenture is in substance generally accepted by Missions, the complicated position of Missions in regard to ownership of property here may frequently give rise to difficulty. We understand that already there has been at least one case of the signature of a missionary manager who had signed the indenture being rejected by the department on the ground that he had no authority to sign. It appears that the department will have to deal with two persons (distinct in almost every case), the ordinary manager and the representative of "the Managers", and that, whenever a building grant is applied for, it will have, with some difficulty it may be, to find the latter and satisfy itself that he has the necessary authority. The confusion that may result, and the amount of work and correspondence that will be involved on both sides to avert it, are serious drawbacks to the scheme.

This, however, is but a small part of the trouble entailed on both sides. Another element of difficulty is the handing over of the title-deeds. By some of us it was not at first understood that the Indenture involved this, and one at least of our number expressed his acceptance of the Indenture under the misapprehension that it was not required. With regard to this there are two feelings among us. Where a deed is new and concerns only the site or building on which a grant is obtained, many of us would rejoice at Government taking off from us the responsibility of guarding the deed, though here also additional work and correspondence will be thrown on both parties, especially upon the department. Some, however, realising that though the deeds may be in the hands of Government, the buildings are yet mission property, and knowing that the deeds may be needed from time to time, foresee with some apprehension the correspondence, delay, trouble, and anxiety about safe transmission that will result if they are handed over.

There is moreover a special difficulty in many cases. Recently many missions have formed Trust Associations and have been bringing their property, held previously under many names, under the Trust, with the result that a large number of pieces of property are often held under one deed. There is, it seems, no reason why all the property of a mission in a whole district, or an even larger division of the country, should not be in one deed, and we know of deeds in which more than ten distinct pieces of property are included. It might well be that such a deed would have to be handed over to the care of Government. It would be needed by the mission whenever a change in any part of the varied property—non-educational as well as educational—covered by it took place. The inconvenience, work and trouble this would involve for all concerned would be very trying. Even where a deed covers only one piece of property such as a compound, the scheme will involve the deed being handed over to the care of the department though the grant may be for a building on but a small fraction of the property. Enlarging an institution

in a large mission compound on which there are numerous mission buildings would at once create such a case. It may be pointed out also that there are cases where no deeds can be obtained. Buildings on sites given by Government and on land held on a patta would seem to require separate regulations.

Another important element in the matter is the expense the plan entails. The Indenture will have to be stamped and presumably registered, and an encumbrance certificate obtained. In many cases, too, fresh deeds may be required. Considering the strain upon managers at present, Government will surely not wish to place any further financial burdens upon them unless they are absolutely necessary.

The strain will tell most just where strain is most to be avoided. The cost to managers in money combined with the correspondence, delay and trouble involved will make the provision of village school-houses under section 120 of the Grant-in-Aid Code too burdensome in many cases where it otherwise might gladly be undertaken. Thus the introduction of the Indenture may prove fatal or at least highly injurious to co-operation between Government and private effort in a department where it could be most serviceable and which it is most important to foster.

We venture to suggest that many of these drawbacks may be in many cases avoided without the rights of Government being in the slightest degree endangered. There may be cases, *e.g.*, where a manager has but one or two schools, in which such an Indenture is necessary to cover Government against the risk of loss; and in these cases, whether they are mission schools or not, we would not ask that an Indenture should not be demanded. But in many cases the managers are conducting a large number of institutions and drawing grants for their maintenance large enough to secure Government against the possibility of loss, perhaps larger in a single year than any building grant on account of which an Indenture will be demanded. In such cases Government has a hold over the managers stronger than that which an Indenture would give them. It is able at any time to recoup itself out of the grants it would otherwise make, to say nothing of its power to stop the grants altogether. Without any detriment to any interest both managers and department may be saved in such cases from all the correspondence, trouble and expense involved in the plan of the Indenture. We therefore beg to suggest that the Director may be empowered to exempt managers under such conditions from the necessity of signing an Indenture. This might be done by inserting a clause in the Grant-in-Aid Code—and meanwhile issuing an order—to the effect that—

In the case of a body which manages a number of schools receiving yearly considerable aid from Government, the Director shall have power, if he thinks fit, to exempt that body from signing an Indenture.

