

LEGISLATIVE COUNCIL.

Tuesday, May 3, 1960.

The PRESIDENT (Hon. Sir Walter Duncan) took the Chair at 2.15 p.m. and read prayers.

DISTINGUISHED VISITOR.

The PRESIDENT—I notice in the gallery His Excellency, the High Commissioner for India, Mr. Shri Samar Sen. The Council would be honoured if he would occupy a seat on the floor of the Council.

His Excellency was escorted by the Hon. Sir Lyell McEwin and the Hon. F. J. Condon to a seat on the floor of the Council.

QUESTIONS.**UNIVERSITY COUNCIL.**

The Hon. K. E. J. BARDOLPH—Has the Attorney-General a reply to the question I asked last week concerning representation of University students and of the Opposition in this Chamber on the University Council?

The Hon. C. D. ROWE—In 1958 and again last year the Students Representative Council asked the University Council to take steps to provide students representation on the council. After careful consideration, which included discussions between representatives of the council and of the students, the University Council decided not to accede to the students' request. No further application has been received by the council from the students this year.

The Hon. K. E. J. BARDOLPH—In my question last week I also referred to representation of the Opposition in this Council. Has the Government considered that aspect?

The Hon. C. D. ROWE—As I understood the question, the honourable member requested that while the Government was considering representation of students on the University Council it would also consider representation of the Opposition in this place. As we were not considering the first part of the question we did not consider the second part. However, I am prepared to refer the question to Cabinet for further consideration.

MILLICENT AREA SCHOOL.

The Hon. A. C. HOOKINGS—Has the Attorney-General a reply to the question I asked last week relating to the establishment of an area school at Kangaroo Inn?

The Hon. C. D. ROWE—The Minister of Education advises that approval in principle has been given for the establishment of an area school at Kangaroo Inn and negotiations are in progress for the purchase of a suitable

site. When the question of a site has been finally settled consideration will be given to the proposed time for the erection of a school.

ADVERTISING OF MILK.

The Hon. G. O'H. GILES—Has the Chief Secretary a reply to the question I asked on April 12 regarding legislation to allow the Milk Board to advertise milk?

The Hon. Sir LYELL McEWIN—This matter is under close consideration by the Metropolitan Milk Board. Discussions have taken place between the board and organizations connected with milk distribution over the last few months. The views of some organizations as to aspects of milk advertising are being sought. The board will again consider the question when these views come to hand and a recommendation for amendment to the Act may be made.

PIKE AND MUNDIC CREEKS.

The Hon. C. R. STORY—I ask leave to make a brief statement prior to asking a question.

Leave granted.

The Hon. C. R. STORY—Some months ago I raised the question of the undue salinity of the water in Pike and Mundic Creeks. Since then the Department of Works has carried out a survey and it has been recommended that certain snagging, dredging and banking be undertaken. When is it expected that this recommendation will be put into effect?

The Hon. N. L. JUDE—I have no knowledge of this question, but will refer it to my colleague for a report.

COMPANY LAW.

The Hon. K. E. J. BARDOLPH—I ask leave to make a brief statement prior to asking a question.

Leave granted.

The Hon. K. E. J. BARDOLPH—During the last few months a series of conferences by the respective Parliamentary Draftsmen of the several States of the Commonwealth has been held for the purpose of arriving at some formula to bring about uniformity in company law. Has any consideration been given to making provision to protect shareholders with regard to take-over bids?

The Hon. C. D. ROWE—I have attended several conferences of State Ministers charged with the administration of company law and very many aspects of this legislation have been considered, but that particular aspect has not

been considered in detail. I shall be pleased to raise the matter at the next conference to see whether or not any action should be taken.

POLICE OFFENCES ACT AMENDMENT BILL.

Read a third time and passed.

COLLECTIONS FOR CHARITABLE PURPOSES ACT (SCHOOLS PATRIOTIC FUND).

Adjourned debate on motion of the Hon. Sir Lyell McEwin (for motion see page 328).

(Continued from April 28. Page 329.)

