LOCAL GOVERNMENT ACT AMENDMENT BILL 1938

Legislative Assembly, 7 July 1938, pages 351-5

Second reading

The Hon. M. McINTOSH (Albert—Minister of Local Government)—The Government in no sense regards this Bill as a Party measure, but as an attempt to help various district councils and municipalities. There are many members in the House who have had municipal experience, and the Government will listen to any suggestions they make. No kudos is to be gained through members introducing new clauses or by the rejection of any. It is a measure which must be judged upon its merits, and is introduced with an ardent desire to assist councils which have done such good work in local government affairs. This is the first Bill to be introduced which contains general amendments of the Local Government Act, 1934.

Until 1934 there were different sets of enactments for municipal corporations and dis­trict councils, but in that year the Local Government Act was passed to enact one code of law for both classes of councils. This Act repealed over 50 Acts relating to local government, and in the process the law was revised and many important changes were made. The Act has worked well, and councils have found the codification of the law a great benefit. It is, however, inevitable that, in the case of an Act dealing with so many topics, amendment of the law becomes necessary from time to time to meet changing conditions and to provide for the endless combination of circumstances inevitable in local government administration.

The Bill represents suggestions made from various sources relating to amendment of the law; mostly they emanate from one or other of the various local government organizations. There is a number of organizations which represent different kinds of councils in South Australia, but there is no one organization representative of all councils in the State. Shortly after the passing of the Act of 1934 the Government, in order to set up a body which could examine proposals for amendment with a view to their application to the whole State, appointed a committee known as the Local Government Advisory Committee, on which are representatives of the Local Government Association, the Municipal Association, and the Local Government Officers’ Association and Government officials. mThis committee has the duty of examining any proposal submitted to it by the Minister and reporting to him, and it has been the practice to refer to this committee most of the proposals for amendment suggested by the various local government organizations. In this way it is considered that these proposals have been submitted to the scrutiny of a body which is representative of all classes of councils. Most of the amendments submitted are of an administrative character and do not effect any change in policy and are thus matters upon which the advice of persons experienced in local government affairs can be of great assistance to the Minister.

The Bill in the main deals with matters arising out of recommendations of this committee. The measure is of large proportion's, but very many of the amendments deal with administrative matters or are intended to clarify the law in some particular matter or other and do not affect policy, and in some eases it takes as many as four or five amendments to different sections of the principal Act to achieve the desired purpose. The Parliamentary Draftsman and his assistant stated that in many cases there were alternative constructions and it is remarkable how many times they could be accepted as a proper construction. They have attempted to make it clear in the Bill what the intention is and not to leave it open to any misconception. Many clauses are entirely of an explanatory nature rather than an alteration of the existing system. It would be impossible for me at this stage to explain at length every amendment proposed by the Bill. I propose, however, to explain the more important provisions and in Committee an explanation will be given on any clause if so desired. I have a detailed explanation of each clause, but it is too lengthy to put into “Hansard.” I will gladly make the explanations available to members prior to their speeches or at any time during the discussion.

One of the matters upon which the existing Act has given some trouble to councils is that dealing with voting rights of persons who are joint owners or occupiers of ratable property. Furthermore, some difficulty arises as to voting rights where a husband and wife inhabit a house which is owned by the wife. In the latter case it has caused much heart burning when the husband has been denied a vote, but the present Act provides that voting rights shall be exercised only by owners and occupiers, and as the wife is the owner and also the occupier the husband cannot be regarded as the occupier in the absence of some tenancy agreement. It is provided by clause 27 that in these circumstances, namely, where a married woman is the owner of property used as a dwelling house for her and her husband and their family, the husband, in the absence of proof to the contrary, is to be deemed to be the occupier and included in the assessment book as the occupier. If he is so included in the assessment book he will automatically be included in the voters’ roll.

Mr. Abbott—No more joint occupiers?