A provision might be added, if it was thought desirable, that in such cases the manager should give to the department on receiving the grant a document recognising the right of the Government to have demanded an Indenture, and the favour of his exemption, and acknowledging the claim of the Government to compensation under section 121 of the Grant-in-Aid Code, none the less, should the building be diverted to other than educational purposes approved by Government.

We ask for no privilege for missions that may not be granted to other established and trustworthy bodies. There are numbers of bodies of various kinds with regard to which Government may be practically absolutely certain that under normal conditions they will continue their schools for more than twenty years, and that if they should divert their buildings to other purposes they will faithfully discharge their dues to Government. With regard to all these we submit that to exempt them from the necessity of signing the Indenture would save them, and perhaps even more the department, from useless expenditure of money and time, and from irritating delays and anxiety.

P.S.—As I sail to-day for England, the Rev. Dr. Chamberlain, Vellore, is taking my place as Secretary to the Council.

Memorandum No. 311, Educational, dated 24th June 1904.

In notes file.

With reference to his letter No. 451, dated 14th instant, the Government Solicitor is requested to submit two revised forms of deeds of acceptance—(i) providing for sale in the event of abolition of institution or diversion of building to other than educational purposes approved by Government, for use in cases in which the Government grant is considerable and registration is desirable; (ii) for use in cases in which owing to the smallness of the grant, it is desirable to avoid registration, the sale clause being omitted.

2. The form proposed by the Director of Public Instruction is forwarded for reference.

3. The suggestions for its revision made in paragraphs 8, 9 and 10 of the Government Solicitor's letter are accepted.

H. D. TAYLOR,
Ag. Secretary to Government.

To the Government Solicitor.

From SUTHERLAND ORR, Esq., Government Solicitor, to the Secretary to Government, Educational Department, dated Madras, 1st July 1904, No. 476.

I have the honour to acknowledge receipt of the memorandum of Government No. 311, dated 24th ultimo, together with its enclosure.

2. Please send me again, for reference, the notes and files of papers which were returned with my letter No. 451, dated 14th ultimo.

From SUTHERLAND ORR, Esq., Government Solicitor, to the Secretary to Government, Educational Department, dated Madras, 2nd August 1904, No. 571.

I have the honour to acknowledge receipt of your memorandum, No. 311, dated the 24th June 1904.

2. I forward, for the consideration of Government—

(*a*) a form of "Deed of acceptance" containing a provision for sale by Government of the property;

(*b*) a form of "Deed of acceptance" without such provision, documents which have been prepared on the lines of the draft submitted by the Director of Public Instruction and with the alterations suggested in paragraphs 8, 9 and 10 of my letter of the 14th June last, No. 451.

3. I have provided in the drafts that the managers purport to bind the owners of the property as well as their successors from time to time which is undoubtedly the intention of all the parties. I have also prepared the documents so as to be applicable with the necessary erasures to cases of grants-in-aid—

(*a*) for enlarging and improving buildings;

(*b*) for the purchase of or payment for the lands in buildings.

4. It seems desirable to have the market value ascertained in each case of abolition or diversion, even although the property may have been actually sold with a view of guarding against any fraudulent sale for a fictitious value. I presume there will be no difficulty in arriving at the value of buildings erected or to be erected at the time of the grant.

5. I am afraid I cannot advise Government that either of the two forms will give Government absolutely valid rights as against the lands or buildings concerned, or the proceeds of same, or against the owner of the land or buildings. This can only be effected by a document executed by the actual owner, and when the grant is so considerable as to make registration desirable, the safest course would be to adopt the form of mortgage originally drafted, though perhaps as a matter of practice the deeds of acceptance will have as in Bengal the moral effect expected of them.

6. I shall be glad to know whether Government wish me to alter the form of mortgage, so as to provide for the release of the property after twenty years and for permission to use the buildings out of school hours, etc.; and if so shall be obliged by the papers being returned to me with instructions.

7. If the forms now submitted are adopted it will be necessary to make the required alterations in the Grant-in-aid Code.

Enclosures.

Proposed Deed of Acceptance.