The Hon. F. J. CONDON (Leader of the Opposition)—I intend to support the motion, which appears a very innocent one, but it has not been so treated for many years. On October 15, 1939, the Charitable Purposes Bill was restored to the Notice Paper. During the previous session nine members had spoken on it. There was a keen debate and several amendments were moved, and finally the Bill was carried in the form the Government desired. It is well that I should give a short history of what occurred on that occasion. "Charitable purposes" was defined as:—

- (a) The affording of relief to deceased, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons or to the dependants of such persons.
- (b) The relief of distress occasioned by war whether occasioned in South Australia or elsewhere.
- (c) The supply of equipment to any of His Majesty's naval, military or air forces including the supply of ambulances, hospitals and hospital ships.
- (d) The supply of comforts or conveniences to members of the said forces.
- (e) The affording of relief, assistance or support to persons who are or have been members of the said forces or to the dependants of such persons.

Prior to the introduction of the 1947 Bill the Cheer-Up Society desired to make a donation to the Food for Britain Appeal, but the legal position was that that purpose was not covered by the Act. The amendment proposed in the 1947 Bill enabled the Government to declare that money collected under the principal Act might be applied to any purpose approved by a resolution of both Houses. The Royal Naval Friendly Union of Sailors' Wives and Mothers, Inc., wanted to make a gift to the Ex-Navalmen's Association to assist to establish headquarters, but that was not legally possible.

On October 15, 1947, a short Bill was introduced that was important to those who were

concerned with the administration of war-time charitable funds. These funds were collected under and governed by the Collections for Charitable Purposes Act of 1939. The Council passed a resolution approving of the making of a proclamation under section 16 of the Collections for Charitable Purposes Act of 1939-47, declaring that a sum of £15,000 held by the administrative board of the Schools Patriotic Fund should be applied for the purpose of maintaining residential hostels for students. The administrative board of the Schools Patriotic Fund went out of existence and the money left was utilized for the Adelaide Miethke Hostel for Girls. Nine months ago there was a balance of £733 3s. 7d. at the Treasury standing to the credit of the board of the Schools Patriotic Fund. This motion is for the purpose of transferring that money to meet the costs of repairs to the Adelaide Miethke Hostel. School children played a very prominent part during the war in collecting this money. I submit that the motion is a worthy one and therefore intend to support it.

The Hon. Sir FRANK PERRY (Central No. 2)—We are indebted to the Hon. Mr. Condon for his review of the history of the fund. I think honourable members will agree that the purpose for which the £733 was originally subscribed is no longer necessary, and a fund that has been established to do similar work should receive the benefit of that money. I am prepared to accept the Chief Secretary's account of how the money was raised by the children and transferred to another fund. It is now proposed to use the funds for repairs to the Adelaide Miethke Hostel. The Council can accept the Chief Secretary's suggestion that the objects of this organization approach closely the objects of the fund for which the money was collected. I support the motion.

Motion carried.

COMPULSORY ACQUISITION OF LAND ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from April 28. Page 332.)

The Hon. Sir FRANK PERRY (Central No. 2)—I suppose that a similar Bill has been before every Parliament of the British Commonwealth. Our measure has been in force since 1925, and has given reasonable satisfaction over the intervening 35 years. I believe four amending Bills have been passed. They did not seek to alter the Act very much, but provided additional coverage which advancing times necessitated. This is a very short Bill,

but anything that savours of taking away rights and privileges compulsorily must receive the close attention of Parliament. A fundamental of our way of life is that the rights and privileges of the individual should be preserved and I believe that, unless sound reasons are advanced to the contrary, those rights should be preserved. However, in a democracy individual rights must give way to the common interest and that principle must be accepted. Provision is made for suitable compensation to be given as far as it is possible to assess the amount in pounds shillings and pence when rights and privileges are taken away. In the legislation under review the amount can be assessed because land is involved. The principal Act gives the Government and its departments the right of acquisition, but semi-Government departments, local government authorities, the Municipal Tramways Trust, the Railways Department, the Electricity Trust, and the Housing Trust have a similar right. I agree with the Hon. Mr. Bardolph that this legislation may come under the control of a bureaucracy and be used by those organizations to which I have just referred without much thought being given to the rights of the individual. Any amendment to an Act of this kind should receive Parliament's closest attention. The Act appears to be fair to owners, and it should be fair to them and also to the purchasers because the legislation seeks to improve the conditions under which people as a whole work and consequently the improvement is an overall one.

