

Constitutional Negotiations – 16 January 2009 – Advisory District Councils

THE CHAIRMAN: So, I'm afraid that has to go on the list for London. But the list is not huge even with those two points, and I'll come back to summarise where I think we are on that list.

That leaves the new text on district councils which was circulated last evening and I'm trying to find it. Here we are, Proposed District Council Provision.

My first comment on this text is to wonder why it is necessary — I don't — legally I don't think it is necessary because of course it's — the legislature may make laws for peace, order and good governance for the Cayman Islands. Provided they're compatible with the Constitution and don't contravene the Colonial Laws Validity Act requirements, there is full power to legislate so it's not necessary to say that a law enacted by the legislature may provide for this or that in terms of district councils. It's not necessary to do that. So I wondered why it was thought necessary or useful to have a specific provision apparently enabling the legislature to do something which it can already do.

Alden.

HON. ALDEN M. MCLAUGHLIN, JR.: Well, based on that, sir, perhaps we need to express — express it a little differently.

I think the feeling on both sides is that we want there to be a constitutionally recognised... but we want concept of district councils as advisory bodies to MLAs to be constitutionally recognised and required.

This is all part of trying to build a better democratic framework and infrastructure so that there is more participation by the community in the work of the legislature through its MLAs. And this was something that was talked about as we all did the rounds during the constitutional modernisation education exercise, so that's why we, I think, collectively feel it ought to find its place in the Constitution.

HON. W. MCKEEVA BUSH: Mr. Chairman, this is — this comes from our findings in the community, and we put it in our document, and we proposed it when we begun this process.

And I have — I do have a problem with what the Government is saying and the way this is drafted because if we are really talking about the empowerment, the Constitution and things that can augment and enhance democracy and involvement, we — the Constitution I think has to provide for it, but not just to say that a law may provide. I think it must be shall provide for it.

I don't know that we should leave the establishment and functions to a law if we really want to have empowerment of people. I feel this — that way about this as I felt about a senate which the Government has rejected.

I think this is what people want. They want to be more involved, but they don't want to leave it to the whims and fancy of a government that may put in place a law or abolish a law. So, if it has constitutional provision it's much harder to take what people feel is a right for them to be involved, and what we're doing is giving them a constitutional right and provision to be in the Constitution.

THE CHAIRMAN: Well, I think if there are going to be such district councils established I think it would have to be done by virtue of a law in order to set out how they are composed and what they can do. So, I don't see a way around that.

The point I — the other point I was going to make is, I mean, it is not... my first remarks should not be taken as saying it is not possible to have a provision, it is just — it's legally unnecessary to because a law can provide for these things anyway.

But as I understood Alden's point, and McKeeva making the same point, that part of the purpose of saying something in the Constitution is to give this emphasis, is to give this optical emphasis. And the one word that seems to me crucial if it's designed to enhance democracy in this text is the word "elected". If it's to enhance democracy, should it not say **the establishment, functions and jurisdiction of elected councils for each electoral district**? Otherwise it could be read as being the intention here is to have some... a law which will simply provide for councils which are appointed by some supremo who chooses whoever he or she wants to sit on it. So, I think if it's designed to show a positive optical message to enhance democracy, one should insert the word "elected" before "councils" in the second line.

HON. W. MCKEEVA BUSH: Mr. Chairman, I am not going to agree to that. Not a matter of democracy. Yes, it is another form of addition to, addendum to the democracy, but, Mr. Chairman, I don't believe that this country need to go into that kind of expense for what we have in mind because that's what it would create. If you're saying that we should have an elected council and then you do that you're having — you're having... no. To me they're going to create more politics that we don't need, and I don't think people want that.

What the people want, the people want a say. And if we give constitutional provision where we say that there must be a council and that the people appointed there give the MLAs their feelings on where — on what affects them — where the road should be and how many roads should be and whether the schools should go there or whether we do need another post office and take into consideration the expenditure for that — I think that's what people want. I don't think —

And you would find some that would want to be elected because they feel like they should have standing equal to MLAs, but if they want to do that then go put their money up and let us turn the spotlight on them. But I don't think a second tier is going to help us.

HON. ALDEN M. MCLAUGHLIN, JR.: Mr. Chairman, we agree. We don't think that what we need or is warranted is essentially local government, you know — a system of local government below the MLAs. What we want, I think all of us, is advisory councils to advise the MLA, not to bind the MLA, because he is the one or she is the one elected. So we're ad idem on this point.

THE CHAIRMAN: How is it proposed then — how it is envisaged that any such councils would be composed if they're not elected?

MR. ROLSTON M. ANGLIN: Mr. Chairman —

HON. ALDEN M. MCLAUGHLIN, JR.: This would all be dealt with, sir, through legislation.

THE CHAIRMAN: But what do you envisage the legislation would say —

MR. ROLSTON M. ANGLIN: Mr. Chairman, what —

THE CHAIRMAN: — as to how the councils would be composed?

MR. ROLSTON M. ANGLIN: What we always envisioned was that the council would always be appointed and appointed by the Premier, Leader of the Opposition and the Governor would have an appointment on the council. And so, we — let's say for a particular district there was going to be seven council persons. Each of those would get three, the Governor, say, would get one, and that way that would be the independent member of the council. Right?

And we went that way because we wanted to ensure that the ruling or governing party, for example, didn't just get to put seven on and say, 'Here's the councilors for the district who duly represent the broad population within the district'.

I am searching, sir, for our discussion paper because I think it did... I'm not sure that spoke to it but it certainly did... yes, here it is.

The district councils would be appointed by the Government, Opposition and the Governor, with the balance of power typically resting in the hands of the Governor's appointees as they are seen as the independent members. So no party loyalty with — with no party loyalty or association. This would be on page 16 of our discussion paper.

