

closed
Sept

Govt. II-27-27,051-12-12-47

W. (1946) Department. 9

MY SERIES.

G.O. No.

3235

Dated

14.2.46

Order on pp 3-4 CF

[Despatch Abstract.]

Tax - Edu. - Dt Bd South Arcot - Enhancement of
rate - Protest - Collector appointed to pass
resolution

Back Papers

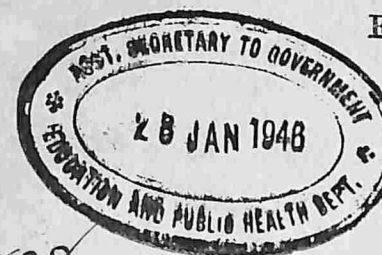
G.O.	No.	Department.	Date.	G.O.	No.	Department.	
	776 sk						
	17-1-46						
	1837 GA						
	7-11-45						
	22-12-45						
	21-12-45						

Further Papers.

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

C.F. 32.

In reply, please quote number, date and short title.*



3838

Local Administration DEPARTMENT.

Received Registered

From (Name) Sri K. Sitarama Reddiar, B.A, B.L,
(Designation) President, District Board, South Arcot
Post Box, (STATION) Cuddalore N.T
Telegraphic Address

To

The Secretary to the Government of Madras,
Education and Public Health Department,
Madras.

Dl.No. 18159-., dated 21st Jan. 1946
Sir, D.B. of 45.

*

ENCLOSURES 1.

Sub:-Education-Elementary-South Arcot District
Board-enhancement of rate of education tax-resolution of
the Board-communicated.

SPARE COPIES

Ref:-G.O.No.MS. 2212 Education dated 31-12-1945.

* Vide overleaf.

I enclose herein a copy of the resolution of the
Board passed at its special meeting held on 21-1-1946.

2. The Board is of opinion that failure to levy
education tax at the rate of 12 pies in the rupee as direct-
ed by the Government will not amount to non-performance
of a duty and will not warrant an action by the Government
under Section 41 of the Local Boards Act.

3. Section 14 of the General clauses Act speaks
of (1) Exercise of a power and (2) Performance of a duty
and thereby distinguishes one from the other. Section 41
of the Madras Local Boards Act can apply only to cases of
default in the performance of a duty.

4. Again it is worth reiterating that the tax-payer
of this economically backward district has been subjected
to untold hardship in recent years by the rapid increase in
the rate of education tax from 4 1/2 pies in the rupee in
the year 1940-41 to 10 pies in the rupee in the year 1944-45.
Added to this, the increase in the land cess from 1 1/2 annas
in the rupee to 2 annas in the rupee is a newly imposed
burden this year. It is not just to subject the tax-payer
to further hardship especially this year when monsoon has
failed and villagers are feeling desperate over the situation.

5. In view of all this I request that the Government
may be pleased to defer for the present the levy of this
increased rate of education tax at 12 pies in the rupee.

R.H./21-1.P.Exd.

President, District Board.

P.T.O

Extract from the Proceedings of the District Board, South Arcot passed at its special meeting held on 21st January 1946.

**

Read the following:-

1. G.O.No. 1831 Education dated 7-11-45 directing the District Board among other things to alter the rate of levy of education tax in its area from 41 2/3 % to 50% of land cess (i.e. from 10 pies to 12 pies in the rupee of land revenue) with effect from Fasli 1355 under Section 35 of the Elementary Education Act of 1920 in order to provide additional funds for Elementary Education to meet the deficit caused by payment of dearness allowance to elementary school teachers.

2. District Board Resolution of the special meeting dated 8-12-45 objecting to the suggested increase in the rate of education cess stating reasons therefor.

3. G.O.No.2212 Education dated 31-12-45 directing the District Board under Sub Section (1) of Section 41 of the Madras Local Boards Act of 1920 fixing 22nd January 1946 as the date by which the District Board should perform the duty of levying education tax at 12 pies in the rupee of land revenue with effect from Fasli 1355 failing which the Government will proceed to take action under Sub Section (2) of Section 41 of the Madras Local Boards Act.