This legislation makes easier the negotiations between the parties. The acquiring authority has the power to acquire land compulsorily, but it has to provide the finance. That power may be exercised against a firm or an individual that is not in as good a position as a company to defend his rights. For that reason this Bill must be carefully considered. Few cases reach the courts, but those that do are the big ones where there are big differences of opinion between the purchaser and the owner. Every member must realize that there is justification for differences of opinion, because the owner, after receiving a notice of acquisition, has to consider the terms of settlement after treating and discussing the matter with the purchasing authority. A price must be fixed and that is not easily arrived at. However, the Act does provide the procedure for negotiation and deals with the time element. If it is impossible to reach agreement the courts of law are available to assess the value of the property.

The acquirement of land usually leads to some betterment of adjoining properties. The unfortunate person in many cases is the owner of the land that is to be acquired because everyone else around him, because of the acquisition, has some improvement made to his property; an improvement brought about by the Government or the authority obtaining his land. The benefit in many cases is not enjoyed by the owner of the acquired land. It should be borne in mind that when notice of acquisition is given the property is valued as at that date, even if the property is not transferred for five or 10 years. The amount involved may be a big sum and the scheme of development may be delayed. The scheme may be so big that it involves a gradual process of acquirement and it may result in first owner whose property is acquired being the one who suffers. I believe that honourable members must consider this Bill while bearing in mind this background.

If the settlement or final payment is not made within 12 months the purchasing authority is compelled to pay interest to the owner. That clause was in the 1925 Act and it was probably in the Act preceding that one. It was inserted to ensure that an early settlement of the transaction was reached.

The Hon. E. H. Edmonds—Have there been any cases where 10 years has elapsed?

The Hon. Sir FRANK PERRY—Yes. I am not fully acquainted with this type of legislation or with the way in which it has functioned, so I have to use my imagination a little in trying to arrive at what I think is the proper course to be adopted. It is rather surprising that honourable members were not approached about this Bill because I was under the impression that anything in the nature of compulsory acquisition of land roused the interest of many people.

The Hon. K. E. J. Bardolph—No publicity has been given to this Bill.

The Hon. Sir FRANK PERRY—That may be so. The honourable member has stressed his view, and I, too, am stressing the point he made. I have not been approached; I have taken some trouble to ascertain the position, but find no spontaneous expression of feeling by the populace.

The Hon. Sir Arthur Rymill—I expect no one expects his land to be acquired until the axe falls.

The Hon. Sir FRANK PERRY—The acquisition of land is not a daily occurrence so it affects only a few.

The Hon. K. E. J. Bardolph—This can affect many.

The Hon. Sir FRANK PERRY—Of course it can, and it has in the past, but people seem to think that once they have settled their own troubles there is nothing further to say. However, members of Parliament have certain responsibilities and one of them is to see that the acquiring authority treats with justice the property owner whose land he seeks to acquire.

The Hon. K. E. J. Bardolph—Does not the honourable member agree that the people expect members of Parliament to look after their interests?

The Hon. Sir FRANK PERRY—I say that we must accept our responsibilities, and that is what I intend to do. I am fumbling somewhat with the subject, but I feel it is a matter of importance, although I have not the background knowledge to be able to present it to the Council as I feel it should be presented.

The Minister, when explaining the Bill, made it look very simple indeed; so simple that I think we should look for the catch in it. I agree with clause (2), which provides that any money received by the owner in the form of rent should be set against the interest. I say that in fairness to the purchaser, and in any case I do not think the owner should receive both rent and interest. However, I shall oppose clause (3), which seeks to deduct from the compensation the rental equivalent where the owner himself occupies the property. If an owner is served with notice of acquisition and negotiations between the parties fail the matter can be taken to the court, and the owner is fairly helpless if the acquiring authority chooses to exert its full powers. In many cases it does not for the simple reason that the land may be required for use at some future date, and whether it is acquired in this year or next may not be of great importance. However, it is of vital importance to the owner. He may have to build a home elsewhere or seek another property on which to continue his business. In the case of a large holding he may have to find another property on which he can continue to make a living. Consequently, an early settlement is of vital importance to him. That is one of the reasons why, in the original Act, a penalty of five per cent interest after 12 months negotiation was provided for. In view of all the difficulties confronting the owner in having to shift to another property, or transfer his business, he should at least be treated liberally, especially as the acquisition of his land is for the benefit of the community

at large, and, in many cases, of distinct benefit to the adjoining landholders.

