EXTERNAL FINANCIAL CONTROL BY THE [illegible] GOVERNMENT AND PROVINCIAL ADMINISTRATIONS OVER LOCAL GOVERNMENT IN SOUTH AFRICA

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C O N T E N T S

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CHAPTER 1.

INTRODUCTION.

From the time of the first permanent European settlement at the Cape in 1652 until the middle of the nineteenth century, there was strong central control over all forms of local government. As settlement moved eastwards and northwards from the Cape of Good Hope, landdrost and heemraden were appointed to assist in the conduct of local affairs; they were appointed by the Central Government. With the advent of British colonial rule, centralisation tended to be intensified, for in 1827 the system of landdrost and heemraden were abolished and resident magistrates within limited jurisdiction were appointed. This was not popular among the closely settled communities which had many local problems on their hands, not easily soluble by a remote central government. The difficulties of governing local communities from the Cape were made worse by the growing problems of defence and farm labour which arose in the Eastern Cape, leading finally to the Great Trek northwards.

There was enduring conflict between the Central Government and local bodies during the first half of the nineteenth century. Under British Colonial rule "the changing climate of public opinion made local selfgovernment inevitable."(1) The Central Government was forced to accept a system of gradual extension of responsible municipal government, and the Cape Municipal Ordinance 1836, based largely on the British system of local government, framed a pattern whereby responsible local government was granted, firstly in the Cape Colony and later in the three

(1) History of Local Government in South Africa
by L.P. Green (Page 16)

other colonies. This process was interrupted in varying ways, by the formation of independent republics in Orange Free State and Transvaal and the Anglo-Boer War. By 1909 local self government had been well established on the British pattern. The governments in each colony passed separate laws under which powers were granted to local authorities to conduct their affairs.

The South Africa Act of 1909 established a legislative and administrative Union of the four colonies under a unitary constitution. The former colonies became provinces of the Union of South Africa and in each province a Provincial Council was established. Powers were granted by the Central Government to the Provincial Councils to pass laws with regard to those matters which fell within their jurisdiction. In particular, Section 85 of the South Africa Act 1909 gave Provincial Councils the power to make ordinances in relation to "municipal institutions, divisional councils and other local institutions of a similar nature."(1)

The Central Government thus passed the entire responsibility for controlling local government over to the Provincial Councils, and they set about passing ordinances granting various powers to local authorities.(2)

In seeking the sources of external financial control by the Provinces over local authorities, therefore, it is clear that a thorough examination of these ordinances must be made.

However, although the Central Government in 1909 and in succeeding years passed on various forms of responsibility for local government to the Provincial Councils, it is of great importance to note that the Central Government itself at a later stage passed statutes which imposed direct controls on local authorities. The best example is the Public Health Act 1919 which imposed far-reaching obligations on local authorities consequent upon the influenza epidemic of 1918.

(1) The South Africa Act 1909 was repealed by the Republic of South Africa Constitution Act 1961, Section 84(1)(f) of which gives Provincial Councils similar powers as were contained in the South Africa Act 1909.

(2) In Transvaal and Cape Province the laws were consolidated into Municipal Ordinances in 1912, in the Orange Free State consolidation took place in 1913, but in Natal separate ordinances continued to be passed and it was not until the passage of the Boroughs Ordinance 1924 that major consolidation took place.

In addition to direct statutory control there are latent controls at both the Central and Provincial levels of government. These arise primarily from the doctrine of ultra vires under which local authorities are the creatures of statute and possess no rights and powers other than those specifically or by implication laid down in legislation. A local authority may thus levy rates on fixed property because that is a power positively granted in a provincial ordinance, but it may not impose a sales tax because nowhere in any ordinance is such a power conferred. For this reason indirect financial control, or financial control by exception, must also be taken into account.

The nature of external financial control must therefore be sought in three distinct spheres: (a)the statutes of the Central Government (b) the Ordinances of the four Provinces (c) the financial relations between the Central, Provincial and Local Governments.

The method which will be adopted in order to perceive the nature of direct financial control will be to go to the fons et origo of control - Acts of Parliament and Provincial Ordinances. A condensation of these laws appears in annexures 1 and 2 and the early chapters will analyse the financial control inherent therein. With regard to indirect financial control, the method will be somewhat different due to the absence of positive legislation. The nature of this type of control will be sought in the financial relations between the three tiers of government. After a study of the facts from these sources, the significance of various controls in relation to economic and political principles will be discussed.

CHAPTER 2.

CONTROL BY THE CENTRAL GOVERNMENT : I.

GENERAL.

The Acts of Parliament which have a bearing on the finances of local authorities are summarised in Annexure A. Where the law itself does not contain elements of control, and where control takes place mainly under administrative law, only the title of the Act and its purpose are given.

These Acts are scheduled in date order from the Public Health Act 1919 to the Physical Planning and Utilisation of Resources Act 1967, for the purpose of easy reference. However, for the purpose of discussing the nature of control, it is better that a different form of classification be adopted for the purpose of this text. The year in which an act is promulgated is of no significance when seeking the nature of control, for in many cases a particular law will merely consolidate all previous laws. For example, the Housing Act 1966 has its origin in the Housing Act 1920, and the 46 years between saw far-reaching development in the field of housing with consequential amendments to the Act.

A survey of the Acts of Parliament framed since 1910 reveals many forms of control imposed by the Central Government over local authorities, and in the sphere of financial control these laws can be classified into very clear categories. One possible method of classification would be the historical method. This would begin with the Public Health Act 1919, the first major example of direct intervention by the Central Government in the government of local authorities since 1909, the year when the control over local government was delegated to the Provincial Councils. This would be followed by the Housing Act 1920 and the Natives (Urban Areas) Act 1923 both of which imposed direct controls by statute over local government, and by the many subsequent Acts which extended and intensified control in many other spheres of local government. However, the historical or chronological method has this disadvantage, that the nature of control would be related more to periods than to the categories of control. It would give an adequate picture of the growth of control, yet sacrifice a coherent synthesis of the method of control embodied in all the lawsfrom 1909 to 1967.

For this reason, the chronological order of Acts has been abandoned in the chapters which follow, and a classification based on the nature of control has been adopted. The consequent classification of Acts of Parliament would then be as follows:-

1. <u>Those which impose major obligatory controls on local authorities.</u>
   (a) Public Health Act 1919;
   (b) Currency and Exchange Act 1933;
   (c) Bantu (Urban Areas) Consolidation Act 1945;
   (d) Community Development Act 1366;
   (e) Group Areas Act 1966;
   (f) Physical Planning and Utilisation of Resources Act 1967.
   (g) Abattoir Commission Act 1967.

2. <u>Those which impose minor obligatory controls on local authorities.</u>
   (a) Motor Carrier Transportation Act 1930;
   (b) Financial Adjustments Act 1932;
   (c) Livestock and Meat Industries Act 1934;
   (d) Marketing Act 1937;
   (e) Transport (Co-ordination) Act 1948;
   (f) Industrial Conciliation Act 1956;
   (g) Water Act 1956;
   (h) Livestock and Produce Sales Act 1956;
   (i) Electricity Act 1958;
   (j) Perishable Agricultural Sales Act 1961;
   (k) Aviation Act 1962.