The Board re-iterates its previous decision not to levy education tax at 12 pies in the rupee and is of opinion that it will not amount to non-performance of duty imposed by the Madras Local Boards Act or any other Act. The Board requests the Government might be pleased to defer the levy of increased education cess considering the economic condition of the District.

Sd. K. Sitarama Reddi,
President.

/True Extract/

R.H.Exd.2

25-2-46
Tax - Education - District Board, S.Arcot - Enhancement of rate - Protest - ~~XXXXXXXXXX~~ appointed to pass resolution. Collector.

G.O.Ms.No. 323 Education, dated the 16/2-1946.

In paragraph 2 of G.O.No.1831, Education, dated 7-11-1945, the Government directed the District Board, South Arcot, under sub-section (2) of section 35 of the Madras Elementary Education Act, 1920, to increase the rate of education tax levied in the area of the District Board from 10 to 12 pies in the rupee of land revenue (i.e. from 41-2/3 to 50 per cent. of land cess) with effect from fasli 1355, and called for a resolution of the Board to levy the tax at the altered rate. The Board not only did not pass a resolution in accordance with the direction of the Government but objected to the enhancement of the rate of education tax. The District Board was thereupon required under sub-section (1) of section 41 of the Madras Local Boards Act, 1920, to perform the duty of levying education tax at 12 pies in the rupee of land revenue (or 50 per cent. of the land cess with effect from fasli 1355) by 22-1-1946. The District Board has reiterated its previous decision and has observed that its decision not to levy education tax at 12 pies will not amount to the non-performance of a duty imposed by the Madras Local Boards Act or by any other Act. The Government do not consider that there is any substance in the contention advanced by the Board.

2. As the Board has failed to perform its duty in regard to the levy of the tax within the period fixed by the Government, H.E. the Governor of Madras, in exercise of the powers conferred by sub-section (2) of section 41 of the Madras Local Boards Act, 1920 (Madras Act XIV of 1920), hereby appoints the Collector of South Arcot to perform such duty. The Collector should first pass a resolution, in the name and on behalf of the District Board, resolving to levy the education tax in the District Board area with effect from fasli 1355 at the altered rate of 12 pies in the rupee of the land revenue (fifty per

cent. of the land-cess).

3. The Collector is requested to forward a copy of the resolution so passed to the Government before 25-2-1946.

K.M.
8/2/46

MR
9-2-46

MVS.

✓ To the Collector,
S.Arcot (with
copy of parag.2 of
G.O.at (V) and G.O. at
(B).
✓ To the P.D.B., S.A.

L. Dis. 3493-46 d/- 19-2-46.
From

Sri Rao Shrip
B. Madhava Rao Bayan,
Collector of South Arcot.

To The Secretary to Government,
Education & Public Health Department,
Madras.

10819
Sir, Tax - Education - District Board, South Arcot - enhancement of rate
Protest - Collector - appointed to pass resolution - copy of resolution
submitted.

Refce:- G.O.Ms. No. 323-En. dated 1/2-1946.

3-4/19
I submit herewith a copy of the resolution passed by me, in
the name and on behalf of the Dt. Board, South Arcot resolving to levy
the Education tax in the District Board area with effect from fasli 1355
at the altered rate of 12 pies in the rupee of the land revenue (fifty
per cent of the land cess).

my-P.19.2. Exr.

for Collector
19.2.46

P.T.O.

6 Resolution:-

Whereas the Government of Madras in their Order G.O.No. 323 Ed. dated 14-2-1946 have asked me as Collector of South Arcot to perform the duty under Section 14(2) of the Madras Local Boards Act of resolving on behalf of the District Board of South Arcot to levy the Education Tax in the District Board area with effect from fasli 1355 at the rate of 12 pies in the rupee of land revenue (50% of the land cess)

I, Sri Rao Sahib B. Mathava Rao Naidu, Collector of South Arcot do resolve in the name and on behalf of the District Board of South Arcot to levy the Education tax in the District Board area with effect from fasli 1355 at the rate of 12 pies in the rupee of land revenue.