There is another aspect that I wish to raise. This Bill provides for the payment of five per cent interest, but that rate is no longer the means of hastening settlement that it might have been in 1925. It is not the present-day bank rate, nor the mortgage interest rate. Admittedly, it is the rate of interest at which the Government obtains its money, but it is not the rate which councils and other organizations have to pay. Consequently, it is rather an encouragement to delay settlement than a spur to bring it on as early as possible.

The Hon. Sir Arthur Rymill—We should keep up-to-date in this matter.

The Hon. Sir FRANK PERRY—Undoubtedly these rates do get out of touch every year or so, but to consider mortgage money at five per cent is unrealistic and when the Bill is in the Committee stages it is my intention to move for an increase.

The Hon. K. E. J. Bardolph—What do you propose?

The Hon. Sir FRANK PERRY—It should be six per cent or seven per cent; I have not made up my mind on that. I understand that for ordinary mortgage loans one would be lucky to get money for six per cent or seven per cent.

The Hon. K. E. J. Bardolph—Why not make it the bank rate at the time of acquisition?

The Hon. Sir FRANK PERRY—That might be argued. If one has good security one may get it for 5½ per cent; it varies up to as high as six per cent or seven per cent. The bank rate is not as static as it used to be. However, I wish to hear the views of other members on this before I decide upon a rate. I certainly think five per cent is quite unrealistic today. A Bill of this nature is probably necessary if we are to advance with the times, but the property owner should not be sacrificed for the benefit of the whole community. Rather, he should get a better price for what he is sacrificing than be cut down and placed in the position where the acquisition of his property leaves him much poorer and a great deal more inconvenienced than he would have been if he were allowed to remain in occupation.

The Hon. K. E. J. Bardolph—Is this Bill the result of bureaucracy?

The Hon. Sir FRANK PERRY—So many are involved—local government authorities, Government departments, electricity undertakings and so forth—that some degree of bureaucracy does come into it. Many officials are involved in acquiring land and fixing values in negotiations for settlement. I do not feel so much for the

man who is able to defend himself as for the person who has his living taken away from him. The Bill is an attempt to do something to improve this position. As drafted, I think the Bill goes a little too far and clause (2) is the only one I will support, and that with reservations.

The Hon. Sir ARTHUR RYMILL secured the adjournment of the debate.

HEALTH ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from April 28. Page 333.)

The Hon. L. H. DENSLEY (Southern)—Although the Bill, a small one, is rather important, it does not, so far as I can see, provide for any further restrictions. It is important that any restrictions on building should be avoided. Provision is made for the deletion of portion of section 123 of the principal Act, which has four subsections. Subsection (1) requires that within a municipality or township within district council areas—

All houses erected or rebuilt shall have such drains, means of ventilation and sanitary requirements constructed of such materials and in such manner as the local board of health may prescribe.

Subsection (2) provides:—

Plans and specifications showing the proposed drains, means of ventilation and sanitary arrangements shall be submitted to and approved by the local board before the erection or rebuilding of any such building is commenced.

Subsection (3) reads:—

Any person guilty of any contravention of this section shall be guilty of an offence . . . and liable to a penalty not exceeding £50.

Under the Bill subsection (4) is to be deleted. It provides that the section shall not apply to any part of the State to which the provisions of the Building Act apply. It raises the point mentioned by the Honourable Mr. Condon whether this matter would be better covered by the Building Act or by the local board of health under the Health Act. It is the general practice for a district council to appoint a building surveyor under the Building Act and a health inspector under the Health Act. The point arises, which is the better of these two persons to undertake the work involved under this Bill? The Building Act provides that if a person intends to erect a house or make alterations to existing premises he must report the matter to the district council by sending to the surveyor a copy in writing of the specifications for the erection, construction, alteration or addition to

a building; and it also provides that the council shall appoint a building surveyor. It appears that if the council can find a person for the job, obviously he should be a fit person for the office in accordance with the Act. To me it becomes a question of who is the more competent person to undertake the work—the health inspector or the building surveyor. In my view the building surveyor should be the person most competent to look after the particular function under consideration.