I

We whose names are entered in the margin and whose signature appear at the foot hereof hereby accept the special grant of rupees only sanctioned by Government through the Director of Public Instruction, Madras, for the $\frac{\text{School}}{\text{College}}$ at in the district of in the proceedings of the Director of Public Instruction, No. , dated the , and in consideration of such grant we hereby jointly and severally and on behalf of our successors in office and the owners for the time being of the premises $\frac{\text{now}}{\text{to be}}$ occupied by the said $\frac{\text{School}}{\text{College}}$ agree that if the $\frac{\text{School}}{\text{College}}$ is at any time hereafter abolished or the buildings thereof diverted to other than educational purposes approved by Government, Government shall be paid out of the sale-proceeds of such buildings or by the owner thereof for the time being as the case may be a sum representing such proportion of the then market value of such buildings as the grant above referred to bears to $\frac{\text{the present market value thereof}}{\text{the estimated market value thereof on completion of the buildings now proposed}}$, namely, Rs. . The decision as to what is the market value of such buildings at such future period shall rest with three arbitrators one to be appointed by the Director another by the said managers for the time being and the third by the two arbitrators so appointed. In the event of the managers failing within one month from the date of such abolition or diversion to appoint an arbitrator the decision of the Director as to such market value shall be final and binding on all parties. Government shall have a lien on all the premises of the $\frac{\text{School}}{\text{College}}$ for the amount to be paid as above provided and shall have power in the event of failure of payment within one month from the date of such amount being fixed to sell and transfer such premises and deduct such amount together with all costs of sale from the proceeds thereof.

Committee of Management. } Members.

Proposed Deed of Acceptance.

II

We whose names are entered in the margin and whose signature appear at the foot hereof hereby accept the special grant of rupees only sanctioned by Government through the Director of Public Instruction, Madras, for the $\frac{\text{School}}{\text{College}}$ at in the district of in the proceedings of the Director of Public Instruction No. , dated the , and in consideration of such grant we hereby jointly and severally and on behalf of our successors in office and the owners for the time being of the premises $\frac{\text{now}}{\text{to be}}$ occupied by the said $\frac{\text{School}}{\text{College}}$ agree that if the $\frac{\text{School}}{\text{College}}$ is at any time hereafter abolished or the buildings thereof diverted to other than educational purposes approved by Government, Government shall be paid out of the sale-proceeds of such buildings or by the owner thereof for the time being as the case may be a sum representing such proportion of the then market value of such buildings as the grant above referred to bears to $\frac{\text{the present market value thereof}}{\text{the estimated market value thereof on completion of the buildings now proposed}}$, namely, Rs. . The decision as to what is the market value of such buildings at such future period shall rest with three arbitrators one to be appointed by the Director another by the said managers for the time being and the third by the two arbitrators so appointed. In the event of the managers failing to appoint an arbitrator the decision of the Director as to such market value shall be final and binding on all parties.

Committee of Management. } Members.

Order—No. 513, Educational, dated 16th August 1904.

In the circumstances stated by the Director of Public Instruction, His Excellency the Governor in Council is pleased to accept his proposal to substitute a deed of acceptance for the mortgage-deed prescribed in G.Os., No. 529, Educational, dated 26th October 1903; and No. 644, Educational, dated 23rd December 1903, in all cases

in which the building grant payable does not exceed Rs. 1,000. The two forms of the deed of acceptance furnished by the Government Solicitor with his letter No. 571 of the 2nd instant should, however, be substituted for the single form proposed by the Director. The deeds should be drawn up on the first of these forms and registered in all cases in which the grant exceeds Rs. 500, but does not exceed Rs. 1,000 and on the second form when the grant does not exceed Rs. 500. In the latter case no registration will be necessary.

2. The Director should see as far as possible that managers are provided with formal powers of attorney from the person or body on whose behalf they are acting, and that they or their principals have a good title to the land and buildings.

3. In all cases where the grant payable exceeds Rs. 1,000 the mortgage-deed already prescribed should be adhered to. The Government Solicitor will however be requested to modify the forms of this deed slightly so as to provide for—

(1) the release of the property mortgaged after the expiry of twenty years,

(2) permission to use the buildings out of school hours for other than educational purposes.

(True Extract.)

H. D. TAYLOR,
Ag. Secretary to Government.

To the Director of Public Instruction.
„ Government Solicitor.

Exd. V. A. Rajavelu.