3. <u>Those which impose controls on local authorities when local authorities seek aid from the State.</u>
   (a) Local Loans Act 1926;
   (b) Slums Act 1934;
   (c) National Roads Act 1935;
   (d) Native Building Workers Act 1951;
   (e) Native Services Levy Act 1952;
   (f) Natives Resettlement Act 1954;
   (g) Native Transport Services Act 1957;
   (h) Licences Act 1962;
   (i) Bantu Beer Act 1962;
   (j) Atmospheric Pollution Act 1965;
   (k) Housing Act 1966.

4. <u>Those which impose controls on local authorities similar to controls imposed on other institutions.</u>
   (a) Factories Machinery and Building Work Act 1941;
   (b) Workmen's Compensation Act 1941;
   (c) Unemployment Insurance Act 1946;
   (d) Transfer Duty Act 1949;
   (e) Pension Funds Act 1956;

(f) Wage Act 1957;
(g) Stamp Duties Act 1962;
(h) Shops and Offices Act 1964.

In the chapters which follow, only the first three of the above categories will be covered. Although local authorities have had occasion to protest against the control imposed by the Central Government under the Acts set out in the fourth category above, they are controls imposed on all alike. For example, a local authority must under the Factories, Machinery and Building Work Act 1941 comply with the same laws in its workshops as the manager of a private factory, and it must under the Workmen's Compensation Act 1941 treat its employees injured on duty no less favourably than is provided in the law for other categories of employers. There have been many occasions in the past where local authorities through the United Municipal Executive have sought exemption from some of the provisions of these laws applicable to both public and private organisations, but these representations have seldom been successful.(1) Compliance with some of the provisions of the laws in the fourth category above have proved to be particularly irksome to certain local authorities. For instance, under the Factories, Machinery and Building Work Act 1941 relatively small items of plant (e.g. filtration plants at swimming baths) were held to be factories in terms of the Act, and local authorities tendered strong evidence to the Industrial Legislation Commission of Enquiry regarding the problems of municipalities.(2) The main grounds on which submissions by local authorities have been made in nearly all cases, have been that the undertakings of local authorities are entirely different from competitive industry and are recognised as such both economically, politically and legally. Because of its close affinity with both the Central and Provincial Governments, local government should enjoy the same exemption granted in the laws to the senior partners of government.(3)

(1) For example, the United Municipal Executive made representations for total exemption from the Shops and Offices Bill 1962. The Minister of Labour replied that general exclusion of local authorities would create practical difficulties.
(2) See paragraphs 1913-1920. Report of the Industrial Legislation Commission of Enquiry. (U.G. 62-1951).
(3) Ibid.

Having listed the Acts under the fourth category above, and given a brief account of their impact on local authorities, they can be left out of account in the subsequent discussion regarding control by Central Government. While it is true that the provisions of these laws must be observed by local authorities, and for that reason contain a certain element of control it is more in the field of constitutional control that the real nature of central control over local authorities should be sought.

In the chapters which follow, the laws set out in the first three categories will be grouped and studied.

CHAPTER 3.

CONTROL BY THE CENTRAL GOVERNMENT : II.

PUBLIC HEALTH.

1. Historical.

When the South Africa Act 1909 was passed no specific provision was made for public health. Local authorities continued to cater for the health of their communities under the control of the Provinces. This was unsatisfactory, and a devastating influenza epidemic in 1918 showed up to a marked degree the inadequacy of the machinery which existed "In one of the provinces there were practically no public health bylaws; in another such laws had been enacted for a period only and were allowed to lapse; in all the provinces there was doubt and confusion as to the scope and functions of the Union Government and Provincial Administrations, which consequently lead to overlapping, friction and neglect."(1)

The death of 150,000 persons in the influenza epidemic of 1918 induced action, and at a conference of all levels of government and other organisations concerned, a Public Health Bill (which later became the Public Health Act No. 36 of 1919) was approved. It is of importance to note, however, that no fundamental constitutional changes were made, and the South Africa Act 1909 was not amended. "In spite of strong pressure exerted at various times by the organised medical profession of the country, hospitals,

(1) "Public Health, Housing and Slums Acts of the Union" by Nathan & Thornton 1941 (Introduction Page 1).

which constitute such an important weapon in combatting ill health, continue to be artificially separated from the rest of our health administration."[1] Similarly, Nathan and Thornton state that the Public Health Act, although an advance on existing legislations "left the provincial administrations responsible for local government and merely empowered the Minister to Act under certain circumstances should a local authority be in default.[2]

The National Health Services Commission was far more specific on the question of the Public Health Act 1919, and stated that the Act "failed to establish a national health authority with powers to deal with every aspect of national health and medical services."[3]

Although there was much overlapping of health services from 1919 to 1944, the report of the National Health Services Commission (a comprehensive document of 215 pages), did not solve any problems. Its recommendations were not adopted by the Government, primarily because the proposal to establish a National Health Service and the proposal that full executive and financial responsibility for personal health services be taken over by the Central Government, would have divested the Provincial Councils of powers given to them in the South Africa Act (e.g. to establish hospitals).

Local authorities approved the particular recommendation of the National Health Services Commission (1944), that all personal health services should be the responsibility of the Central Government, for this would have relieved them of considerable financial responsibility. Local authorities continued, through the United Municipal Executive, to press for greater financial assistance and in 1949 a committee was formed under the Minister of Firance. This Committee was known as the Havenga Committee. It recommended that the Government and the Provinces take over the full financial and executive responsibility for personal health services; but if any local authority should desire to control personal health services, the Government should refund 87½% of the approved net cost thereof. As an interim

(1) Medical and Health Legislation in the Union of South Africa (1949) by E.H. Cluver. Page 317.
(2) Public Health, Housing and Slums Acts of the Union (Introduction. Page 2).
(3) Report of the National Health Services Commissions 1944 (U.G. 30 - 1944) Para. 7.

measure it recommended increased refunds under the Public Health Act, and these remain as set out in the summary of the financial provision of the Act in Annexure A.

Local authorities were entirely satisfied with the allocation of health services recommended by the Havenga Committee. The increased refunds to cover the interim period before all personal health services were taken over by the Government and the Provinces also provided welcome additional financial relief for local authorities. The Public Health Amendment Act 1952 gave legislative effect to these additional public health refunds, but the amendment to the Act included one important principle which had not hitherto operated, namely that the Minister could control the salaries paid to the personnel engaged on refundable health services. The United Municipal Executive strongly opposed this amendment, and continues to do so. (1)

By 1956 no further action had been taken regarding the re-allocation of health services and in that year the Minister of Finance appointed a committee, with Mr. C.L.P. Borckenhagen as Chairman, to investigate the functions and finances of local authorities. In its first interim report tabled in Parliament in 1960, the Committee dealt with the re-allocation and financing of Health Services. (2) Its recommendations embraced a clear re-allocation of health services in which, broadly, local authorities would (a) continue to undertake full financial and executive responsibility for environmental health services (e.g. sanitation, water, health, inspection, etc.) (b) continue to do tracing and reporting work in connection with infectious diseases (c) undertake, with financial assistance from the Government not exceeding 50%, permissive promotive health services (e.g. maternity and child welfare services).