B. Mathava Rao Naidu,
Collector of South Arcot.
18-2-1946.

True Copy-

In Witness whereof
for Collector.

mv-P. 19.2. Ex1.

Memorandum No. 10819 B2/46-1 Edu DP 5-3-1946.

Letter from the collector of South Arcot, L.D. No. 3493/ub, of 19.2.46.
Re: Board South Arcot - Enhancement of rate of ed. tax to 12 pies in the rupee of land revenue

2. The Govt. is requested to arrange for the publication of a notice in the prescribed manner as required by section 77(1) of the Madras Local Boards Act, 1921.

The collector of South Arcot has requested to arrange for the immediate collection of education tax at the enhanced rate of 12 pies in the rupee of land revenue from fasli 1355. The collector has also requested for the adjustment to the credit of the Govt. before 31.3.46 of the additional income (about Rs. 43500) due from the tax for this month in 1945-46.

The collector of S. Arcot has also requested for the adjustment to the credit of the Govt. before 31.3.46 of the additional income (about Rs. 43500) due from the tax for this month in 1945-46.

note the Dept. may be required to say whether
the order is in order - collected 1801 order - whether
[then only instructions can be given to the collector
in regard to the collection of the tax]



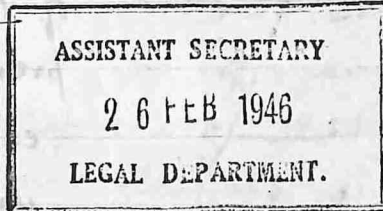
Am 4. p. 4. 42.
10819 B2/46-1
25/2/46.

23.2.46 PM 23/2/46 S W 26/2/46 LCU.

Legal Dept

1329

The resolution is in order. It is presumed
that a notification will be published in the
prescribed manner, as required by s. 77(1)(b) of
the Local Boards Act.



K.M. 26/2/46

S M 26-2-46 E D H

Legal n. 01329-1
26-2-46.

25. 2. 46 dep

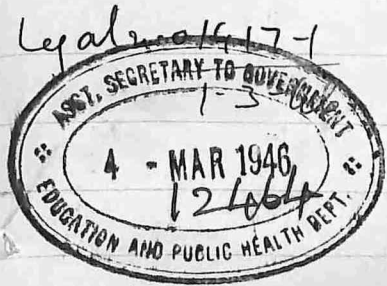
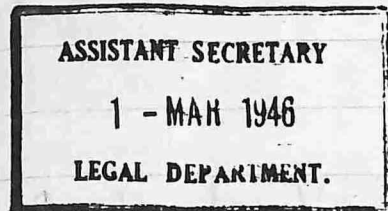
Under the rule framed under
section 36(1) of the EA Act no notification need
be

be published. If a notification is to be
published, the President is specifically be
asked to do so. A para has been added
to the draft. Dept may see again.

Am 4. p. 4. 42.
10819 B2/46-2
28/2/46.

27.2.46 PM 28/2/46 Legal Dept

This Dept was not aware of the existence
of the rule in question when the note on the
previous page was written. As the rule specifically
excludes the operation of s. 77(1)(b) of the L. Boards Act,
it is unnecessary to publish a notification in pursuance
of that section. The draft may issue as it stood originally.
Parag. 2. may be omitted.



K.M. 1-3-46

S M 1-3-46 E D H

25. 2. 46 dep
The draft may issue
PM 5/3/46

C.3838.A. From the P.D.B., S.Arcot, D1.No.18159-DB/45, dated 21-1-46.

Enhancement of rate of education tax.

