



NEW ZEALAND  
**GOVERNMENT GAZETTE.**

(PROVINCE OF WELLINGTON.)

Published by Authority.

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W. FITZHERBERT, *Provincial Secretary.*

VOL. VI.]

FRIDAY, 14TH OCTOBER, 1859.

[No. 24.]

Provincial Secretary's Office,  
Wellington, 13th October, 1859.

**T**HE following despatch and enclosures are directed to be published for general information.

WILLIAM FITZHERBERT,  
Provincial Secretary.

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Colonial Secretary's Office,  
Auckland, 8th October, 1859.

SIR,—I have the honor to enclose for your information a copy of a Petition which has been presented to His Excellency the Governor, by the Provincial Council of Wellington, on the subject of the Public Money Control Bill, lately passed by the Council and disallowed by your Honor,—also a copy of the reply of the General Government to the Council's Petition, with its enclosures.

I have the honor to be, Sir,  
Your most obedient servant,  
HENRY JOHN TANCRED,  
For the Colonial Secretary.

His Honor  
The Superintendent,  
Wellington.

Colonial Secretary's Office,  
Auckland, 8th, October 1859.

SIR,—I have the honor to acknowledge the receipt of your communication dated 26th ultimo, transmitting a Petition to His Excellency the Governor from the Provincial Council of Wellington on the subject of the "Public Money Control Bill," lately passed by the Council, and disallowed by the Superintendent; and I have to inform you that the Petition has been duly laid before His Excellency.

In reply, I have, in the first place, to state that the Expenditure of the Provincial Revenue by the Superintendent, otherwise than under the authority of an Act of Appropriation passed by the Provincial Council, is plainly contrary to law.

An urgent public necessity may occasionally justify, or even demand, the expenditure of public money in anticipation of a legally granted supply. In such cases the Provincial Council is the Constitutional Judge of the conduct of the Superintendent. If the Council should approve of, or acquiesce in, the course taken by the Superintendent, it will give effect to its decision in his favor by making a retrospective appropriation covering the unauthorised expenditure. If, on the other hand, the Council should see reason for so strong a measure, it will refuse the Indemnity which it alone can grant, leaving the Executive exposed to the liabilities incurred by an illegal expenditure of the Public Money.

But whilst His Excellency's Responsible Advisers thus entirely confirm the constitutional position taken by the Provincial Council of Wellington, they are unable to recommend His Excellency to adopt either of the two courses suggested by the Council in their Petition.

It is clear that the Act of the Superintendent in withholding the Governor's assent from the "Public Money Control Bill" is final, and precludes the Governor from dealing with the Bill.

Nor are the General Government prepared to instruct the Superintendent of Wellington to reserve all Bills which may in future be passed by the Provincial Council with regard to the control of the Public Expenditure,—because, in the opinion of His Excellency's Advisers, the subject is one which can be satisfactorily dealt with by the General Assembly alone.

In accordance with the request of the Provincial Council, a reference has been made to the Attorney-General on the legal questions adverted to by the Council in their Petition. I transmit herewith a copy of the questions submitted to that Officer, and of his Report thereon.

Should the Provincial Council ultimately refuse to legalize the expenditure which the Superintendent has incurred without its previous sanction, the responsibility of vindicating the law will, according to the opinion of the Attorney-General, rest upon the General Government. It is a responsibility which His Excellency's Advisers will not shrink from meeting, whenever the occasion arises.

It is proper to observe that the existing remedies against illegal acts of the nature in question, as entailing consequences of undue severity, appear ill suited to the present political constitution of the Colony, and his Excellency's Advisers therefore contemplate the proposal of measures in the General Assembly for adapting the law to the circumstances of the Colony.

I have the honor to be, Sir,

Your most obedient servant

(Signed) HENRY JOHN TANCRED.

For the Colonial Secretary.

The Speaker of the  
Provincial Council,  
Wellington.

#### ENCLOSURES.

The Governor requests the Attorney Generals attention to the accompanying papers, and that he will state his opinion on the following points.

1. Has the Provincial Council of Wellington any remedy under the Constitution Act or

any act of the General Assembly for the illegal expenditure by the Provincial Executive Authorities of the Public Money?

2. Has the Superintendent the power by law of expending at his discretion public money in the Provincial Treasury not appropriated by the Council?

3. Is there any, and what remedy for the expenditure without authority of money paid over to the Provincial Treasury?

(Signed)

T. GORE BROWNE.

Attorney General's office,  
Auckland, 7th October, 1859.

SIR,—I have the honor to acknowledge the reference made to me by your Excellency of a Petition and accompanying documents transmitted by the Provincial Council of Wellington on the subject of the expenditure of the Public money by the Superintendent of that Province, and in compliance with your Excellency's commands that I should state my opinion on the question submitted to me, I have to report as follows.

1. That neither the Constitution Act, nor the Acts of the General Assembly provide any remedy for the illegal expenditure of the public money by the Provincial Authorities, nor am I aware of any mode by which a Provincial Council can make the Superintendent of a Province and his Executive responsible for spending public money without authority.

2. I am of opinion that the Superintendent of a Province is not invested with the power of spending at his discretion public money paid over under acts of the General Assembly to the Provincial Treasury and not appropriated by the Provincial Council. Such a doctrine, in my opinion, is clearly both unconstitutional and contrary to law.

3. Under the "Surplus Revenue Act 1858" certain portions of the Public Revenue are paid over to the several Treasuries of the Provinces and made subject to the appropriation of the respective Provincial Councils. In my opinion the Recipients of this money are accountants to the Crown—are liable as such to render an account, and are chargeable with any sums of money not expended under legal authority. They are amenable in the Supreme Court on the prosecution of the Attorney General.

I have &c.,

(Signed) FRED. WHITAKER.

To His Excellency

Colonel T. G. Browne, C. B.,

&c., &c., &c.