



THE  
**GOVERNMENT GAZETTE,**  
 PROVINCE OF HAWKE'S BAY.

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T. H. FITZGERALD,  
 Superintendent.

VOL. I.]

FRIDAY, FEBRUARY 3, 1860.

[ No. 14.

\* Superintendent's Office,  
 Napier, Feb. 2, 1860.  
 THE following correspondence with  
 C. D. Ward, Esq., Barrister-at-  
 Law, Wellington, is published for  
 general information.

T. H. FITZGERALD,  
 Superintendent.

Superintendent's Office,  
 Napier, Jan. 24, 1860.

SIR,—Some doubts having been expressed by many parties here as to whether, under the "Officers' and Contractors' Act," of the Province of Wellington, Session 1 No. 26, Mr. H. S. Tiffen's seat in the Provincial Council as one of the members for the Napier Country District, did not become va-

cant on the formation of the Provincial Government, and his acceptance of the office of Chief Provincial Surveyor, I would be obliged for your opinion and advice in this matter. I have always considered that as Mr. Tiffen held the office of Commissioner of Crown Lands under the General Government, and that of Chief District Surveyor under the Wellington Provincial Government at the time of the separation of the Province, and that he continued to act in both capacities at the time of his election, that it was not necessary for him to go before his constituents for re-election.

As I understand the above law at present, it would not be necessary for a member of Council who has accepted office and been re-elected, to stand

again in case of accepting any additional office; but if I am in error, please inform me of it.

I have, &c.,  
T. H. FITZGERALD,  
Superintendent.

Wellington,  
January 31, 1860.

SIR,—I have the honor to acknowledge the receipt of your Honor's letter of the 24th January.

I could have wished, before giving an opinion on the case therein contained, to have procured further information on certain points not fully stated: but delay in this matter is not desirable; and the case is tolerably clear as it stands.

By the 4th clause of the New Provinces Act it is enacted, that in every Province created under that Act, the laws of the original Province shall continue in force so far as the same are applicable. The question of the applicability of the "Officers' and Contractors' Act" of Wellington to the Provincial Council of Hawke's Bay might be raised; but in my opinion without effect. I observe, also, that this Act has been practically held to be in force at Napier. The words of the Act in reference to cases like the present, are as follows:—"If \* \* \* \* any member of the Provincial Council shall accept any office of emolument under the Superintendent \* \* \* \* \* his election shall thereupon, and is hereby declared to be void; and a writ shall forthwith issue for a new election as if such member were naturally dead." The facts I assume to be the following. Mr. Tiffen was formerly Commissioner of Crown Lands and Chief Surveyor for the District of Aburiri, holding the former appointment under the General Government, the latter under the Provincial Government of Wellington (the Survey department being invariably under Provincial control.) On the separation of Hawke's Bay an hiatus occurred, owing to the bungling of the framers of the New Provinces Act in making no provision for car-

rying on the Government of any new Province in the interval between the creation of such Province by proclamation and the meeting of its Provincial Council. During this interregnum, Mr. Tiffen's appointment as Commissioner of Crown Lands, derived from the General Government, remained in *statu quo*. But the Chief District Surveyorship fell with the authority which created it. If I remember rightly, an authority to carry on the Public works during the interregnum was sent down to certain officials at Hawke's Bay by the General Government; but no special appointments whatever were made. Although, therefore, Mr. Tiffen for some time performed the duties of the new office of Chief Surveyor of the Province of Hawke's Bay, he was not on that account legally Chief Surveyor, until he received his appointment from the Superintendent of the new Province. At the date of his election the office was merely temporarily filled, under the above mentioned authority from the General Government, pending an appointment by the future Superintendent. Presuming the office to be one of emolument, I am therefore clearly of opinion that Mr. Tiffen's acceptance of it under the Provincial Government of Hawke's Bay was such an acceptance of office as rendered his election void under the "Officers' and Contractors' Act"; and that a writ should forthwith issue for a new election for the District which he represents.

With regard to the second point submitted to me by your Honor, I am of opinion that if a member of Council, who has accepted office and has been re-elected, accepts an additional office of emolument under the Superintendent, his seat thereby becomes vacant, by virtue of the hereinbefore referred to "Officers' and Contractors' Act."

I have the honor to remain,  
Your Honor's obedient servant,  
C. D. R. WARD.

His Honor  
The Superintendent  
of Hawke's Bay.