The Building Act was amended in 1953 to provide that in the event of the erection or construction of or addition to a building, the mode of drainage of water from the roof of the building, and the mode of disposal of nightsoil and sullage waste water from the building must have been approved in writing by the council. The building surveyor must take particular notice of these matters and refer them to the council, and the council must have the proposal in writing and agree to it in writing. It is a question of whether the building surveyor or the body of men sitting as the local board of health is the more competent to say what is required for drainage purposes. From my knowledge and experience I should think that the building surveyor would generally be the more competent person to decide this point and advise the council. Under the Building Act the building surveyor is called upon to do the job.

The Hon. Sir Lyell McEwin—No, the health inspector.

The Hon. L. H. DENSLEY—Under the Act the building surveyor is called upon to report to the council after plans and specifications have been provided. I am wondering whether it would not be more desirable to leave the Act as it is, rather than agree to these amendments, which take away from the Building Act the conditions that are necessary to be applied to this particular question of drainage. It would be better if we left matters to the building surveyor instead of the health inspector, who is not necessarily a highly-qualified man except to see that sanitary conditions are reasonable.

The Hon. C. R. STORY secured the adjournment of the debate.

LAND AGENTS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from April 28. Page 334.)

The Hon. Sir ARTHUR RYMILL (Central No. 2)—This Bill is the longest introduced during this session so far, although it has only

four clauses, two of which are purely mechanical. Clause 4 deals with the inspection of the books and so on of land agents, and I can see no objection to it. It seems to me that those people who are well intentioned will not have to suffer to any marked extent, and on the other hand the clause is probably a further precaution against fraud or things of that nature. Although no doubt the intention of clause 3 is good, my concern is whether once again we are not legislating for hard cases, which are very few, and at the same time penalizing people who do not intend any evil. It seems to be a tendency of modern legislation that when a hard case arises which traditionally is said to make bad law, more and more effort is made to protect peoples' interests. We may all laud that intention, but the question is whether in protecting those interests we are not doing worse on the other side of the ledger by penalizing many people who do not ever offend. This clause could have that effect because it undoubtedly will delay the sale of subdivisational land by a number of people who are not dishonest and have no fraudulent intention. My present intention is to support the clause, but I shall listen further to the debate by other members before making up my mind. As far as I can see the benefits of the clause may outweigh the disadvantages I have mentioned.

The Hon. Mr. Bevan made an excellent speech on the Bill and set out in some detail the present obligation of subdividers. Subdividers were required in the past to provide only the space for roads and did not have to make them, but in recent years they have been given further obligations in that regard and Mr. Bevan dealt with that at some length. We are in a formative state on that point and there has recently been some public discussion on whether those provisions are good or bad. I think they are probably reasonable, but time will prove their advantages or disadvantages. Mr. Bevan raised one interesting point on subdivisions in sandhill country. His point, as I understood it, was whether a person owned the sand and the land or the sand under the land as planned. I was not quite clear on that point and shall leave it to him to discuss in the Committee stages of the Bill. I feel that I should generally support the Bill with the one reservation previously made that I wish to give further consideration to clause 3, because I understand from legal friends that there are certain frailties in the way of the registration of planned subdivisions in the

Lands Titles Office that can delay the sale of land and be onerous on genuine subdividers. In the meantime I propose to support the second reading.

The Hon. F. J. POTTER secured the adjournment of the debate.

METROPOLITAN TRANSPORT ADVISORY COUNCIL ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from April 28. Page 335.)

The Hon. G. O'H. GILES (Southern)—I support the Bill. Previous speakers have dealt with the history of this Bill and its subsequent amendments, and I do not intend covering the same ground. The principle of appointing advisory boards to help the Government in its policies seems to be a good one. In this case the Government has provided for obtaining advice on transport matters by appointing three persons to the board, two of whom are the key figures, namely, the General Manager of the Municipal Tramways Trust, and the South Australian Railways Commissioner. They, together with the impartial Chairman, are able to give expert advice on metropolitan transport problems.