The Hon. M. McINTOSH—They have been set out separately as owner and occupier. The existing provisions r elating to joint tenants and tenants in common are worked out on a logical basis, namely, that at elections where there are two or more joint tenants or tenants in common they have voting rights on the basis that one such person can vote for every £75 of the annual value of the property, with a maximum of three votes. The existing provisions enable the joint tenants or tenants in common to nominate which of them shall vote. Failing nomination, the right to vote is accorded to those who appear first on the voters’ roll in alphabetical order of names. In practice, this provision causes most difficulties where husband and wife jointly own ratable property assessed at less than £75 of annual value . In such a case only one person can vote as owner Failing nomination, this person is decided according to the alphabetical progression of the names, and if the person entitled to vote happens to be the wife, the husband in many cases has felt aggrieved. The expression “tenants in common” and “joint tenants” are well known to lawyers, but have caused difficulties to clerks. These terms have reference to ownership, but have been interpreted in many areas as referring to what is commonly known as tenants, that is, people holding land under tenancy agreements. It is therefore proposed to alter the sections dealing with voting rights at elections and polls, and this is done by clauses 14 and 76. Instead of the terms “joint tenants” and “tenants in common” the sections are re-drafted to make it plain that the persons covered by the sections are owners of ratable property and occupiers of ratable property. The existing provisions as to the limits of voting for these persons are re­tained, but each class is dealt with separately, so that in elections joint owners will have up to three votes, according to the assessed value of the property, and similarly joint occupiers will have up to three votes. In the case of polls on financial questions, the voting limit is also left unchanged, but owners and occupiers will be recorded separately. If the owners and occupiers are identical persons then for the purpose of ascertaining who is entitled to vote as occupier regard will not be had to those entitled to vote as owners. This last provision will have the effect of providing, in a case where husband and wife jointly own and occupy a property, that one of them will be entitled to vote as owner and the other as occupier. The Government is not putting this up so much as a matter of policy, but as a matter regarded as essential by local governing authorities, and it is in accord with their desires.

Mr. Abbott—-That does not make it any more sensible.

The Hon. M. McINTOSH—I think it does. Even though a house is in the wife’s name the husband, in the greater proportion of eases, takes all responsibility and for all practical purposes might be regarded as the occupier, but simply because the property is in his wife’s name he has been deprived of the opportunity to vote.

Clause 24 provides for an important change of the law and sets up an Appeal Board for town and district clerks. This proposal has been submitted to the Government on various occasions by the Local Government Association, the Municipal Association and the Local Government Officers Association and has the support of the Suburban Municipal and District Councils Association. The proposal is therefore supported by councils generally and by the association representing town and district clerks. The clause sets up an appeal board consisting of the president and the secretary of the Local Government Association, the president and the secretary of the Local Gov­ernment Officers ’ Association and the vice- president of the Municipal Association. If a town clerk or district clerk is dismissed, suspended or reduced in status by his council he will have the right to appeal to this board, whose decision will be binding on the council. The Government will incur no expenses in this matter, as it is provided that the expenses of the board are to be borne in equal proportions by the associations represented on the board. It is of manifest importance that a clerk should be able to carry out his duties fearlessly and impartially. Cases have been known in this State where clerks have been dismissed for what would appear to be inadequate reasons. These cases are admittedly few, but the clerk should be in a position to do his duty Without fear of consequences. It is not considered that this provision will interfere with a council in its legitimate control of a clerk . We have now generally accepted the principle that Government officers are entitled to some sort of board to hear complaints in respect of their dismissal or reduction of salary, etc., and as local government is becoming so much a part of the functions of government it seems very logical that the same provisions should be extended to these men.

The Hon. E. S. Richards-—Are we extending it to tramway employees?

The Hon. M. .McINTOSH—We shall be extending it this year to railway officers . About 98 per cent, of railway workers are already subject to Federal awards.

The Hon. R. S. Richards—I said tramway employees.

The Hon. M. McINTOSH—We are not touching on them at the moment . Obviously, if a clerk is incompetent or there are other good reasons why he should be dismissed, the board will have no alternative but to endorse any action of the council. In fact, it may be assumed that in such a case no clerk dismissed by his council would care to risk an appeal to the board. The clause will, however, give protection to the clerk who is dismissed for reasons based upon prejudice or other improper grounds.

Mr. Abbott—Who will pay the costs of the appeal?

The Hon. M. McINTOSH—The expenses will be borne in equal proportion by the associations represented on the board. Clause 26 provides that land used for a show society within a country municipality is to be assessed at one-half of the annual value or land value thereof, as the case may be. Under the present law such land is assessed at half its value when situated within a district council district, but is assessed at its full value when situated within any municipality. The clause proposes to make the law uniform as regards all country showgrounds, whether situated in a district or a municipality. The exemption will not apply to metropolitan municipalities. Clause 28 proposes an important change in the method of making assessments. Under section 173 assessments based on annual values are made on the basis of the estimated gross annual rental at which ratable property would let for a term of not less than seven years in the case of a municipality, and for a term of seven years in the case of a district council. This provision has presented considerable difficulty in administration. It imposes on valuators the duty of making an estimate of what rental a particular property would let at for seven years, although letting for seven years is not common in actual practice. In England and other States the law provides that assessments are to be based upon the estimated rental for a term from .year, to year, and it is proposed by clause 28 to make the South Australian law conform to this practice. It will be more easy for valuators to assess upon this basis, and one effect will be that assessments will keep pace with the rental value of the property at the time when the assessments are made. Under the existing provision, where the valuator is required to make his assessment on the basis of a seven years’ letting he cannot, when values are low, assume that values will keep low for seven years, and this causes much dissatisfaction to ratepayers concerned. With an assessment based on the year to year value the assessment will have to keep near the actual letting value of the properties assessed.