All other personal health services would continue to be run by the Central Government or the Provinces or would be taken over from local authorities. On the basis of figures taken from 44 local authorities, there would be a net saving of R693,980 to these local authorities. The Committee laid down the following principles in dealing with the re-allocation of financial responsibility.

(1) See Minutes of United Municipal Executive, 20th August, 1964.
(2) First Interim Report of the Committee of Enquiry into the Financial Relations between the Central Government, the Provinces and Local Authorities. Introduction and Report on the re-allocation and financing of Health Services. (G.P. S 7336135-1959/60)

(a) as far as possible the authority assuming the executive responsibility for an individual health service should also assume the financial responsibility therefor and vice versa;

(b) any necessary financial adjustment resulting from the above should be achieved as far as possible by -
   (i) amended powers of taxation, and/or
   (ii) overall grants on a formula rather than on a detailed refund basis; and

(c) the authority assuming both executive and financial responsibility should be empowered to delegate the executive responsibility if it can make satisfactory arrangements.(1)

The adoption of the recommendations of the Borckenhagen Committee would benefit local authorities by releiving them of all responsibility for infectious diseases and curative services (except for reporting and tracing) and this is in line with the previous recommendations of the National Health Services Commission 1944 and the Havenga Committee 1949.

The United Municipal Executive gave forceful evidence before the Borckenhagen Committee 1944 to the effect that local authorities should be relived of all responsibility for all personal health services.(2) However, the Borckenhagen Committee recommended that local authorities should retain responsibility for persissive promotive health services (e.g. maternity and child welfare) with financial assistance from the State up to a maximum of 50%.

The re-allocation of health services recommended by the Borckenhagen Committee is a big advance on any previous division of services, and its implementation would see the end of the system of public health refunds. This method of subsidy has, together with the overlapping of services, caused much confusion and waste since the passage of the Public Health Act 1919.

With this historical background to health services, it is now possible to study the aspects of financial control which emerge from central control over health.

(1) Op. cit. Para. 61.
(2) See Memorandum of the Institute of Municipal Treasurers and Accountants 1957 and 1958 and reference to those in paragraphs 52 to 56 of the Borckenhagen Committee's Report. Op. cit.

2. <u>Financial Control under the Public Health Act 1919</u>.

The type of control imposed with regard to public health is similar to that adopted in many other countries, i.e. the granting of wide powers to administrative officials. Examples of this in the financial sphere are to be found in Annexure A under the section which summarises the main financial provisions of the Public Health Act 1919. The Minister has power to compel a local authority to combat infectious diseases and to recover the cost from such local authority. The Minister has power to make advances to a local authority and his certificate of cost is final. He may make refunds of expenditure incurred by local authorities and his decision is final; there is no obligation on him to make any refund. He has extensive power to make regulations and as long as they are within the provisions of the Act, they are valid. This type of financial control has not been successful for the reasons which follow in succeeding paragraphs.

The main purpose of the Public Health Act was to ensure that, because the combatting of diseases was in the public interest, local authorities must be compelled to take action. This was accomplished by legally decentralising the functions of public health to the Provinces and local authorities, and clothing the Minister with drastic powers to deal with those local authorities which failed to accept their legal responsibilities. The provisions of the Act are drastic yet ineffectual. The procedure is cumbersome because the Provinces had to be brought into the picture. The Act was a compromise between leaving the powers of the provinces intact, and giving one Ministry control over health and local government. Dr. J. Alexander Mitchell, who played a leading part in framing the Act said in evidence before the Select Committee on the Public Health Bill "It would have been easier to organise an efficient public health organisation, had the Provinces not existed."[1].

A law was thus passed which gave the State wide powers over local authorities, but the methods for ensuring compliance with the law were inefficacious. To this difficulty was added a system of financial aid to local authorities which did not encourage local authorities to exert themselves in the field of public health. Originally the refund

(1) Report of the National Health Services Commission 1944, Op. cit. Paragraph 25.

which the government made in respect of most infectious diseases was fixed at fifty percent of the approved net cost. The percentage was fixed on a basis the same as that applying to the general subsidy paid by the Central Government to the Provinces, a basis which was approved by the Murray Commission in the following terms:-

> 'One of the most salutary principles for the creation of a sound system of public finance, is that any authority which is entrusted with the expenditure of public money, should be charged with the direct liability for raising either the whole or a substantial portion of the revenue required to meet such expenditure. When funds are raised by one authority and disposed of by another, the sense of responsibility by which the latter should be guided and which constitutes a most valuable protection for the taxpayer, is almost inevitably weakened. It is only when the power to spend is controlled by the liability to provide the necessary funds that efficient and economical administration can be secured. The reciprocal action of these two influences tends to discourage extravagance and to ensure that good value is obtained for all the expenditure incurred." (1)

This principle was endorsed by the Roos Commission in 1934, which referred to it as the "first principle of provincial finance".(2) As long as the Provincial Administrations had to raise from their own funds half of what they spent, there would be sufficient inducement to ensure economical administration on the part of the Provinces.

Yet the earlier Baxter commission in 1923 had criticised the 50-50 principle on the grounds that it lead to extravagance in provincial spending and was thoroughly unsound.(3) It broke down because assigned revenues were not taken into account. Expenditure was undertaken on the basis, not of 'where are we to find the money' but on the basis, 'where are we to find half the money'. In the view of the Commission "the most essential factor in economical administration is the development of local responsibility."(4)

There is no clear indication why the legislators in the Public Health Act 1919 decided on a refund to local authorities of fifty percent of the approved net cost of health services, but they were probably influenced by the 'salutary

(1) First Report of the Financial Relations Commission (U.G. [illegible]) Para. [illegible]
(2) Report of the Provincial Finances Commission 1934 - U.G. 46/1934)
(3) Report of the Provincial Finances Commission 1923 - (U.G. 19/1923)
(4) Ibid. Para. 600.

principle' laid down by the Murray Commission. Relief in this view is strengthened by a memorandum which the Secretary of Health submitted to the Borckenhagen Committee in 1957, in which the following statement was made:-

> "Provision for granting financial assistance to local authorities was introduced into the Public Health Act in order to assist them to carry out the obligations imposed upon them by that Act. Originally the assistance so granted never exceeded the share of the costs borne by the local authorities themselves. This ensured a fully responsible partnership; a relationship which was disturbed when the contribution of the Government exceeded that of the local authority."(1)

It was expected that the 50-50 principle would both encourage local authorities to perform the duties imposed by the Act and ensure economical administration of the services performed.