In view of one or two remarks made by a previous speaker I wish to deal briefly with the original Act. Section 3 provides for the appointment of the council and section 4 sets out the constitution of the council. Section 5, which is amended by the Bill, prescribes the term of office of the council. The validity of the acts and proceedings of the council are covered by section 10, which states:—

No act or proceeding of the Council shall be invalid by reason only of the fact that at the time when such act was done or when such proceeding took place there was a vacancy in the office of any member or any defect in the title of any member to his office.

That section could be interpreted by a layman to mean that in certain instances where the council was given a job to do before reporting to the Minister of Railways its decision would be valid even if the entire Advisory Council was not. On the other hand section 14 (5) possibly qualifies this interpretation. Section 14 provides that the Governor may, on the recommendation of the council, make orders giving the South Australian Railways Commissioner or the Municipal Tramways Trust directions as to policy. I do not need to tell honourable members how that section applies.

Section 12 refers to the duty of the council and it states:—

The Council shall inquire into and report upon any matters relating to or connected with the Public Transport Services or Public Transport requirements of the Metropolitan area which are referred to the Council by the Governor.

Section 13 deals with a matter that was mentioned by another member, who questioned the powers of the council. He referred to the use of the word "advisory" and a statement was made that the Advisory Council had the power to order the Municipal Tramways Trust or the Commissioner of Railways to comply with its instructions, but section 14 distinctly qualifies that statement, as it is quite emphatic. It reads:—

For all or any of the purposes mentioned in this section, the Governor, on the recommendation of the Council, may make orders giving to the South Australian Railways Commissioner or to the Municipal Tramways Trust . . .

In other words there is no reason to suppose that the Advisory Council has power to order those two bodies to comply with its directions. The only way the council can bring such an order into effect is to send its report and recommendations to the Minister of Railways, who tables the report if he sees fit to do so. The Government proceeds from that point. I think an honourable member who earlier spoke on this Bill overlooked section 14, which deals with directions concerning railways and tramways.

I intend to spend a little time on the three paragraphs of subsection (2) of that section. Subsection (2) reads:—

Such orders may be made for all or any of the following purposes:—

- (a) ensuring that adequate public transport services are provided for the metropolitan area or any part thereof.

The use of the word "adequate" is interesting because it obviously concerns the maintenance of a sufficient number of services and of services of an adequate standard. There is, in my mind, a certain amount of doubt as to the adequacy, in some ways, of privately-operated bus services in the south-western suburbs of Adelaide. I believe that private bus services are licensed by the Municipal Tramways Trust and that their vehicles are subject to safety inspections by that body, but their control under this Bill is probably restricted. In terms of frequency of services and, to a certain extent, of the standards of

the buses used, I think much is desired. Paragraph (b) of subsection (2) reads:—

Preventing duplication or overlapping of public transport services in the metropolitan area or any part thereof;

That is probably the simplest of the three paragraphs and it is easy to imagine that with the increasing population along certain routes any duplication that may exist could become a necessary part of the services required. Section 14 (2) (c) says:—

Otherwise securing economy and efficiency in public transport services in the metropolitan area or any part thereof.

That will always be an important function of the Advisory Council, and my only wish is that the Government, or the Minister concerned, may utilize this highly creditable body to further its impact on economy and efficiency in transport services. With the population increasing rapidly in parts of Adelaide I imagine that the costs of operation as between various transport operators will vary, but the factors of lower overhead costs and higher percentages of passengers may permit of economies in certain cases.

The amendments contained in the Bill are very simple and merely effect the re-appointment of members of the council and the continuation of that body for a further period. I commend the Government for its intelligent action in the first place in setting up this Advisory Council and for its decision to extend its life. In case some honourable members still have doubts on this point, I believe that the proposed retrospectivity is fully substantiated by section 20 of the Acts Interpretation Act. I support the Bill.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5.

The Hon. F. J. CONDON—On many occasions the Opposition has moved in this Council for retrospectivity in legislation and I hope that those supporting this Bill will not, at some future time when we may introduce the question, say that they do not believe in it but will give it the favourable consideration they are giving it on this occasion.

Clause passed: title passed.

Bill reported without amendment and Committee's report adopted.

ADJOURNMENT.

At 3.23 p.m. the Council adjourned until Wednesday, May 4, at 2.15 p.m.