



Government House
Bermuda

H.E. Mr George Fergusson
Governor and Commander-in-Chief

DGO 378/002/14

10 July 2014

The Hon Randolph Horton JP, MP
Speaker of the House
Sessions House
21 Parliament Street
Hamilton HM 12

Dear Mr Speaker,

You have kindly brought to my attention a Motion approved by the House of Assembly on 4 July asking me to establish a Commission of Inquiry into alleged claims of "historic losses in Bermuda of citizens' property through theft of property, dispossession of property and adverse possession claims"; and "to determine, where possible, the viability of any such claims and make recommendations for any victims of wrongful action to receive compensation and justice." I have considered this carefully.

Under the provisions of the Commissions of Inquiry Act 1935, the Governor "may, whenever he considers it advisable, issue a commission appointing one or more commissioners and authorising them, or any quorum of them therein mentioned, to inquire into the conduct of any civil servant, the conduct or management of any department of the public service or into any matter in which an inquiry would in the opinion of the Governor be for the public welfare". The decision to appoint a Commission therefore falls to the Governor. In deciding whether or not to appoint a Commission, a recommendation from the House of Assembly carries considerable weight and I have taken this into account carefully. The Act specifies that the fees of a Commissioner will be paid in accordance with the Government Authorities (Fees) Act 1971, which would therefore come from the Consolidated Fund.

In considering this Motion, I have taken into account the debate in the House of Assembly and had discussions with supporters and opponents of the Motion and others and am grateful to them. It has become clear that there are three main strands of concern reflected in the House's Motion:

- consequences of the purchase, including compulsory purchase, in the early 1920s of land in the Tucker's Town area;
- consequences of the purchase, including compulsory purchase, of land in the early 1940s for the purpose of the construction of United States air and naval bases particularly in the area of Longbird, St David's and Cooper's Islands and Morgan's and Tucker's Islands; and
- consequences of a series of land transactions in the 1950s, 1960s and 1970s in which concerns were expressed in the House about possible injustices arising from systematic collusive behaviour between lawyers, bankers and estate agents.

I have looked at each of the three categories of cases.

The purchase by compulsory purchase of the land in Tucker's Town was subject to requirements in the Bermuda Development Company (No 2) Act 1920, that subsequent sales of the land by the Bermuda Development Company of more than 100 acres should be subject to further approval by the Legislature, as should sales to companies not incorporated in Bermuda. There does not appear to have been any legislative requirement made in respect of "first refusal" offers to former landowners, though the 1954 letter by the then Colonial Secretary cited in the debate clearly suggests that he, at least, regarded this as good practice. The subsequent sales appear to have complied with these requirements. The Ombudsman's recent report, 'A Grave Error', indicated that one resident was subjected to an involuntary eviction. Other purchases were made under the compulsory purchase arrangements set out in the Act, which contained numerous appeal arrangements.

The compulsory purchases and other compulsory land transfers related to US naval and aviation requirements during the Second World War clearly disrupted communities and the Bermuda natural landscape. Compensation arrangements were made.

Both of the major historic compulsory purchases which were highlighted in the debate - the purchases in Tucker's Town in the 1920s and the purchases for military purposes during the Second World War - appear to have been completed broadly in accordance with the normal principles of compulsory purchase for public objectives, with measures in place to help ensure fair prices. In neither of these cases do I consider that there is a specific enough case that injustices were done that would merit the establishment of a Commission now.

The debate in the House showed that there is a broad concern about allegations of a pattern of cases in the 1950s, 1960s and 1970s in which some landholders lost land, or part of the value of their land, through abuses by members of professions individually or in collusion with each other. I have not seen suggestions that such abuses involved civil servants or the conduct or management of a department of the public service in a way which would justify inquiry by a Commission under those criteria. I would need to be satisfied that abuses by non-official agents were pervasive, systematic and on a scale to cause significant injustice to make them the subject of a Commission of Inquiry so long after the alleged events. I would need also to be clear, under the 1935 Act, that such an Inquiry "would serve the public welfare". This overlaps with the suggestion in the Motion itself that, if possible, remedies should be proposed if relevant abuses were found.

I have concluded that these concerns are neither so clear nor so urgent as to justify my taking the still unusual step of commissioning an inquiry under the 1935 Act. I am also conscious that such an inquiry would incur expenditure under the 1935 Act, which does not appear to have been the settled wish of the House, from either side of the debate. I note suggestions in the course of the House's debate that, instead of using the 1935 Act, an inquiry might be established with funding arrangements other than those provided for in the Act proposed in the Motion. This may be possible, but would go both beyond the terms of the House's Motion and my own powers. Whatever alternative mechanism for an inquiry might otherwise be looked at, it may be useful to set out for the record that I see no case for asking Her Majesty's Government in the United Kingdom to consider funding an investigation into allegations of commercial transactions not involving the Crown, if such funding is not forthcoming from Bermuda. Bermuda is proud of its high degree of autonomy as a British Overseas Territory. It is a long time since Bermuda's commercial and

private land law has been supervised from the United Kingdom and this does not seem to me a compelling issue on which to reverse that.

The debate has raised serious concerns, of public interest. Some may well be worth further examination. But they are not clear or urgent enough to justify a Commission of the kind proposed. I would be open to consider this again, however, if the House gave me clearer references to the kinds of alleged abuses concerned and a clearer mandate for me to incur expenses from the Consolidated Fund.

I am copying this letter to the Premier, the Leader of the Opposition and Mr Walton Brown JP, MP who brought the motion before the House.

Yours sincerely,
George Fergusson

George Fergusson

cc: Premier of Bermuda
Leader of the Opposition
Mr Walton Brown JP, MP