Educational Department.

NOTES CONNECTED WITH G.O., No. 513, EDUCATIONAL, DATED 16th AUGUST 1904.

[Subject.—*Building Grant Agreements.*]

From the Director of Public Instruction, No. 4644, dated 23rd May 1904.

In the Grant-in-Aid Code * as revised in 1885 by a committee consisting of officials as well as non-officials a provision † was inserted to the effect that managers of schools receiving building grants from public funds should, if required, execute a deed of agreement in such form as might be prescribed from time to time. This provision was repeated in the Codes subsequently issued but no ‡ form of agreement was prescribed and no manager was asked to execute any agreement till 1903–1904. It was then noticed that Government had no hold on managers receiving considerable sums of money in the shape of building grants and it was decided that agreements should be taken in future and the Director was requested to submit a draft form for approval—*vide* G.O., No. 305, Educational, dated 23rd June 1903.

* G.O., No. 395, Educational, dated 16th June 1885.

† 7th condition in rule 1, section X.

‡ Director of Public Instruction's u.o., note on page 2 of the notes in G.O., No. 305, Educational, dated 23rd June 1903.

2. The Director accordingly submitted four forms of agreement with his letter § No. 5047, dated 4th September 1903. These forms provided that if within twenty years a building for which a grant was drawn was diverted to other than Educational purposes or ceased to be required for the purpose for which it was built and if the manager did not then refund the portion of the grant required from him he should sell the land and building to Government. But it was thought that he could not validly sell the land and buildings unless the land absolutely belonged to him, nor usefully, if there was any prior claim on the property equal to its sale value. The Director was therefore requested || to consult the Government Solicitor and ascertain whether under the deeds drawn by him the Government could enforce the agreement by proceeding against the building in case the ownership in the land did not vest in the manager or in case he alienated it or encumbered it. It was also pointed out that what was needed was a mortgage on the land and buildings.

§ In G.O., No. 529, Educational, dated 26th October 1903.

|| Secretary's note dated 11th September 1903, in the notes in G.O., No. 529, Educational, dated 26th October 1903.

3. The Government Solicitor then drew up modified forms of agreement and these were approved in G.Os., No. 529, Educational, dated 26th October 1903, and No. 644, Educational, dated 23rd December 1903. In G.O., No. 144, Educational, dated 3rd March 1904, it was decided that Local Boards and Municipal Councils receiving building grants from Government should also execute these agreements.

4. The Director now brings to notice that there is considerable opposition on the part of managers against the execution of agreements in these forms. While considering that some of the objections raised are imaginary he admits that there are others which are real. He does not enumerate all the objections but amongst the imaginary objections he mentions two, namely,

A | The provision could be inserted in the deeds. Why should Government object?

A. Galletti.

H. D. Taylor.

(1) There is no provision in the forms of agreement for the release of the buildings mortgaged and for the re-conveyance of the title deeds after the expiry of twenty years.

No (2), need not be considered: or else a concession might be made, permitting the building to be used for other purposes out of school hours and during holidays.

A.G.

(2) There is a provision prohibiting the diversion of the buildings to other than educational purposes approved by Government.

These being imaginary objections need not be considered.

5. Among the objections which the Director considers real he mentions four, namely:—

(1) The Grant-in-Aid Code authorizes the managers alone and not the Trustees or the legal owners of the properties concerned to deal with the department in all matters concerning grants. The forms of agreement have been drawn up on the assumption that the managers are also the legal owners. This is not so in the majority of cases, especially in the case of missionary bodies, several of whom again have not made satisfactory legal arrangements for owning property.

This is by far the most serious objection, unless Managers have a proper power of attorney from the Trustees or legal owners.

H. D. Taylor—31-5-04.

(2) The title-deeds have to be retained by Government for twenty years, but very often there is only one deed for several properties including the school building for which grant is drawn and the land on which it is situated, and the deed will be required by the owner in connection with the other properties (mentioned in the deed) within the twenty years.

B | Surely there is no objection to giving a copy of the title-deed for reference in such cases with power to inspect the originals.

H.D.T.—31-1-04.

(3) Within these twenty years at least 2,000 documents will have been received by the Director, and the responsibility involved in taking charge of them and arranging for their safe custody will be considerable.

