

(1) Number of pages 11
(2) Date of repair
(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public DEPARTMENT.

G.O. No.	178	Press
	(92-94)	Min.
Dated	14-2	1868.

Not to be ded or roughly handled

Government {1868} of Madras.
PUBLIC.

Recd.

Regd.

} 1868.

Enclosures

Spare copies

G.O., No. 178, 14th February 1868.

FEBRUARY.

Nos. 92—94.

Madras Municipality.

The Commissioners informed that Government have no power to interpret the law which must be administered by them in respect to the levy of tax on professions and callings.

provides that every certificate granted before the 31st of December 1867 shall have effect and continue in force from the day of the date thereof, until the said 31st of December 1867, and that every certificate granted upon or after that date shall expire on the 31st of December next after the day of the granting thereof; and section 62 provides that every person who shall exercise his art, profession, etc., within the town for the space of two months in any one calendar year without having caused his name to be registered, and taken out his certificate of registration, shall be liable, upon conviction, to the penalties prescribed by this section.

The Municipal Commissioners find it extremely difficult, looking at the language of sections 57 and 61 of the Act, to determine upon the form of certificate to be granted under section 60 of the Act, and the time from which the certificates are to commence to run; the more especially as though the present Act came into operation on the 1st of November last, yet persons required to take out certificates under the Act have already paid for certificates to the 30th November last under the late Municipal Act (No. IX of 1865).

Counsel will therefore be pleased to advise:—

1. Whether looking at the fact that certificates under the late Act having been granted and paid for up to the 30th November last, certificates under the present Act (by which the late Act is repealed) are to be applied and paid for from the 1st November last, or can the Municipal Commissioners grant certificates from the 1st of December last?

2. Whether the Act No. IX of 1867 came into operation on the 1st November last, all persons who from that date to the 31st December last carried on any of the trades or professions specified in Schedule C to the Act are required by the Act to apply for and obtain certificates to the 31st December last, they having carried on business for two months in one calendar year, and that on their failing to do so, do they render themselves liable to the penalties prescribed in section 62 of the Act?

3. If persons are liable under the last question, can the Municipal Commissioners grant certificates expiring on the 31st December last, on payment of a proportion only of the annual sum payable for them on the ground that the certificates are intended only to be in force for two months, or can the Municipal Commissioners claim payment for a whole year, there being no provisions in the Act for granting certificates for portions of a year?

4. The 57th section provides that the certificates shall be applied (paid) for on or before the 1st day of June and the 1st day of December in each year, and as in consequence of the Act coming into operation on the 1st of November last all annual certificates must be applied for on or before 1st December in each year, what course must be adopted with reference to certificates applied for in the month of November in each year, seeing that by section 60 each certificate shall specify the date of the grant thereof, and that by section 61 every certificate granted upon or after the 31st of December last shall expire on the 31st of December next after the day of the granting thereof?

5. Whether the form of certificate herewith forwarded and intended to be granted for the present year is in proper form, and if not, what alterations should be made in it?

And generally to advise the Municipal Commissioners upon the course they should pursue in granting certificates under sections 57 to 62 of the Act.

1 & 2. I think that certificates granted up to 30th November under the old Act ceased to have any legal effect on the 1st November when the new Act came into operation. Therefore I am of opinion that persons who are liable to the Act, and who have not taken out fresh certificates up to the 31st December, have been two months trading, etc., without a certificate within the meaning of section 62, and are therefore liable to the penalties of that section.

3. The Act does not contemplate payments for broken periods less than a half-year. Therefore the Municipal Commissioners are entitled to demand the second half-yearly instalment in respect of certificates granted for these two months.

4 & 5. This question is incorrectly worded. The Act provides for payments on or before 1st June and 1st December, not for applications. But there is nothing to prevent the Commissioners receiving payments after those dates. All certificates issued during the first half-year should be expressed to be for the year ending 31st December. Those issued during the second half-year should be expressed to be for the half-year ending 31st December. When a party applies for a certificate in November, he will have to pay for half a year, and his certificate will terminate at the end of the year.

