



**House of Assembly
Bermuda**

THE PARLIAMENT ACT 1957

Summons to Attend before a Legislative Committee

To: William G. Francis, Permanent Secretary – Ministry of Economic Development

You are hereby required to attend as a witness before the Standing Committee of House of Assembly appointed to investigate accounts of the Consolidated Fund at the House of Assembly on Thursday the twelfth day of February, 2015, at two-thirty in the afternoon. And you are hereby further required, on attending before such legislative committee, to produce to the committee the following documents:

- Host Venue Agreement Between the Government of Bermuda and the America's Cup Event Authority
- Economic Impact Assessment for the America's Cup being held in Bermuda
- Instructions and/or conditions attached to the financial grant provided to ACBDA Limited from the Ministry of Economic Development



E. David Burt, JP, MP
Chairman of the House Standing Public Accounts Committee

Dated the 10th day of February, 2015



Government of Bermuda
Ministry of Economic Development
OFFICE OF THE PERMANENT SECRETARY

11 February 2015

Mr. David Burt
Chairman of the Public Accounts Committee of the House of Assembly
Sessions House

Dear Mr. Chairman:

I acknowledge receipt of your summons dated 10th February 2015 requiring my attendance at the Senate Chamber on 12th February, 2015 at 2:30pm and further requiring the production of certain documents.

I have since taken legal advice and am of the view that you do not presently have the authority to make this request. I would therefore ask that you make clear to me under what powers you purport to act before I am able to take further action in this matter.

Faithfully yours,

William G. Francis
Permanent Secretary
Ministry of Economic Development

cc: Hon. K. H. Randolph Horton, JP, MP, Speaker of the House of Assembly



**House of Assembly
Bermuda**

11 February, 2015

William Francis
Permanent Secretary
Ministry of Economic Development

Dear PS Francis:

Good Afternoon! Thank you for acknowledging the summons from the Public Accounts Committee. I would like to note that this is the third communication from the PAC on this matter, with the previous ones being sent electronically on January 28, 2015 and February 6, 2015; notwithstanding, this is the first time that we have received any acknowledgment of any communication on this matter.

In your letter you state, "I have since taken legal advice and am of the view that you do not presently have the authority to make this request". You further ask that I make clear under what powers I "purport to act" in making this request.

For clarity, the House Standing Select Public Accounts Committee has the power to summon witnesses and documents under the following:

- i. Parliament Act 1957, Sections 30 & 41
- ii. Public Treasury (Administration and Payments) Act 1969, Section 28
- iii. House Of Assembly Standing Orders, Sections 34(3) & 38(3)

Mr. Francis, you will no doubt be aware that the Government has allocated funds, which have been appropriated by the legislature, to the ACBDA. You will also be aware that as the Accounting Officer for the Ministry of Economic Development you are responsible for these funds and to ensure they are being used in accordance with Financial Instructions.

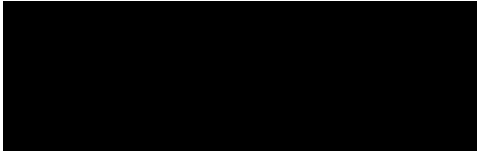
Before I close, I will share with you the advice that the Public Accounts Committee has received from the Office of the Auditor General in this regard:

“It is the duty and responsibility of the PAC to examine funds voted by Parliament and obtain evidence in the course of its deliberations as to whether or not public funds are appropriately managed. It is the duty and responsibility of Accounting Officers, Heads of Departments and other responsible officers to personally appear before the PAC to explain and justify the financial activities of the Departments and Ministries. “

The Public Accounts Committee has agreed by unanimous consent that you should appear in front of the committee tomorrow to speak to funds under your control. It is hoped and expected that as a senior civil servant you will obey the law, the Public Service Code of Conduct, and long held custom and practice and respect the authority of the PAC in this regard.

I look forward to speaking with you tomorrow.

Best Regards,



E. David Burt
Chairman, House Standing Public Accounts Committee

c.c. His Honour the Speaker



Attorney-General's Chambers

BY HAND AND BY EMAIL

11 February 2015

Hon. K. H. Randolph Horton, JP, MP
Speaker, House of Assembly
Sessions House

Dear Mr. Speaker,

It has come to my attention that Mr. David Burt, JP, MP, in his capacity as Chairman of the Public Accounts Committee ("PAC"), has issued a summons to the Permanent Secretary of the Ministry of Economic Development to attend the Senate Chamber on Thursday, 12th February 2015 at 2:30pm in order to give evidence on matters relating to public funding for the America's Cup.

I wish to point out the unorthodox nature of the Chairman's actions in respect to this matter. As Rule 34(3)(c) of the Standing Orders of the House of Assembly makes clear, the function of the PAC is to examine, consider and report on –

- (i) the accounts showing the appropriation of the sums granted by the Legislature to meet the public expenditure of Bermuda;
- (ii) such accounts as may be referred to the Committee by the House; and
- (iii) the report of the Auditor for any such accounts.

This language is quite specific. It does not contemplate a plenary power to examine and inquire into any matters touching upon the expenditure of public funds. The PAC has traditionally concerned itself with consideration of accounts prepared by the Accountant-General, reports thereon prepared by the Auditor-General and any other special reports which may be prepared from time to time.