The Hon. J. Mclnnes—It does not affect councils assessing on land values?

The Hon. M. McINTOSH—No, we are dealing with those rating on annual values. Under the year to year system it does not necessarily follow that councils shall make an annual assessment, but if they do, instead of taking the seven-year period as a unit, they may take the year to year period. Under the Waterworks Act the seven-year system has been in existence for many years. The councils have asked for this alteration, but in actual fact a valuator would make a more conservative valuation on a seven-year basis than on a year to year basis, because he would have to make allowance for fluctuations that might occur within that long time. It is safe to say that we have never had in South Australia seven consecutive good years. I do not submit this proposal as the acme of perfection, but as something more easily applied than the present system. On the whole the seven-year basis had something to commend it from the point of view that it tended towards more conservative valuations. Clause 33 provides that district councils may impose a minimum rate of up to 2s. 6d. The minimum rate will be that fixed by the council, but must not exceed 2s. 6d. Under section 228 a similar provision has been enacted with regard to municipalities, but the minimum rate in that case may be up to 10s. It sometimes occurs in district council districts that the rates paid on some township allotments are extremely small and the cost involved to the council in assessing the property and making out the necessary notices is not covered by the rate. The clause therefore allows a minimum to be fixed up to an amount not exceeding 2s. 6d., which is obviously not excessive in the circum­stances. Clause 55 deals with polls to consent to loans. When a council desires to raise a loan, a poll may be demanded by the ratepayers and in some circumstances a poll must be held. It has happened in a number of cases that a poll has been demanded but the number of ratepayers who have voted at the poll has been absurdly low. A case recently occurred where a borrowing proposition was rejected at which only 3.8 per cent, of the voters exercised their rights of voting. It is considered that where a council has approved of a borrowing scheme and a demand for a poll is then made, the scheme should not be rejected unless a reasonably substantial number of the ratepayers are sufficiently interested to come to the poll and vote against the propo­sition. It is therefore provided by clause 55 that such a poll will be deemed to be carried unless a majority of the votes cast at the poll are against the proposition, and unless the number of votes cast against the proposition constitute at least 10 per centum of the total number of votes which could have been cast at the poll by all the persons entitled to vote. This will mean at a poll that to outvote a proposal for a loan there must be at least a 10 per cent, adverse vote. The members of councils are the elected representatives of the ratepayers. Knowing the circumstances they approve of a scheme, and it should not be left to a noisy minority to reject it.

The Hon. R. S. Richards—A noisy minority could not do so.

The Hon. M. McINTOSH—It could. In the case I have mentioned the adverse vote amounted to 3.8 per cent. If those, opposed to a proposal do not amount to more than 10 per cent, of the ratepayers they should not have the right to outvote the proposition. Clause 63 contains a provision dealing with the by-law making powers of councils. Some councils, particularly in the metropolitan area, have had a lot of trouble with respect to rubbish tips within their areas, but the present law. gives them no effective means of control. It is provided by the clause that councils may therefore make by-laws dealing with, or preventing the deposit of rubbish. Recently the Government issued a regulation regarding the depositing of rubbish along the banks of the River Torrens. The Henley Beach Council was badly affected because of rubbish deposited in the bed of the river by people knowing that the flood waters would' remove it. The rubbish was deposited on the foreshore at Henley Beach as the result of flood waters and became dangerous to children playing on the beach. The Government was able to deal with the matter because of its powers, and it is thought that the councils should have similar powers. A number of the clauses deal with payment of what are known as road moieties. Under various sections of the Act councils may require owners of abutting property to pay amounts for road construction purposes. Under the present law these amounts bear interest at 6 per: cent, from the giving of the demand for payment by the council . It is considered that persons liable to make these payments should have a reasonable opportunity to pay before being charged with this interest. It is, therefore, provided that interest in such cases shall commence at the expiration of' three months from the giving of the demand to pay. Other amendments proposed by the Bill are of varying degrees of importance. Some clauses make minor administrative changes and others make drafting amendments only. In the schedule are collected a number of amendments of this latter kind. If, however, information is sought as to the effect of any clause that information will be given during the Committee stages of the Bill. Some of the district councils think the Bill should be more comprehensive, but the advisory committee and myself have not accepted all the amendments suggested. We have adopted what we thought were the most important. The Government is anxious to get as perfect a measure as possible, and any amendment brought forward by a member will be dealt with on its merits. The Government has no prejudices in the matter . I commend the measure to members, and feel sure that it will be a beneficial addition to our local governing laws.

The Hon. J. McINNES secured the adjournment of the debate.