(4) Extra expenses will have to be incurred in the way of stamp and registration fees and encumbrance certificates, which managers of schools will find difficult to bear especially in the case of small grants.

6. It is submitted that the first of these objections, namely, that very often managers of schools and the owners are different persons, is no doubt real; but as regards the second and third, namely, that title-deeds have to be kept by the Director for twenty years, there is some doubt whether it will be necessary for Government under the agreements to take charge of any title-deed. The Director has perhaps taken legal advice in the matter and he may be right. The fourth objection regarding expense is a rather trivial * one.

* Not trivial in the case where the grant is petty and the expenses absorb a considerable proportion of it?

A. Galletti.

7. As a way out of the difficulty the Director suggests—

(1) that in all cases where the grant does not exceed Rs. 1,000 the managers may be allowed by the Director to execute a deed of acceptance in place of a deed of trust. [The form of the deed of acceptance is given on page 5 of the current file];

(2) that in cases where the grant exceeds Rs. 1,000 the execution of the deed of trust may be enforced except in the case of a body which manages a number of institutions or a single institution of long stability and which has been in receipt of considerable aid, each of these exceptional cases being dealt with on its merits; and

(3) that Local Boards and Municipal Councils may be exempted altogether from executing any deed.

8. It is submitted that there appears to be no serious objection to the acceptance of these suggestions. The deed of acceptance referred to is in reality a promissory note, and where the persons concerned are respectable and are men of means there will be no difficulty in the recovery of moneys due to Government. The Government are not, it is submitted, very much concerned with any particular form of agreement. All that they care for is that the grants paid from public funds should not be diverted to other purposes and should be recovered either in whole or in part if so diverted.

P. T. Tharyan—28-5-04.

The Director has apparently not taken legal opinion about the value of a deed of acceptance. We may refer to the Government Solicitor? and the Government Solicitor may be asked to modify his mortgage deed, if he sees no objection, to meet the difficulties which the Director classes as more imaginary than real; or at any rate, the first of them?

A. Galletti—30-5-04.

The proposed deed of acceptance may be referred to the Government Solicitor for opinion.

2. As to the first difficulty raised, viz., the power of the manager to execute a valid and binding agreement, Government may, before making the grant, and prior to execution of the agreement, insist on the manager's producing a proper power of attorney duly registered from the Trustees or legal owners.

C

H. D. Taylor—31-5-04.

Send the papers with these notes to the Government Solicitor for opinion.

G. S. F[orbes]—2-6-04.

To the Government Solicitor.

From the Government Solicitor, dated 14th June 1904, No. 451.

I have the honour to acknowledge receipt of your current No. 938, dated the 3rd ultimo, with the accompanying notes and files of papers.

2. With regard to the forms of mortgage I see no objection to the addition of a proviso for redemption.

3. The mortgage to be valid must be executed by the owner of the property forming the security or by his attorney holding a sufficient power which however need not be registered.

4. I see no objection to Government's undertaking to give copies of or produce the title-deeds for inspection when so required by the mortgagor at the mortgagor's expense if it is thought necessary. In the majority of cases, however, the title-deeds will doubtless be registered documents and the mortgagor could obtain certified copies from the Registrar of Assurances.

5. With regard to the proposed form of deed of acceptance, the deed provides for Government's receiving a fair share of the sale-proceeds of the building towards the erection of which the grant has been made in the following cases:—

(*a*) Where the $\frac{\text{school}}{\text{college}}$ is abolished.

(*b*) Where the building is diverted to other than educational purposes approved by Government.

It does not appear that a sale of buildings will necessarily be involved even in the case of the abolition of a $\frac{\text{school}}{\text{college}}$ and there is no reason why a sale should follow on the diversion of purposes mentioned.

6. In these circumstances Government having no guarantee that the building will be sold will be without a guarantee of any recompense for the grant made.

7. Were the deed to contain any undertaking to sell the building in either of the events mentioned the document would require to be registered, a difficulty which I understand the Director of Public Instruction is desirous of avoiding.

8. If it is intended that the Government's share of the sale-proceeds of the building should be in the proportion which the grant bears to the market value, I am of opinion that the deed of acceptance should so state, thus leaving it to the arbitrators merely to determine the market value.