(Signed) J. D. MAYNE.

1st February 1868.

GOVERNMENT OF MADRAS.

PUBLIC DEPARTMENT.

READ—the following papers:—

No. 92 From the President of the Municipal Commission, Madras, to the Chief Secretary to Government, dated Madras, 4th February 1868, No. 101.

I have the honour to forward, for the consideration of Government, copy of a case I have had occasion to submit for the opinion of counsel regarding the levy of the tax on professions and callings under sections 57 to 62 of Act IX of 1867 by which it will be seen that Mr. Mayne is of opinion that certificates granted up to 30th November 1867, under sections 44 to 47 of Act IX of 1865, ceased to have any legal effect on the 1st of that month, when the present Act came into operation, and that persons who have not taken out fresh certificates up to 31st December last have been two months trading, etc., without a certificate, and are, therefore, liable to penalty.

2. I cannot believe the Legislature intended that persons who had paid tax on their trade or calling under the late Act up to 30th November 1867, should be required to pay half a year's tax under the new Act for the two last months in 1867, and I therefore have been issuing certificates commencing from the 1st December 1867, and ending 30th November 1868; but as a person who applied for a certificate in last month claimed under section 61 of Act IX of 1867, that it should run from 1st January to the 31st December 1868, I was induced to take counsel's opinion on the matter.

3. Although Mr. Mayne's opinion is so positive, I think it desirable that Government should take the opinion of their Law officers before effect is given to it, as it will undoubtedly cause great dissatisfaction to the public, if they have to pay half a year's tax for the short period the new Act was in operation in 1867, more especially as they paid tax under the old Act up to 30th November of that year.

ENCLOSURE.

Case.

The Madras Municipal Act of 1867 (Act No. IX of 1867) which repeals Act No. IX of 1865 (the Madras Municipal Act of 1865) came into operation on the 1st of November last, in pursuance of a notification in the *Port St. George Gazette*, and the Municipal Commissioners having determined, with the approval of the Government, to levy a tax on arts, professions, trades, and callings in the manner provided in sections 57 to 62 of the Act, it has become necessary for them to determine upon the mode in which the provisions of these sections shall be carried into effect. By section 57 it is provided that on and after the day when the Act shall come into operation, every person who shall, within the town, exercise any of the arts, professions, trades or callings specified in Schedule C to the Act, shall cause his name to be registered in the office of the Municipal Commissioners, and shall take out a certificate of such annual registration, and that every person so taking out a certificate shall pay for the same such annual sum as is mentioned in the said Schedule C. The same section further provides that such annual sum shall be payable in two equal half-yearly instalments on or before the 1st day of June, and on or before the 1st day of December in each year, and that no such certificate shall be delivered until the payment of the first half-yearly instalment of the annual sum payable for such certificate. Section 60 provides that every certificate shall specify the date of the grant thereof, the name of the person to whom the certificate is granted, and the sum paid for such certificate. Section 61

No. 93. From the President of the Municipal Commission, Madras, to the Chief Secretary to Government, dated Madras, 5th February 1868, No. 107.

In continuation of my letter of yesterday, No. 101, I have the honour to draw attention to section 34 of Act IX of 1867, which provides that "no tax, rate, toll, fee or assessment shall be payable under this Act for any period for which payment shall have been made under (Madras) Act IX of 1865," which strengthens my argument that persons who have paid tax on their professions and callings under Act IX of 1865, up to 30th November 1867, are not liable to a second payment of tax for that month under Act IX of 1867.

No. 94. ORDER—No. 178, Public, dated 14th February 1868.

The Right Honourable the Governor in Council considers that the Government have no power to interpret the law which must be administered by the Commissioners, subject to the remedies provided for those who consider themselves aggrieved by the Act itself.

(True Extract.)

R. S. ELLIS,
Chief Secretary.

To the President of the Municipal Commission, Madras.