However, the limitation of financial aid to the one sphere of combatting infectious diseases only, to the exclusion of all other personal health services, did not provide sufficient incentive for local authorities courageously to embark upon comprehensive public health services. The National Health Services Commission 1944 reported that "It is very much to the credit of the majority of local authorities that they have gone beyond their specifically prescribed statutory obligations and have provided infant clinics, ante natal clinics, etc."(2) Local authorities over a long period sought additional financial aid from the Government, and they persistently requested the Government to take over the full financial responsibility for all personal health services.(3) In 1946 and 1952 the Government conceded additional financial aid, and today the Government refunds 87½% on most services (see for example Sections 48 and 50 in Annexure A). There has thus been a complete departure from the 50-50 principle. In accordance with the precept 'he who pays the piper calls the tune', the control imposed by the Government on local authorities has been greatly

(1) See annexure to proceedings of United Municipal Executive - February, 1958.
(2) Op. cit. Para. 13. Page 129.
(3) See memoranda on Financial Relations prepared for United Municipal Executive by the Institute of Municipal Treasurers and Accountants S.A. Inc. in 1944, 1949, 1955 and "Supplementary Memorandum on Health Services" in 1958, which concluded as follows "....the United Municipal Executive must repeat its longstanding request that local authorities should be relieved of all financial responsibility for personal health services..."

intensified. This intensification of control is quite logical, for it is not to be expected that a department of the Government will pay out claims by local authorities without close scrutiny. The requirements of the State Treasury and the Controller and Auditor-General have to be met. Any system of refunding expenditure involves detailed control. Local authorities have protested vigorously against the enormous amount of work in submitting claims.(1) Financial control by the Government was considerably intensified when the Public Health Act 1919 was amended in 1952, giving the Minister power to control the salaries of health personnel engaged on refundable services. Even a small increase in the salary of a Bantu midwife had then to be submitted to Pretoria for approval. In his Presidential report to the 14th Annual Health Congress 1956, Dr. H. Nelson, Medical Officer of Health of Pretoria quoted figures to show the bad effect the 1952 legislation was having on the recruitment of health inspectors. It also required elaborate bookkeeping; for example, an analysis had to be made of an official's service in time and money if he worked on more than one service.(2)

In the light of the great dissatisfaction of local authorities with the part-refund system, and the clear evidence on this aspect given before the Borckenhagen Committee, it was not surprising that this Committee recommended a departure from the system on the lines that the authority assuming the executive responsibility for a service should assume financial responsibility therefor, and vice versa.(3) Adoption of the Committee's recommendations would cause the old system of part-refund expenditure to vanish for two reasons:-

(a) The Committee recommends that the State and the Provinces take over full financial and executive responsibility for all personal curative health services, and there would therefore be no claims on the Government by local authorities;

(b) The Committee recommends that local authorities take over full financial and executive responsibility for environmental health services, and there would therefore be no claims on the Government by local authorities;

(c) The Committee recommends that local authorities should be permitted to undertake permissive promotive health

(1) See Memorandum on "Proposed Simplification of Public Health Part-Refund Claims" prepared by the I.M.T.A.(S.A.)Inc. in 1957 for the United Municipal Executive.
(2) South African Municipal Magazine - January 1957.
(3) See above. Page 10.

services with financial assistance from the Government, but "such financial assistance should take the form of a contribution to be made by the Department of Health on a formula basis determined by mutual agreement between the Department and the local authority concerned, the contribution to be preferably less than but not to exceed 50% of the net cost of the service.(1) There would thus be a general grant, and not a refund of expenditure, or specific grant

The adoption of the Borckenhagen Committee's recommendations and the consequential amendments to the Public Health Act 1919 would be a big step forward. Apart from the logical re-allocation of health services between the Central, Provincial and local authorities, there would be the welcome exit of the part-refund system which has been the cause of many vexing problems. Local authorities would also benefit financially.(2) The fear of local authorities that the cost of the permissive promotive health services would increase rapidly under public pressure, is something which is uncertain at this stage. From the view point of financial control, there can be only advantage in the elimination of the part-refund system. In its place, as far as the permissive promotive services are concerned, there is recommended a formula but no details are given. This indicates that in the place of a part refund system, there would be an annual grant from the Government, based on a formula related to population and other factors. Such a step would considerably lessen direct financial control. An annual subsidy based on formula and requiring compliance with general standards of performance would eliminate much of the present minutiae of control. A block-grant would be made annually, and there would be only a general supervision to see that certain standards are observed, similar to the position with road subsidies, where a general standard has to be maintained but where an annual subsidy is paid on the basis of say miles of main roads, and not in accordance with the detailed expenditure incurred by a local authority.(3)

If the recommendations of the Borckenhagen Committee are adopted, a great many of the drastic provisions of the Public Health Act regarding the responsibility for combatting infectious diseases would disappear, because the provisions would become unnecessary if local authorities are

(1) Op. cit. Para. 145. Page 15.
(2) See details on page 17 of the Report.
(3) See for example Roads Ordinance 9 of 1933 (Transvaal).

relieved of all responsibility for handling communicable diseases, except for tracing the vectors of disease. The necessity for strict financial controls contained in the Act would likewise disappear, and all that would be necessary would be a listing of the promotive health services to be undertaken and the basis of financial assistance from the Government. In view of the fact that the services would be permissive and the financial aid from the Government based on a block formula, financial control over public health services would not be an important factor. The 47 year old method of financial control started in 1919 which has been amended to much and caused so much vexation among the three tiers of government, would thus end.

Certain local authorities have put forward the proposal that those local authorities which wish to run personal health services (e.g. maternity, child welfare) should be permitted to do so, and obtain a subsidy of 87½% from the Government.(1) If the main principles of the Borckenhagen Committee are to be accepted it is extremely unlikely that such a return to the part-refund system for permissive personal health services would be acceptable. Any Government which bears a percentage of the cost of a service will impose strict financial control to ensure that public money handed over by the State is not wasted.

Such strict control would not be necessary if the State were to lay down in a new consolidating Act a formula for subsidy, based, say, on a percentage of population or total income weighted by other factors. General yardsticks could then be used to ensure that the money is spent in the public interest. Local authorities may still press for a removal of the 50% maximum, but even if the Government accepts the Borckenhagen Committee's proposals for permissive personal health services, there would be (a) a considerable improvement in the method of financial control, and (b) the demise of a system where "the body undertaking expenditure is responsible for only two shilling and sixpence in the pound thereof" and where there is "detailed and irksome control....by the authority providing the other seventeen shillings and sixpence."(2) It would also be in line with developments in Britain in the past decade, where general

(1) See for instance Memorandum on the First Interim Report of the Borckenhagen Committee, by Dr. L.P. Green (United Municipal Executive Proceedings - August 1961)
(2) First Interim Report of Borckenhagen Committee. Op. cit. Para. 69. Page 8.

grants have superseded specific grants for particular services, with the object of reducing detailed central control.

CHAPTER 4.

CONTROL BY CENTRAL GOVERNMENT : III.

BANTU AFFAIRS.