HON. W. MCKEEVA BUSH: And, Mr. Chairman, a good point is being raised that later on, if the country finds itself where we have funds to operate a system — a true system of local governance, then we could, you know, graduate to that. But we don't want to do that. We want to be able to give the people the say, but at the same time — and give them constitutional standing, but at the same time keep costs down. And to me that's one of the big things, cost, and less politics too. Less politics.

This senate is — why don't you stick to building roads. You don't know nothing about a senate.

MR. EDDIE THOMPSON: Mr. Chair? Mr. Chair, if I might ask — and pardon me for my ignorance if it's more than obvious, but would this mean then that the general populace would have to go through this council, these councils and so then...

HON. W. MCKEEVA BUSH: You mean that they wouldn't have access to government?

MR. EDDIE THOMPSON: To government on a whole.

HON. W. MCKEEVA BUSH: No, but we would be stupid. Any government would be stupid to bypass their constituents.

MR. EDDIE THOMPSON: It goes back to the question if they should be elected then as opposed to appointed.

HON. W. MCKEEVA BUSH: No.

MR. EDDIE THOMPSON: At the end of the day, the general public has access to the government. It's just much ado about nothing.

HON. W. MCKEEVA BUSH: No, no. I think that you — I think that any representative, the Governor together will appoint people across party lines and they will have good input, but you're not going to bypass your constituents.

MR. EDDIE THOMPSON: So this would be somewhat mimicking single-member constituencies to some extent?

MR. ROLSTON M. ANGLIN: Mr. Chairman, let me elaborate on this point just for two minutes.

What we find typically in our districts is that after a general election... you typically as in any constituency anywhere you have people who are firmly for you, against you and then you have some in the middle that you've won. Right? Now, after an election is all over and you go into running the district for four years, one of the weaknesses that we have found in our districts

is that usually — usually — the people that you get most of your input and advice from, just because of the fact that you've had to go out and run and you have a campaign committee, et cetera, are the people who supported you and you often times do not get to reach out and get — not necessarily a relationship, but input from other people as well.

One of the real benefits of this is that it will at the district level ensure that every district as we're trying to build our communities is getting a voice that is truly representative of the entire community. We see this as a key building block for us in terms of community development and interaction with the community.

To answer Mr. Thompson's question, if someone wants to come to my MLA office to see me, they can still come. However, if once we go down this route and you get good strong terms of reference and the councils get up and running and really become bodies that are recognised within the community getting things done, sure people are going to then go when councils call their meetings and say, 'Well, we think a park would be good on 'X' Street'.

But this is going to be a process. We're not expecting this to happen overnight. We just see it as a good first building block to true community participation and an involvement in a formalised way.

Just to say, Mr. Chairman, this was wasn't — this wasn't dreamt up just overnight. I mean, right now there's a non-profit organisation in Cayman called the West Bay Community Council. That was something that was formed in 2001 or 2002, I can't remember exact time. But it was aimed to try and do this exact same thing because we kept hearing from the public after getting elected, 'Well, how do we really do things better? How do we be better organised? How do we really get our voices to you in a more collaborative and a more formal manner?' This would be a first step.

Now, in three, four, five elections, God spares life, who knows what the public will want? The public may then be at the point where they say, 'We would like a model of local government. Let's think about it.' And then we may commission such a study. But that's down the road. For right now we see this as a good first step. Let's get this built, let's get it functioning and working and then...

THE CHAIRMAN: I think my conclusion on this is that as drafted it is clear that the real — not battleground but the real time when the details need to be sorted out is when a bill comes forward for discussion because it will need legislation to sort it out.

And provided that the text, as it is at the moment, is neutral, which it is... I would have preferred to see the word "elected" before "councils", but I can see that that argument may still need to be carried through. So it's neutral and it does not rule out the option of elected councils. I think my inclination, even though it is not legally necessary to say that, if you both regard it as important for optical reasons is to leave — I would recommend leaving this language exactly as it is and curious as it may seem, because it is not necessary to have it. We simply put it in and it is for later to work it all out in terms of legislation.

If there's any push to change any of this carefully drafted language, I fear that I — we would have to take it back to London because I think we could advise our minister that this is, albeit legally unnecessary it is a thing for a later day. It's a thing for you to sort out at a later day. So let's — are you happy then just to take this language?

[inaudible comment by Leader of the Opposition — microphone not turned on]

THE CHAIRMAN: Well, I don't mind. I think that you need to — if you're going to do it, it doesn't really matter one way or the other.

HON. W. MCKEEVA BUSH: I don't mind what you just said.

THE CHAIRMAN: Okay.
Susan?

MS. SUSAN DICKSON: I just wondered in the heading whether you should call it, perhaps, a community council which was the way that Rolston was referring to it because... well, maybe it's just for us in the UK. District council seems to me to imply something that you don't seem to be talking about, and community council might be better.

HON. W. MCKEEVA BUSH: Ms. Dickson, sometimes we will speak — and I speak for my district — we will speak of the community of Governor Sound and a community of North West Point. So I think district is right, meaning the electoral district.

THE CHAIRMAN: Governor?

GOVERNOR STUART JACK: Sorry, I've just got one point of clarification. Is it envisaged that these committees would have any executive functions at all because potentially if they were to do so that might derogate from the powers of other parts of government and would therefore have to be reflected in the Constitution?

HON. V. ARDEN MCLEAN: Advisory only.

GOVERNOR STUART JACK: Advisory only. Okay.

THE CHAIRMAN: To operate as advisory bodies. That's the...

HON. W. MCKEEVA BUSH: And if you want to put that in the heading, Proposed Advisory District Council.

THE CHAIRMAN: Advisory district council.

HON. W. MCKEEVA BUSH: I don't mind that.