

Supply—Privy Council

That is my recollection. There seems no doubt about the legality of providing for these salaries by means of estimates. For many years parliament has passed items having legal effect as well as having a purely appropriating effect. To what extent this practice should be carried is a matter of judgment and what I might call parliamentary good taste. We felt that past practice had sanctioned the judgment we exercised in this case, as similar action had been exercised in the past by others who were then in power. If I had had any doubt as to the constitutional situation I certainly would have ensured an examination by the law offices of the crown.

I think the hon. gentleman in raising this argument realized that there are two sides to it. I believe that in fairness to him it can be said that he realizes that this course had been taken in the past and that it had not been challenged in any way. The effect is that of a pathway which in the intervening years has become a regular highway. But if there is any weakness in this regard I am sure none of us would wish parliament to follow a course taken in the past unless it is correct. It could be very simply ascertained, then, and the necessary statute could be brought into being to cover the situation.

If the hon. gentleman's stand is correct, then for a period of several years 13 or 14 members of this house holding positions as parliamentary assistants during those years and in each of those years automatically place themselves in the position of being unable to establish their eligibility as members of the House of Commons and, indeed, would have forfeited their seats in the house.

That is why the hon. gentleman was so careful, and why he had good reason to say, "Remember, my face may be red if there is anything that can be brought up which will cast doubt on the formula I am advancing." I simply say that I would expect his face to be red, because we have only followed the course which his government followed over the years without any challenge heretofore, particularly by anyone like the hon. gentleman who is such constitutional authority and who for so many years was associated with Right Hon. Mr. King, whose constitutional knowledge was, indeed, one of those things of which he was most proud.

It will be noted that the wording of the item includes specifically a safeguard to ensure that the payment shall in no way render a member ineligible or disqualify him as a member of the House of Commons. While there may be some doubt as to whether this exact wording is strictly necessary in the light of section 14 of the Senate and House

of Commons Act to which I have already referred, none the less out of an abundance of caution this insertion was included with regard to this item in the estimates.

Of course, having gone that far in his argument the hon. gentleman had to go the full limit. He then raised the question of the position of these ministers as candidates under the provisions of the Canada Elections Act. He pointed out that if they had accepted payments after the dissolution of the house on February 1 and if they had received payments under the provision of governor general's warrants, they would find themselves in a difficult position. I am not going to argue that, because of the fact that they were not paid under governor general's warrants in the months of February and March. No payments under governor general's warrants were made to them because of the very point he has suggested with regard to their eligibility being subject to challenge.

Mr. Pickersgill: Would the Prime Minister permit a question?

Mr. Diefenbaker: In just a moment. No payments were made until after supply was passed in due course in the month of May.

Mr. Pickersgill: The Prime Minister will perhaps recall that I asked that very specific question before I embarked on my argument, because I did not feel it would have been proper to have trespassed on the time of the committee before doing so. If the Prime Minister had told me what I asked him at the beginning it would have been a different matter, but the Prime Minister told me, I think, that these ministers were paid under governor general's warrant. If he had told me they were not I will admit there would not have been much to my argument.

Mr. Diefenbaker: I correct that to this extent, because of the answer I gave the hon. gentleman a few moments ago. Payments were not made in April and May. I am glad the hon. member brought this to my attention, because I had the wrong two months when he spoke a moment or two ago, and I am glad of that question because he cleared it up in accordance with the point he now makes and the answer which I gave him this morning.

Going further, the hon. gentleman has raised the question of the position of these ministers as candidates under the Canada Elections Act. Why did he not challenge that position? He has the courts. If this argument is other than a debating argument, very simple action can be taken with regard to it.

I am not here for the purpose of saying whether or not the controverted elections