1. Introduction.

Financial control exercised by the Central Government in respect of Bantu Affairs is stronger than in the case of Public Health. Reference to the summary of the financial provisions of the Bantu (Urban Areas) Consolidation Act No. 25 of 1945 (Annexure A) will reveal that the entire financial accounts of a local authority relating to Bantu in urban townships are subject to control by the Central Government. In the case of Public Health, financial control is limited to certain duties imposed under the Act, or to services on which the Government refund a percentage of expenditure. In the case of environmental health services, local authorities enjoy relative freedom from central financial control. In the case of Bantu Affairs, however, every detail of income and expenditure must be approved by the Minister. The financial control is naturally only one aspect of control, for the Bantu (Urban Areas) Consolidation Act 1945 is an example of the complete control exercised by the Central Government over all aspects of Bantu in urban areas. The Minister's powers to compel local authorities to take action in a wide variety of spheres such as the movement, residence and segregation of Bantu in urban areas are very far-reaching.

2. Historical.

The Central Government's powers stem originally from the South African Act 1909 which vested "the control and administration of native affairs.... throughout the Union" in the Governor General in Council.(1) Prior to 1910, the four Colonies separately controlled local authorities who were given a free hand in handling Bantu communities in urban areas. When the Provincial Councils took over from the

(1) Section 147. The Republic of South Africa Constitution Act 1961 retains the provision, except that the power is vested in the State President, acting on the advice of the Executive Council.

grants have superseded specific grants for particular services, with the object of reducing detailed central control.

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BANTU AFFAIRS.

1. Introduction.

Financial control exercised by the Central Government in respect of Bantu Affairs is stronger than in the case of Public Health. Reference to the summary of the financial provisions of the Bantu (Urban Areas) Consolidation Act No. 25 of 1945 (Annexure A) will reveal that the entire financial accounts of a local authority relating to Bantu in urban townships are subject to control by the Central Government. In the case of Public Health, financial control is limited to certain duties imposed under the Act, or to services on which the Government refund a percentage of expenditure. In the case of environmental health services, local authorities enjoy relative freedom from central financial control. In the case of Bantu Affairs, however, every detail of income and expenditure must be approved by the Minister. The financial control is naturally only one aspect of control, for the Bantu (Urban Areas) Consolidation Act 1945 is an example of the complete control exercised by the Central Government over all aspects of Bantu in urban areas. The Minister's powers to compel local authorities to take action in a wide variety of spheres such as the movement, residence and segregation of Bantu in urban areas are very far-reaching.

2. Historical.

The Central Government's powers stem originally from the South African Act 1909 which vested "the control and administration of native affairs....throughout the Union" in the Governor General in Council.[1] Prior to 1910, the four Colonies separately controlled local authorities who were given a free hand in handling Bantu communities in urban areas. When the Provincial Councils took over from the

(1) Section 147. The Republic of South Africa Constitution Act 1961 retains the provision, except that the power is vested in the State President, acting on the advice of the Executive Council.

Colonial Governments in 1910, doubt existed for many years whether the Governor-General-in-Council or the Provincial Councils should approve regulations dealing with Bantu Affairs. The Government pressed the view that in the interests of a uniform policy and proper control over the Bantu in urban areas, the controlling authority should be the Central Government; a uniform statute for improving the standard of administration of Bantu Affairs by local authorities would best give effect to state policy. A Bill was prepared, but the First World War (1914-1918) interfered with its passage and it was not until the Stallard Commission reported in 1921 that the Bill was refurbished and resubmitted. During the period 1910 to 1922 other Commissions had reported, but only incidentally, on the very bad conditions under which Bantu lived in urban areas.(1)

The Stallard Commission was very forthright in its condemnation of the confused handling of Bantu affairs in urban areas:-

> "The unregulated mixture of the black, white and coloured races in congested areas, or slums, is a cause of social degradation and evil to all concerned. There is no single individual or body responsible for administering the law as between black and white in this matter. The Government, through the Department of Native Affairs, has the duty of protecting natives. The local authority has the power of providing housing accommodation for them."(2)

One of the Commission's main recommendations was that local authorities should be charged with the duty of providing adequate housing for Bantu, coupled with control over the ingress and the removal of unemployed from the area. The Commission also made the following recommendation "That it should be a recognised principle of government that natives - men, women and children - should only be permitted within municipal areas in so far and for so long as their presence is demanded by the wants of the white population."(3)

In the decades which followed, there were many differing views on the permanency or otherwise of the Bantu in urban areas, and whether or not they should have the right to own

(1) For relative extracts from these reports, see Report of the Native Laws Commission 1946-48 (U.G.No. 28-1948) Page 3.
(2) Report of the Local Government Commission (Transvaal) 1921 (T.P. 1 - 1922) Para. 265.
(3) Op. cit. Para. 267.

fixed property. The Native Economic Commission 1930-1932 saw two distinct groups, those who have settled permanently in the towns, and the tribal natives who come and go.(1) The Native Laws Commission 1946-48 was more specific and said in one of its recommendations "We therefore have to accept the fact that there is a permanent urban Native population."(2) However, there was later a clear move away from this view; the Tomlinson Commission 1955 laid down the present-day policy of separate development under which independent Bantu homelands are being developed; the Bantu must look there for their economic and political future.(3) The whites have no permanent rights of any kind in the Bantu areas, and the same applies to the Bantu in white areas.(4) The policy was put even clearer by the Deputy Minister (now Minister) of Bantu Administration and Development, Mr. M.C. Botha, at the opening of the Orange Free State Municipal Congress at Odendaalsrus on 5th November, 1963. "The only justification for the Bantu's presence in the white areas is, therefore, that they sell their labour to the whites. It speaks for itself therefore that the number of Bantu in the white areas must normally not be more than what is necessary for the labour requirements of a particular centre or area."(5)

This background is important because the Central Government's policy has had a profound influence on the finances of local authorities as will be made clear in the following paragraphs.

The report of the Stallard Commission in 1922 was followed in 1923 by the Natives (Urban Areas) Act 1923 which was to form the pattern of control over Bantu in urban areas until the present-day. There have been very considerable amendments, and the powers of the Minister have beengreatly increased over the years. Local authorities have regularly protested against the drastic powers assumed by the Government, and the deputations from the United Municipal Executive to the Minister or Deputy Minister have been frequent.(6)

(1) Report of the Native Economic Commission 1930-32 (U.G.22-1932) Paragraphs 529 - 543.
(2) Report of the Native Laws Commission 1946-48 (U.G.28-1948) Para. 49.
(3) Summary of the Report on the Socio-Economic Development of the Bantu Areas within the Union of S.A.(U.G.61-1955)
(4) For a clear statement of this policy see Report of the Department of Bantu Administration and Development 1958/59 (U.G. 57 - 1960).
(5) The S.A. Municipal Magazine - December 1963(Translation)
(6) See for example the proceedings of the United Municipal Executive 1954 and 1957, when the Native Laws Amendment Bills of 1954 and 1957 were considered.