Please see the orders in para 2 of G.O.1831-Edn., dated 7-11-45, and G.O.2212-Edn., dated 31-12-45. The Dt. Bd., S.Arcot, was required under sub-section (1) of section 41 of the M.L.B. Act, to perform the duty of levying education tax at 12 pies in the rupee of land revenue with effect from fasli 1355. The Board has ^{now} reiterated its previous decision not to levy education ^{tax} at 12 pies and has expressed the opinion that this decision of the Board will not amount to non-performance of duty imposed by the M.L.B. Act or any other Act. In para 3 of the letter ^{P.D.B.} of the P.D.B., forwarding the resolution, ^{P.D.B.} has drawn Govt.'s attention to sec. 14 of the General Clauses Act and has stated that section 41 of the M.L.B. Act can apply only to cases of default in the performance of a duty. The levy of the tax has been ordered under section 35(2) of the Madras Ele. Edn. Act which runs as follows:-

"The local authority may, with the previous sanction of the Provl. Govt., and shall, if so directed by them, alter the rate of levy of any such tax (education tax)".

The wording of the section ('shall') clearly indicates that it is a duty imposed on the local authority by the direction of the Government, which it is bound to carry out; it is difficult to see how it can be construed as a power which the local authority has failed to exercise. It is therefore open to Govt. to further proceed with the case under section 41(2) of the Act. *Please see Legal Department's view in pages 12-14 and 16-17 N.7 of (B).*

The orders in the G.O. dated 31-12-45 were issued after consulting the Legal Dept. They may be requested u.o. to advise on the point raised by the Dt. Board S. Arcot.

In G.O.No.818-Edn., dated 26-5-44, the Govt. directed that the rate of education tax in the area of Dt. Bd. South Arcot should be raised from 6 to 12 pies in the rupee. A deputation of the District Board waited on the Adviser (Mr. Gawne) for a re-

194
194
p662, BK17

194
p239, Madras Code II N.16
p662, BK17

p662, BK17

194
G.O. 1325-Edn. 11.9.46
(R)

194
p221

194
p221

194
1325-Edn. 11.9.46
(R)

reconsideration. It expressed its willingness to raise the rate of tax to 9 pies. The Adviser after hearing the deputation decided that the order might stand. Orders were accordingly issued in G.O.No.1325 Edn., dated 11-9-44. The President again pressed the matter and it was decided to reduce the rate of tax to 10 pies - vide G.O.1842 Edn., dated 3-12-44.

2. While reviewing the E.E.Fund of the Dt.Board for 1945-6 it was anticipated that there would be a deficit of Rs.39,000/- at the close of the year after making the maximum contribution possible from the General Fund. L.A. & Fin. suggested the increase of the rate of the education tax to meet the deficit. This was, however, deferred for consideration after the actual closing balance for 1944-45 was known - G.O.No.776 Edn., dated 17-5-45.

3. The financial position of the E.E.Fund for 1945-6 was reviewed again in October last. It was found that the account would close with a deficit of about 2.21 lakhs at the end of the year and it was decided to avoid the deficit as follows:-

- (1) by ordering the payment of an addl. contribution of Rs. one lakh from the general funds to the E.E.Fund;
- (2) by directing an increase in the rate of edn. tax from 10 pies to 12 pies in the rupee of land revenue from 1-7-45 (The Bd. will derive an income of Rs.43,500/- in 1945-6).
- (3) by sanctioning a subsidy of Rs.52,000/- from Provl. funds.

Though there was a good case to raise the rate of education tax to 14 pies it was decided to increase it only to 12 pies as the enhancement from 10 pies to 14 pies would be too steep a jump. Orders were issued in G.O.1831 Edn., dated 7-11-45 directing the enhancement of the rate of tax to 12 pies. The Dt. Bd. objected to the increase of the tax for reasons set out in the resolution on p. 3 c.f. of G.O.No.2212 Edn. dated 31-12-45. As there were not peculiar to the Bd., it was decided to ignore the objections and the Board was directed to levy the tax at 12 pies within a specified date.