9. In the absence of any directions as to the principles on which arbitrators are to decide what is a fair share there will be nothing to guide arbitrators and their decisions will be liable to be based on grounds not uniform.

10. With regard to the wording of the document I observe that the committee of management undertakes "severally and individually". As these words bear the same meaning I think they are probably used by mistake for "jointly and severally". In the first two references to the building it is described as a $\frac{\text{school}}{\text{college}}$, but later on the building is described as a school building only. The word "school" here might be omitted.

As regards the forms of agreement already prescribed by Government, the Government Solicitor says that there is no objection to the adoption of the course proposed at **A** on page 1 *supra*, **B** on page 2 and **C** on page 3, with this difference that in regard to **C** there is no necessity to register powers of attorney.

2. As to the deed of acceptance proposed by the Director, the Government Solicitor raises several objections enumerated in paragraphs 5—10 of his letter. Orders are solicited whether the Director's proposal to substitute a deed of acceptance for a deed of trust in the large majority of cases—referred to in paragraph 7 on page 2 *supra*—should be accepted. If it is accepted the Director may be asked to revise the form of the deed of trust as suggested by the Government Solicitor and in consultation with him.

P. T. THARYAN—18-6-04.

The deed of acceptance would make it difficult for defaulting managers to sell. If it is always insisted on, intending purchasers would know that Government has a hold on all buildings that have been used for aided schools, and would make enquiries before buying. Submitted that, for small sums, the deed of acceptance is sufficient security; it would depreciate the sale-value of a property turned to other account but not sold; if the property is sold, Government gets its own back.

A. GALLETTI—20-6-04.

The proposal of the Director of Public Instruction to substitute a "deed of acceptance" for a formal trust-deed in case where the building grant does not exceed Rs. 1,000 may be accepted, and the Government Solicitor may be asked to revise the form of the deed accordingly.

2. The deed must, if the Government interests are to be fully safeguarded, specifically provide for a sale if the school be abolished, and this would necessitate registration, the cost of which the Director of Public Instruction wishes to avoid.

3. Government does not appear to have lost by this form of deed in Bengal, and the Director of Public Instruction may be allowed to try the experiment.

4. Registration might perhaps be insisted on in case of all grants over Rs. 500. When the grant exceeds Rs. 1,000, the existing form of deed should be adhered to.

H. D. TAYLOR—20-6-04.

I agree.

G. S. F[ORBES]—21-6-04.

Please draft accordingly to the Director of Public Instruction; ask the Government Solicitor to revise the deed of acceptance in accordance with the note *supra*.

H.D.T.—22-6-04.

The drafts placed below are submitted for approval.

P.T.T.—22-6-04.

A.G.—23-6-04.

There is no object in addressing the Director of Public Instruction at once. Better wait till the deeds are received from the Government Solicitor and are approved when they can be communicated to the Director of Public Instruction with the order. Please type copy of reference to the Government Solicitor as revised.

H.D.T.—23-6-04.

A typed copy is placed below.

P.T.T.—23-6-04.

A.G.—24-6-04.

Reference to Government Solicitor may issue.

H.D.T.—24-6-04.

[Memorandum No. 311, Educational, dated 24th June 1904.]

From the Government Solicitor, dated 1st July 1904, No. 476.

Memorandum No. 311, Educational, dated 24th June 1904, in which the Government Solicitor was requested to submit two draft deeds of acceptance to be executed by managers of schools under rule 119 of the Grant-in-aid Code was sent down to Madras along with other papers connected with it on the 29th ultimo for being printed up. The Madras office has now been asked to expedite the printing of those papers and to send up, if possible, by return of post, proofs of the letters and the notes in question. For orders as to whether the present letter from the Government Solicitor may lie over till they are received.

N.L.R.—5-7-04.

Submitted that there is no other alternative.

P. T. THARYAN—5-7-04.

Lie over.