The basic financial control incorporated in the 1923 Act still remains today. A separate Bantu Revenue Account has to be maintained. This had its origin in a conference between members of the Stallard Commission and officials of the Government Native Affairs Department, one of whose conclusions was "the whole revenue from natives derived by the municipality to be spent on their betterment."(1) Several amendments have been made to provide for the additional categories of income and expenditure which have arisen as the result of the growth of urban areas (e.g. Bantu Beer Sales, Bantu Services Levy, etc.) and the requirements of the law as it is today are set out in Annexure 1, where a summary of the financial provisions of the Bantu (Urban Areas) Consolidation Act 1945 is given. Before discussing the nature of the financial control imposed on local authorities under this legislation, it is desirable to mention another section which had its origin in the Report of the Stallard Commission. This Commission was impressed with the Durban system whereby many of the services rendered for the Bantu were paid for from the sal of Bantu beer. The Commission recommended that the scheme be introduced into the Transvaal as soon as possible. In the Natives (Urban Areas) Act 1923 and in all subsequent legislation local authorities were given power to acquire" the exclusive right to sell Bantu beer in a location or native village.

The above survey of control over Bantu in urban areas indicates three important fields of financial control, namely:-

(a) The duty imposed upon local authorities of providing adequate housing for the Bantu in urban areas;

(b) The separation of the Bantu Revenue Account from the general finances of a local authority;

(c) The legal right given to local authorities to sell Bantu beer and European liquor to Bantu, and the control by the State over the profits arising therefrom.

These will be dealt with separately below.

(1) See Memorandum of Conclusions, Appendix VI. Report of the Local Government Commission 1921 (TP 1 - 1922)

3. Bantu Housing.

Notwithstanding the powers given to the Central Government with regard to Bantu Affairs in the South Africa Act 1909 and the Natives (Urban Areas) Act 1923, the duty of providing housing for the Bantu has always remained the responsibility of local authorities. Section 2 of the Bantu (Urban Areas) Consolidation Act 1945 provides that a local authority may with the Minister's approval set aside areas for Native villages and provide accommodation. Sections 3 and 4 arm the Minister with drastic powers against a local authority where the accommodation provided is "inadequate or unsuitable", but the initiative lies with local authorities. The Housing Act 1920 was promulgated with the intention of assisting local authorities financially with housing schemes; housing will be dealt with in another chapter and only a few salient points relating to Bantu housing will be covered here. The Housing Act 1920 did not provide a rapid solution to the bad housing conditions in urban areas, and local authorities continually pressed the Government for greater financial assistance. The Government's policy changed considerably during the period 1920 to 1960. The very great importance of housing in the development of Bantu urban townships may be gauged from the following analysis of total expenditure in the Bantu Revenue Account of 47 local authorities in 1959.(1)

Locations, villages and hostels	72.8 per cent
Health, Social Welfare, Recreation etc.	12.3 " "
Registration, influx control, labour bureau and administration of services levy	9.0 " "
General Administration	2.6 " "
Capital contributions ex revenue	3.3 " "
	100.00 " "

The Central Government assumed strong powers of financial control over the finances of Bantu in urban areas in the Natives (Urban Areas) Act 1923, yet in the very important sphere of removing slums and providing adequate housing, local authorities were left to act themselves, with financial assistance by way of loans provided in the Housing Act 1920. Local authorities were able to borrow money from the State for the construction of dwellings at rates of interest which were on average just below the rate which the Government paid on its long term stock issues. Thus, financial

(1) Figures quoted in the Seventh Interim Report of the Borckenhagen Committee. Paragraph 166.

control entered the picture only when local authorities borrowed from the State.

4. The Bantu Revenue Account.

Reference to the relative sections in Annexure 'A' dealing with Bantu (Urban Areas) Consolidation Act No. 25 of 1945 will reveal the very strict nature of financial control. There must be complete separation of the Bantu Revenue Account from the other financial accounts of local authorities. Estimates of anticipated expenditure must be submitted for the Minister's approval, and all tariffs must be approved by him. Services to a Bantu Township must be charged for at cost price, a matter which has caused many problems and many submissions to the Government.(1) Circular letters from the Department of Bantu Administration and Development prescribe the form of estimates, and the details to be included. If there are changes in tariffs "it should be stated how the charges therefor compare with the charges made for the like service in other portions of the urban area".(2) In a very detailed circular sent to local authorities in 1963, a standardised schedule for the completion of estimates is included, with a comprehensive list of details to be submitted, e.g. a schedule of all white and Bantu posts in the department with full details of present incumbents, salaries and allowances.(3) When the estimates have been approved in writing by the Minister, expenditure may take place only in accordance with such estimates, and any votes exceeded must be reported for the necessary authority. The final accounts are audited by the Provincial Auditor, and the Minister may surcharge an urban local authority with the amount of any payment made without the minister's consent.(4)

Financial control is therefore complete and the only latitude a local authority would have would be a variation of the nature of expenditure within the totals of the votes in the approved estimates. The expenditure would have to be consistent with the description of the vote otherwise

(1) See "Cost of Municipal Services Chargeable to the Bantu Revenue Account" (I.M.T.A. Memorandum July 1959)
(2) Circular 210/313, 28th October, 1938.
(3) Circular No. A5/2, 26th March, 1963.
(4) Sections 19 (11)(a) Act 25 of 1945.

the Provincial Auditor would comment thereon in his report.[1]

When the Native Revenue Account was first created in terms of the Natives (Urban Areas) Act 1923 its structure was relatively simple; it included only income from fines, licences, pass and registration fees, rentals, and proceeds from the sale of Bantu beer.

Today other major categories of income have been added, namely, income from theNative Services Levy, and income from the sale of liquor.[2] The Native Services Levy was introduced in 1952 after a long history of negotiations between local authorities and the Central Government regarding the financing of Bantu Housing.[3] Prior to 1950, the main desideratum in housing policy had been how much the Bantu should be subsidised for accommodation in urban areas, and" how this subsidy should be shared between local authorities and the State. From 1950 onwards, local authorities pressed the view that because employers benefitted financially from the low Bantu wage structure, they should pay towards Bantu housing. The ideal would be to pay wages high enough to enable the Bantu to pay a full economic rental, with no element of subsidy. However, the idea of a levy on employers gained favour and the Native Services Levy Act 1952 was promulgated requiring employers of Bantu labour to pay to the local authority 20c per week per Bantu housed by the local authority (for details see Annexure 'A'). Financial control over income from the levy is similar to that described for the Bantu Revenue Account. With regard to expenditure from the fund, this may take place only on services to Bantu townships, and a local authority must submit full details, plans and estimates of any proposed capital project to a local Native Services Levy Committee, and the Bantu Affairs Commissioner transmits their recommendations to the Department of Bantu Administration and Development.

With regard to income and expenditure on liquor, this forms part of the Bantu Revenue Account.[4] Financial control is similar to that exercised over the general Bantu Revenue Account, but a separate liquor account must be opened.[5]

(1) For example, if the purchase of new furniture were to be charged to a building maintenance vote, it would invite comment.
(2) Native Services Levy Act No. 64 of 1952, and Section 100 Bis of the Liquor Act 1928.
(3) The effect of the levy on Bantu housing is covered in a later chapter dealing with the Housing Act 1920.
(4) See Section 19(3) Quat. of the Bantu(Urban Areas) Consolidation Act 1945.
(5) See Section 19(1) of the Act.

