

1913.
NEW ZEALAND.

ESTIMATES

(OPINION OF THE SOLICITOR-GENERAL RELATIVE TO THE).

Laid on the Table of the House by Leave.

MEMORANDUM FOR THE Hon. THE PRIME MINISTER RE THE ESTIMATES.

Office of the Attorney-General and Minister of Justice,
Wellington, 18th September, 1913.

IN accordance with the request you made to me the other day, I have obtained the opinion of the Solicitor-General upon the question which has arisen in connection with the estimates presented to the House by the Hon. the Minister of Finance on the 6th August last, and now beg to enclose the same herewith for your information.

A. L. HERDMAN.

OPINION OF THE SOLICITOR-GENERAL RELATIVE TO THE ESTIMATES.

The Hon. the Attorney-General.

THE estimates now before the Committee of Supply of the House of Representatives and relating to the remuneration of the Public Service are based, in accordance with the usual practice, on the salaries paid during the last financial year, any increase being left to be dealt with on the supplementary estimates. On the 20th August, after the main estimates had been brought down, the Public Service Commissioner published his classification of the Public Service in accordance with the Public Service Act, 1912. This classification is now in force, subject, however, to any alterations which may be made therein by the Board of Appeal. The salaries fixed by the classification are different in very many instances from the salaries appearing in the estimates now under discussion in the Committee of Supply.

I am asked to advise as to the legality of the course so taken in bringing down the estimates, and my attention has been called to an opinion recently given on this point by Sir John Findlay, K.C., and Mr. C. P. Skerrett, K.C.

So far as that opinion is confined to the proposition that a vote on the estimates cannot alter any salary fixed by the Public Service Commissioner in pursuance of his statutory authority under the Public Service Act, I agree with that opinion. When the Commissioner has once fixed the salary of an officer by classifying him in accordance with the Act, the officer acquires a statutory right to be paid that salary, and this right cannot be affected by a reduction of the estimates. The House has, of course, full power to reduce the estimates, but such a reduction would amount merely to a refusal by the House to supply the Executive Government with the moneys necessary to enable it to fulfil its statutory obligations. These obligations would none the less remain in existence, and the Civil servant so affected would be entitled to take proceedings in a Court of law for the recovery of the salary assigned to him by the Commissioner. Apart from legislation, the difficulty so created could only be put an end to by the act of the Commissioner in dispensing by three months' notice with the services of the officer whose salary the House had so refused to vote.

If, on the other hand, the Committee of Supply voted a salary in excess of the statutory salary as fixed by the Commissioner, this vote would be entirely ineffective to increase that salary. The repeal of section 46 of the Public Revenues Act, 1910, by the Public Revenues Amendment Act, 1912, prevents any such increase of a payment the amount of which is limited by an Act of Parliament.

If, therefore, Parliament is desirous of increasing or reducing any salary fixed by the Public Service Commissioner, this must be done by express enactment, and not merely by a vote on the estimates. An express enacting clause in the Appropriation Act itself would of course be sufficient for the purpose.

The only qualification of the above rule is that which is provided by section 24 of the Public Service Act, 1912. By virtue of this section the Governor may, by message to the House of Representatives, recommend a rateable reduction or increase in the salary of every person in any division of the Public Service. If this recommendation is approved by a resolution of the House, it takes effect accordingly without any enactment to that effect. To this extent the statutory salaries of public servants may be affected without legislation enacted for that purpose.

In order to avoid misapprehension it is necessary to state that the foregoing observations as to the power of the Commissioner to fix salaries independently of Parliament apply only to the