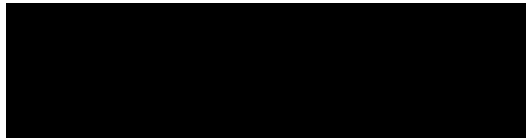
Finally, I would cite section 33 of the Parliament Act 1957 which restricts disclosure by public officers of certain official matters without the consent of the Governor,



even if it were accepted that the PAC had the authority to issue a summons. It appears that the matters sought come within this provision, and no evidence of the Governor's consent has been provided to support the Chairman's request.

The Government takes the view that he does not have the authority to pursue this course of action and humbly asks that you take appropriate efforts to restrain the Chairman from engaging in activities that may serve only to bring the House into disrepute.

Faithfully yours,



Hon. Trevor G. Moniz, JP, MP

Attorney-General

For the Government of Bermuda

Cc His Excellency, George Fergusson, Governor
Hon. Michael H. Dunkley, JP, MP, Premier
N. H. Cole Simons, Government Leader of the House of Assembly and Whip
David Burt, Chairman of the Public Accounts Committee of the House of
Assembly



Hon. K.H. Randolph Horton, JP, MP

SPEAKER

House of Assembly

Sessions House

21 Parliament Street, Hamilton HM 12

February 12, 2015

Hon. Trevor G. Moniz, JP, MP
Attorney-General's Attorney
43 Church Street
Global House – 4th Floor
Hamilton HM 12

Dear Hon. Attorney-General,

I write with reference to your letter of 11 February, 2015 and the request which you have made on behalf of Government with respect to the work of the Public Accounts Committee (“PAC”).

The Committee is empowered to act under our Standing Orders. You in fact quote the rule in your letter, the most relevant portion of which to the matter at hand is, 0.34(3) (c) (i) which states:-

(c) “The Public Accounts Committee shall have the duty of examining, considering and reporting on:-

- (i) “the accounts showing the appropriation of the sums granted by the Legislature to meet the public expenditure of Bermuda;”]

I am, therefore, of the view that it is within the purview of PAC to examine funds voted on and approved for expenditure by our Legislature and in examination to obtain evidence in the course of its deliberations as to how those funds have been managed since approval.

In this regard, I should like to also draw your attention to section 28 of the Public Treasury (Administration and Payments) Act 1969 which reads as follows:-

“28 (1) Without prejudice to anything in section 27, any committee appointed by the Minister or by either House of the Legislature to investigate accounts of the Consolidated Fund may inspect and take account of the public monies in the charge or custody of any officer of the Department.

(2) In any case where a committee is appointed by either House of the Legislature to investigate the accounts of the Consolidated Fund and the Legislature is dissolved while that committee remains undischarged, the committee may, notwithstanding such dissolution, continue to exercise its powers until duly discharged by the House of the Legislature which replaces the House by which the committee was appointed.”

You refer me to section 33 of the Parliament Act 1957. In turn, I should draw your attention to section 41 of the Act which reads:-

“41 Nothing in this Part derogates from or abridges section 28 of the Public Treasury (Administration and Payments) Act 1969 [title 14 item 1] (committees of either House appointed to investigate accounts of Consolidated Fund); and the provisions of this Act shall, to the extent that they are supplemental as respects the due carrying into effect of those provisions of the Public Treasury (Administration and Payments) Act 1969 apply and have effect as if any such committee were a legislative committee within the meaning of his Act.”

The Part to which section 41 refers is Part IV of the Parliament Act 1957 (“Evidence Before Legislative Committees”) which contains the section 33 to which you referred me.

This office does not, therefore, share your view that the Governor’s consent is required and/or that PAC is without the requisite authority to proceed as proposed.

I would, therefore, also invite the Government to reconsider its position in this matter and to allow its officers to appear before PAC as summonsed.

In closing, I should also like to add as Speaker of the House of Assembly, that I do not think it helpful to charge that a properly-constituted committee of the House may, as you put it, “engage in activities that may serve to bring the House into disrepute”, when it appears that PAC, comprised as it is of members from

both the Government and Opposition, is seeking only to discharge what is regarded as one of its responsibilities under our Standing Orders to the Legislature and, ultimately to the people of Bermuda.

Faithfully yours,



HON. K.H. RANDOLPH HORTON, JP, MP
SPEAKER of the House of Assembly

KHRH:ubf

*Cc: His Excellency, the Governor, Mr. George Fergusson
Premier- the Hon. Michael H. Dunkley, JP, MP
Mr. N.H. Cole Simons, Govt. Whip and House Leader
Mr. E. David G. Burt, JP, MP - Chairman, PAC*



David Burt [REDACTED]@gmail.com>

Accountant General

Talbot, Sherleeta S. [REDACTED]t@gov.bm>
To: E David Burt [REDACTED]@gmail.com>

6 February 2015 at 11:41

Good morning Mr. Burt,

I sent an email to Mr. Stovell this morning asking if he would be able to attend the PAC meeting on the 19th February. He called me back at 11:35 am this morning to inform me that he will not be answering any further emails because he was directed not to do so. I informed him that you were told yesterday in a meeting that he will be cooperating going forward. He stated that he received an email from the Cabinet Secretary just yesterday and was told he is not to respond until the Cabinet Secretary returns on Island. The Cabinet Secretary will not be back in office until the 16th of February.

Sherleeta Talbot

Assistant Clerk to the Legislature