There is one further aspect of control which must be observed and that is the disposal of liquor profits. The Minister is given power to specify the manner of disposal of liquor profits in terms of the Liquor Act 1928 (Subsection 7 of Section 100 bis of the Liquor Act 1928) and he has determined that 80% of the profits shall be paid to the Department of Bantu Administration and Development for application in the general interest of the Bantu, and the remaining 20% shall remain in the Bantu Revenue Account and shall be dealt with as if it were revenue derived from the sale of Bantu beer.

There is one other category of income which must be isolated and that is the income from the Native Schools Levy Fund Account. This is not specifically mentioned in the Act but is a sub-account created in terms of Departmental policy.(1) In terms of this policy authorities may levy up to 20c per month as an addition to site rentals in Bantu townships and use the proceeds for constructing and maintaining lower primary schools.

5. The Bantu Beer Account.

Although the Bantu Beer Account is a sub-account of the Bantu Revenue Account, it forms the subject of a special treatment here because there have arisen other forms of financial control in the disposal of profits on the sale of Bantu beer.(2)

In the original Natives (Urban Areas) Act 1923 there were no restrictions on the disposal of the profits arising from the sale of Bantu beer. The municipal monopoly of the sale of Bantu beer was not general except in Natal where it had been common practice since 1908. From 1930 onwards the influx of Bantu from the reserves to urban areas increased, and in 1935 the Government appointed a departmental committee to investigate how the influx of Bantu could be controlled.(3) It's recommendation led to the passage of the Native Laws Amendment Act 1937, which imposed strict controls on the entry of Bantu into urban areas, but of more importance to the subject now under discussion was the fact that the Act also gave further encouragement to local authorities to acquire a monopoly of

(1) Circular letter No. 102/302/1 - 26th March, 1958.
(2) Section 19(1) of the Act.
(3) Report of the Native Laws Commission 1946/8 (U.G. No. 28-1948) Appendix 5.

the sale of Bantu beer as a means of solving the over-crowded housing conditions, as finance had been a major obstacle.[1] The position is put clearly by Professor H.R. Burrows as follows:

> "The Act of 1937 marks a determined effort by the Central Government to force local authorities, even against their wishes, to allow Natives to consume their special beer and is a clear recognition that the policy of total prohibition, adopted by certain local authorities, had been a failure."[2]

From 1937 onwards local authorities greatly intensified the sale of Bantu beer, and large profits were made. Local authorities utilised the profits for financing general services in Bantu Townships. The influx of Bantu into urban areas "continued to outstrip the capacity of public bodies to provide housing and other amenities."[3] The Government in 1941 appointed a commission to enquire into the manufacture and supply of Kaffir Beer, and this Commission recommended, among other things, that Bantu beer profits should be allocated only for the social welfare of the Bantu.[4] The Commission gave as its reason the fact that local authorities could finance housing in ways other than from beer profits.(e.g. loans under the Housing Act 1920) and beer profits should be conserved for improving the social amenities of the Bantu in beer halls and in the townships generally. This recommendation passed into legislation in the Native Laws Amendment Act No. 36 of 1944, which compelled local authorities to create a sub-account of the Bantu Revenue Account to be known as the "Kaffir Beer Account" which would be chargeable only with the cost of maintenance and sale of the beer, plus "any service, expenditure or grant which may be certified in writing by the Minister as being calculated to improve the social recreational amenities available for the Native residents within the area of the urban local authority, or otherwise to promote the social welfare of such residents."[5]

Local authorities strongly opposed this amendment to

(1) Ibid. Para. 3.
(2) "Memorandum on Kaffir Beer Profits". Department of Economics, Natal University College, November 1945.
(3) Report of the Native Laws Commission 1946/8, Para. 3.
(4) Report of the Kaffir Beer Commission, June 1942.
(5) Section 19, Act 36 of 1944.

the Act, particularly as the Minister ruled specifically that Bantu housing could not be classified as social welfare.[1] Under strong pressure from local authorities, the Government in October 1945 appointed a Committee to enquire into all aspects of the manufacture and sale of Bantu beer by local authorities, and the United Municipal Executive pressed for the removal of all restrictions on the use of Bantu beer profits.[2] The Committee issued its report in 1948 and the submissions of the local authorities were largely met: "Adequate and suitable housing is one of the basic necessities of life and is an essential contribution to social welfare. It is difficult to understand, therefore, why the losses sustained in providing good dwellings should not in part be borne out of the beer profits where these are available."[3]

The Committee recommended that up to two-thirds of beer profits should be allowed towards defraying the losses on Bantu housing or towards reducing rentals or towards capital expenditure on housing.[4] The Government gave effect to their recommendations in 1952 by amending the Bantu (Urban Areas) Consolidation Act 1945 whereby authority was given for two-thirds of Bantu beer profits to revert to the main Bantu Revenue Account, against which would be charged losses on housing schemes, amounts required to offset reductions in rentals, capital expenditure on housing schemes, and loan and maintenance charges on Bantu wages.[5] This is still the position today, except that an important power was conferred on the Minister in 1964, whereby he may call upon local authorities to pay over to the Government an amount fixed by him, to be spent in the interests of the Bantu generally, not necessarily resident in the area of the local authority. (See Annexure for details).[6]

It is clear from this account of the legislation covering Bantu beer profits that there are two distinct forms of financial control. Firstly, there is the control over the Bantu Beer Account itself, similar to the control exercised

(1) See for instance his reply to the City Council of Durban, quoted in the Durban City Council's memorandum to The Kaffir Beer Profits Enquiry 1945.
(2) See 'Memorandum on Kaffir Beer Profits'(Nov.1945) prepared by the I.M.T.A. S.A.(Inc.) on behalf of the United Municipal Executive and "Memorandum for submission to the Native Laws Commission of Enquiry" by the I.M.T.A. S.A.(Inc.) and "Memorandum on the Financial Relations between the Central Government, Provincial Administration and Local Authorities in the Union"(1944) prepared by the I.M.T.A. S.A.(Inc.) on behalf of the United Municipal Executive.
(3) Report of the Kaffir Beer Profits Enquiry 1945. Para. 78.
(4) Ibid. Para. 96.
(5) Section 34 of Act No. 54 of 1952.
(6) Section 55 of the Bantu Laws Amendment Act 42 of 1964.

over the Bantu Revenue Account as a whole. The requirement that a separate Bantu Beer Account has to be opened and only certain types of expenditure charged thereto, imposes definite accounting responsibilities on local authorities in the preparation of their final accounts and the Provincial Auditor must ensure that the allocation of expenditure takes place in accordance with the Act.

The other type of control is that whereby the Central Government restricts the use of the revenues of local authorities. This is quite a different form of control and will be discussed more fully when other legislation is dealt with in later chapters. The control, in the case of the sale of Bantu Beer, has operated briefly as follows:-

The Government required local authorities in 1923 and again in 1937 to sell beer and get on with providing urban amenities for the Bantu. In 1944, the Government's view was, "We find the Housing Act 1920 provides sufficient power to enable you to build houses, and therefore you may not use beer profits for housing." In 1952 the Government concluded that housing was an important amenity, and therefore it permitted two thirds of the beer profits to be used for housing. This problem of control without responsibility will be noted frequently in later chapters, but it is particularly applicable to Bantu Beer profits.