4. The Board has again reiterated its decision not to levy tax at the increased rate in view of the economic condition of the District and it requests Govt. to defer

the increased levy. The District Board has always been protesting whenever an increase ~~in the~~ rate of education tax is ordered. The reasons urged by the Dt. Bd. do not appear to be valid. It may be mentioned in this connection that the Govt. have ordered the increase of education tax in the case of 6 other district boards and all of them have resolved to levy tax at the enhanced rate.

5. The Dt. Board points out that failure to levy the tax at the increased rate as directed by Govt. will not amount to non-performance of duty imposed by the M.L.B. Act. It does not appear that this contention is correct. The Govt. ~~may disagree with the stand taken by the Dt. Bd. and they may~~ proceed to take action under section 41(2) of the M.L.B. Act. An officer should be appointed to perform the duty of levying education tax at 12 pies in the rupee of land revenue. The Collector may be appointed to perform this duty. On receipt of a report from the Collector, instructions may be issued regarding the collection of tax at the enhanced rate.

6. The file may be sent to Legal for remarks with reference to para 5 above.

Handwritten notes:
A at p. 2 ante, & B above, the attitude taken up by the Dt. Bd. is quite unreasonable & the Dt. Bd. must not be allowed to "get away with it". Italian way be taken as above.

LEGAL DEPARTMENT.

Action may be taken as proposed by Secretary, E. & P.H., in his note above. It was the duty of the district board to alter the rate of levy of the education tax, as directed by the Government. Section 35 (2) of the Elementary Education Act provides that "the local authority.....shall, if so directed by them (the Provincial Government), alter

ASSISTANT SECRETARY

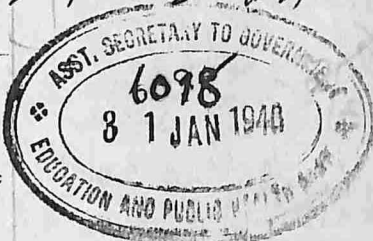
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LEGAL DEPARTMENT.

the rates of levy" of the tax. The section clearly imposes a duty, default in performing which will justify action under section 41 (1) and (2) of the L.B. Act. Those provisions refer in general terms to "any duty imposed by or under this or any other Act", and will therefore cover the duty imposed by section 35 (2) of the Elementary Education Act. There is no force in the contention advanced by the President of the District Board in paragraphs 2 and 3 of his letter at p.1 c.f.

K.M. 30/1/46

Legal 2-0673-1
30-1-46.



May be sent to him for acceptance and legal for scrutiny before circulation.

24/2/46 S

L.A. Level.
d. A.W.

383872
5.2.46



The draft order below may be passed. It is proposed therein to ask the S.O. to be appointed thereunder to pass a resolution to allow the rate of the education tax with effect from fasli 1355 i.e., the current fasli which began on 1.7.45. The proposal will no doubt, cause some legal difficulty. The proposal will not affect the ~~enhancement~~ of ~~taxation~~ with retrospective effect. With these remarks this may be passed on to legal dept.

LEGAL DEPARTMENT.

The duty laid on the district board is to levy the education tax at the enhanced

ASSISTANT SECRETARY
8 - FEB 1946
LEGAL DEPARTMENT.

rate fixed by the Government. The Collector may be appointed to perform this duty. As the first step in the performance of such duty, he will pass a resolution in the name and on behalf of the district board, resolving to levy the tax at the enhanced rate. It is unnecessary to appoint the Collector as Special Officer of the District Board for the purpose of enabling him to make the levy.

2. A redraft of the order is placed below.

3. Land-cess is levied for each fasli. In this case, the levy is to commence from fasli 1355, that is to say, from the year commencing on 1st July 1945. The year has not elapsed, and the proposal is in order. See in this connexion section 75 (4) of the L.B. Act.



Legal 2-0920-1
9-2-46.

K.M. 8-2-46

9-2-46 S P.H.

25-2-46

Issue from the draft of the order of draft.