A. GALLETTI—6-7-04.

Memorandum No. 311, dated 24th June 1904, together with the connected papers have been received from the Press to-day and are put up. The papers which were returned by the Government Solicitor with his letter No. 451, dated the 14th ultimo (page 3 *supra*) are as follow:—

(1) Letter from the Director of Public Instruction, No. 4644, dated 23rd May 1904.
(2) G.O., No. 168, Educational, dated 10th March 1904.
(3) " " 166 " " 10th " "
(4) " " 144 " " 3rd " "
(5) " " 130 " " 24th Feb. "
(6) " " 644 " " 23rd Dec. 1903.
(7) " " 529 " " 26th Oct. "
(8) " " 305 " " 23rd June "
(9) " " 395 " " 16th " 1885.
(10) Draft code for European schools.

2. The above papers, with the exception of G.O., No. 168, Educational, dated 10th March 1904, have been referred to in the notes and were accordingly forwarded to the Government Solicitor. He now requests to be furnished again with these papers for reference. Submitted that the whole file may now be forwarded to him u.o.

N.L.R.—11-7-04.

P.T.T.—12-7-04.

A.G.—12-7-04.

Yes.

H. D. TAYLOR—14-7-04.

To the Government Solicitor.

From the Government Solicitor, No. 571, *dated 2nd August* 1904.

In the drafts forwarded by the Government Solicitor provision is made for managers binding the owners as well as the successors in office of the managers. The drafts are also prepared so as to be applicable with the necessary alterations to cases of grants-in-aid for enlarging and improving buildings and for the purchase of or payments for the lands in buildings. The drafts further provide for the market-value being ascertained at the time of paying the grant as well as at the time of the abolition or diversion of the school or college.

It is submitted that the drafts may be approved. There will be no difficulty in ascertaining the market-value referred to.

2. The Government Solicitor doubts whether the present forms will give Government absolutely valid rights as against the lands or buildings. The Government however know that they will not and the forms are to be adopted only when the grants do not exceed Rs. 1,000.

The managers of course cannot bind the owners unless they are formally empowered to act on behalf of the owners.

H. D. TAYLOR—10-8-04.

3. The Government Solicitor also asks whether the forms of mortgage approved in G.Os., No. 529, Educational, dated 26th October 1903, and No. 644, Educational, dated 23rd December 1903, which will now be used for grants exceeding Rs. 1,000, should be altered so as to provide for the release of the property after twenty years and for permission to use the buildings out of school hours. Submitted that he may be requested to make the necessary alterations.

H.D.T.

4. Finally, the Government Solicitor thinks that if the forms now submitted by him are adopted it will be necessary to make the required alterations in the Grant-in Aid Code. Submitted that this is not necessary. Rule 119 (iii) says: "the manager shall also execute a deed of agreement in such form as may be prescribed from time to time." The deed of agreement may be a mortgage deed or simply a deed of acceptance. It does not seem necessary to specify it in the Code.

H.D.T.

P. T. THARYAN—8-8-04.

A. GALLETTI—9-8-04.

The draft may be accepted.

2. The Director of Public Instruction should see, as far as possible, that managers are provided with formal powers of attorney from the person or body on whose behalf they are acting and that they have a good title.

H. D. TAYLOR—10-8-04.

G. S. F[ORBES]—11-8-04.

Please draft accordingly.

H.D.T.—12-8-04.

A draft is submitted for approval.

N.L.R.

P.T.T.—12-8-04.

A.G.—13-8-04.

Issue.

H.D.T.—15-8-04.

[G.O., No. 513, Educational, dated 16th August 1904.]

Stock Form No. 127
2,000—12-2-03.

1 11

Educational (1904) Department.

CURRENT No. 938

From

[*Name*] The Hon'ble Mr. A. G. Bourne, D. Sc. B. R. S

[*Designation*] Director of Public Instruction,

[*Station*]

Madras office
Please have this stitched with the original of G.O. No. 513 Edn/04
R.D.C.
28/4

Current No. 4644 of 1904

Dated 23rd May 1904

Enclosures 5

Received 190 .

ASSISTT SECY TO GOVT. LOCAL MUNL EDL & LEG DEPT. 25 MAY 1904

Registered 26-5 1904.

SUBJECT.

Suggesting certain modifications in the form of agreement to be executed under Rule 119 of the Grant-in-aid Code.

BACK PAPERS.

✓ G.O. No. 528 Edn of 26-10-03 G.O. No. 170 Edn of 24-2-04	✓ G.O. No. 166 Edn of 26-3-03 ✓ R. No. 305 Edn of 23-6-03

FURTHER PAPERS.

To

The Secretary to Government,

Educational Department.

Sir,

In October last, Government approved finally the draft forms of agreement required to be executed by managers receiving building grants under Rule 119 of the Grant-in-Aid Code (Vide G.O.No. 529, ~~[illegible]~~ Educational, dated 26th October 1903). The Managers concerned were shortly after furnished with copies of the deeds to be executed; but as they were obliged to obtain encumbrance certificates for the sites on which the buildings were erected, and take legal advice before executing the deeds, and as the deeds themselves had to be carefully scrutinized by the Government Solicitor, and doubtful legal points in some cases settled, it was found impossible to have any deed successfully executed before the end of the last official year. In view of a large amount of building grants (Rs 31,687), sanctioned and authorized for payment during 1903-04, lapsing, I requested special permission to pass the grants on the managers undertaking to execute the deeds of agreement before 1st June 1904. This permission was granted in G.O.No. 130 Educational, dated 24th February 1904.

I regret to say that until now not a single deed has been executed. On the other hand new and unexpected difficulties have arisen, not only with reference to grants already paid but also with reference to grants applied for since the commencement of the current official year,--difficulties which I desire to bring to the notice of Government.

In justice, however, to the managers who had promised to execute the deeds, I would say that none of those who had made the

[E. 1]

1,000--5-12-02.

Educational (1904) Department.

CURRENT No. 1161

From

[Name] Sutherland Orr Esq/.

[Designation] Government Solicitor

[Station] Madras

No. 476 Received 4-7- 1904.

Dated 1-7- 1904.

Enclosures

Registered 4-7- 1904.

SUBJECT.

Requesting that the notes and files of papers ~~[illegible]~~ on the subject of building grant agreements, returned with his letter no. 451, dt/ 14-6-04.

BACK PAPERS.

FURTHER PAPERS.

[E. 12]
1,200—7-1903

EDUCATIONAL DEPARTMENT

4

13

138

READ AGAIN G.O., No. 529 Edl (N), dated 26th October 1903.

" " " 644 Edl (M), " 23rd. December 1903.

READ ALSO:—

C. No. 938, From the Director of Public Instruction, No. 4644 dated 23-12-1904

" " 1161, " " Govt. Solicitor, " 476 " 1-2-1904

" 1370 " " do " 571 " 2-8-1904

ORDER No. 513, dated 16-8-1905

P.S.

In the circumstances stated by the Director of Public Instruction, His Excellency the Governor-in-Council is pleased to accept his proposal to substitute a deed of acceptance for the mortgage deed prescribed in Govt. no. 529 Educational, dated 26th October 1903 and no. 644 Educational, dated 23rd. December 1903, in all cases in which the building grant payable does not exceed Rs. 1000. The two forms of the deed of acceptance furnished by the Govt. Solicitor with his letter no. 571 of the 2nd instant should however be substituted for

for the single form proposed by the Director. The deeds should be drawn up on the first of these forms and registered in all cases in which the grant exceeds Rs. 500 but does not exceed Rs. 1,000, and on the second form when ~~when~~ the grant does not exceed Rs. 500, In the latter case ~~form II should be used and~~ no registration will be necessary.

2. The Director should see as far as possible that managers are provided with formal powers of attorney from the person or body on whose behalf they are acting and that they [illegible] have a good title to the land & buildings.

3. In all cases where the grant payable exceeds Rs. 1,000 the mortgage deed already prescribed should be adhered to. The Government Solicitor will however be requested to modify the forms of ~~this~~ deed slightly so as to provide for

(1) the release of the property mortgaged after the expiry of twenty years,

(2) permission to use the buildings out of school hours for other than Educational purposes.

P.H. 12/8/4 — A.H. 13.8.4 — [initials] 15.8.04

5 copies despd 20/10/4.

To the Director of Public Instruction.
" Government Solicitor with papers

Rto with copies of forms
Despd 18/8/4

...st copy sent to Press.

...urned for signature.

...patched in print.

Number of copies required: Order complete. Letter only. Order complete and Letter.

Dated

Enclosures to C. No.

...of Government

...of Government.

...tatement with ditto.

... not filled up, being meant for despatch ... original.

N.B.—
A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.