For order whether draft or 2 may be on file may be circulated for



12.2.46

12/2/46 S

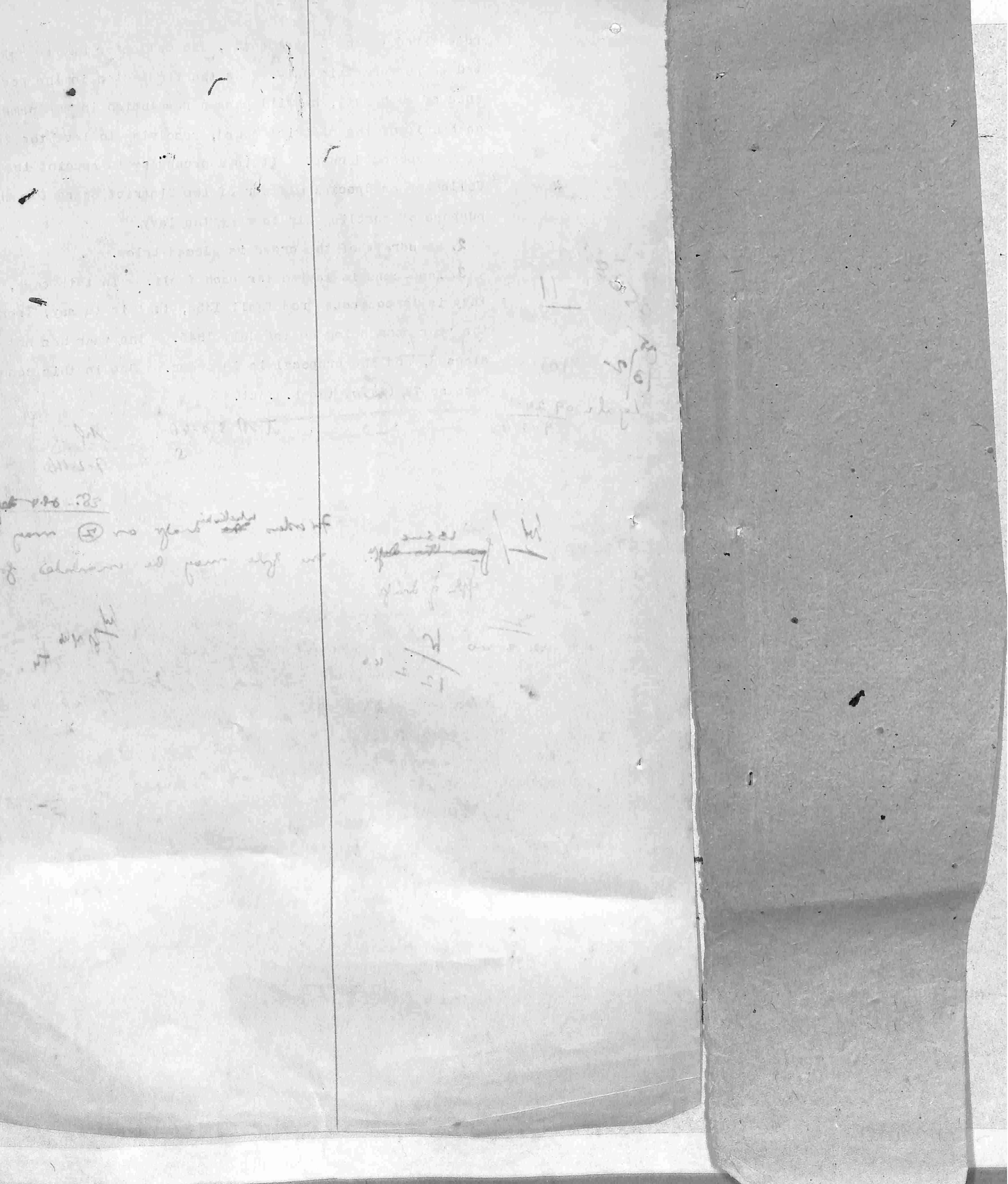
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Issue 14/2/46

Legal

L.A.U.O. 3580-1A/46
7-2-46.

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