Profits on the sale of Bantu beer form an important part of the Bantu Revenue Accounts of local authorities and the Borckenhagen Committee came to the following conclusions:

(1) That contributions from Bantu beer profits form an extremely important part of the finances of local authorities insofar as these accounts are concerned.

(2) That losses on locations, villages and hostels constitute by far the most serious cause of deficits (where these occur) in these accounts.

(3) That in other respects the revenues at present available to local authorities for Bantu administration should be (and in most cases are) sufficient to cover the expenditure incurred under these accounts.(1)

Much of the earlier discussion over Bantu beer profits had been devoted to the moral and economic aspects. The

(1) Seventh Interim Report of the Committee of Enquiry into the financial relationship between the Central Government, the Provinces and local authorities, 1963. Para.172.

Social and Economic Planning Council thought that the magnitude of the Bantu beer profits was "a highly regressive concealed tax and in no way conforms to the norm of equity."(1) Mr. R.G. Randall, while stating that such taxation was regressive, said "it may be argued that the Native will get his beer in any case and it is better to arrange for a municipal supply of beer, made from pure ingredients and with a fixed alcoholic content to draw him away from other unhealthy, highly alcoholic, illegal brews."(2) The Department of Bantu Administration in 1958 deprecated the use of beer profits for the erection of schools "as natives by such usage are in effect encouraged to consume more beer and by so doing to acquire more schools and thereby justify what actually is an evil."(3)

Little of this argument is heard today, and few will disagree with the recommendation of the Borckenhagen Committee, "that no change should be made in the sources of revenue available to local authorities under their Native Revenue Accounts."(4) There is also little support today for the Social and Economic Planning Council's view, that the selling price of Bantu beer should be adjusted as near as possible to the cost of production.(5) The policy today is to charge a reasonable price, and not frown on the fact that larger profits may be made at such a price.(6) The reason for this is that the profits may be used only on the welfare of the Bantu, who derives benefits which he may not otherwise have had if such services were to be financed from the General Rate Fund of the local authority.

Financial control by the Central Government has been of benefit to the Bantu in urban areas, but for a long period argument between local authorities and the Central Government regarding the nature of control caused delays in solving many problems.

(1) Report No. 8. Para. 10 (U.G. No. 40-1945).
(2) S.A. Journal of Economics - March, 1939.
(3) Circular from Secretary for Native Affairs - 21st March 1958
(4) Seventh Interim Report. Para. 176.
(5) Report No. 8. Para. 109.
(6) See "Financing of Bantu Administration and Development in Urban Areas" by the Minister of Bantu Administration and Development (Dr. M.D.C. de Wet Nel). I.M.T.A. Conference Proceedings 1961.

Restrictions on the use of beer profits was originally intended as a protection of the Bantu against the actions of certain local authorities who merely sought to balance their Native Revenue Account with such profits, with no contribution from other sources, and without an objective approach to a solution of the real problems of providing amenities for the Bantu in urban areas. In some cases the Government was forced to act itself, in other cases it had legally to compel local authorities to take action. This has raised the question whether the Central Government should not itself take over the responsibility for Bantu affairs entirely instead of giving the responsibility to local authorities, and then imposing restrictive financial controls. While the Government and local authorities have argued about finance, many problems have become worse, and the principle laid down by the Borckenhagen Committee is relevant, namely, that the authority assuming the executive responsibility should assume the financial responsibility, and vice versa.(1) Enough information has been furnished for an understanding of the nature of control, and discussion on this will follow in later chapters.

CHAPTER 5.

CONTROL BY THE CENTRAL GOVERNMENT IV.

TRANSPORT, WATER AND ELECTRICITY.

1. Introduction.

The financial control which will be covered in this chapter under the three headings of Transport, Water and Electricity, is less intensive and more indirect than the control dealt with in the previous chapters under the headings of Public Health and Bantu Affairs. In all the laws dealing with these latter two subjects, local authorities are charged with specific duties. In its exercise of control over Health and Bantu Affairs, the Central Government has built up an imposing edifice of laws, regulations and Ministerial powers.

In the case of Transport, Water and Electricity, however, the laws do not relate so specifically to local authorities as in the case with Health and Bantu Affairs.

(1) Supra. Page [illegible]0.

The laws in respect of Transport, Water and Electricity were promulgated primarily to control the operation of these national services throughout the Republic; the control imposed on local authorities is not the most important factor when seen against the legislation as a whole. Nevertheless, there are important elements of control which have influenced the finances of local authorities and these will now be discussed.

2. Transport.

1. Passenger Transport: At the time of Union in 1910 the local authorities which operated passenger transport services had a virtual monopoly. Tramways were then the main form of urban passenger transportation, but the rapid development of the internal combustion engine gave rise to competition from private operators. The increasing urbanisation of the country's population together with the increasing use of the private motor car accelerated the financial difficulties of municipal transport undertakings.

Mr. [illegible] Laight classifies the development of urban passenger transport into three distinct periods, namely:

(i) The era of Tramway Monopoly (1900 - 1920)
(ii) The competitive era (1920 - 1930)
(iii) The era of control.(1)

The era of control was ushered in not only by the difficulties of local authorities, but more particularly by the competition of road motor transport with the railways. "As soon as the impact of the commercial vehicle on the South African Railways began to be felt, public control was instituted which practically had the effect of keeping the commercial vehicle away from the railway routes, thus nearly eliminating the competition between road and rail."(2)

Control was instituted by the passing of the Motor Carrier Transportation Act 1930, which followed in the wake of the report of the Road Motor Competition Commission which had been appointed in 1929. The Commission concluded that the incidence of road motor competition had

(1) "Monopolistic Competition in Relation to Municipal Passenger Transportation in the Union of S.A." (University of S.A. - July 1950 - Thesis approved for M.Com.Degree)
(2) "Road Transport of Goods in South Africa" by C. Verburgh (University of Stellenbosch, Bureau of Economic Research - 1959.)

created a transport problem of considerable magnitude. The effect of the competition on railway and on tramway finance was by no means insignificant and was likely to become more serious. The commission considered that unregulated and uncontrolled competition was not likely to promote the best interests of the country. The Motor Carrier Transportation Act was passed in 1930 "to provide for the control of certain forms of motor transportation and matters incidental thereto."

In terms of the Act, the Republic is divided into local transportation areas and for each of these a local road transportation board is established, consisting of a chairman and two members, one of whom is a representative of the local authority or local authorities in the area.

Originally the administration of the Act was vested in a Central Road Transportation Board, but this was superseded by the National Transport Commission established by the Transport (Co-ordination) Act No. 44 of 1948.[1] Local Transportation Boards make recommendations to the National Transport Commission on all transport matters within their areas (and outside at the request of the Commission).

The Local Road Transportation Boards are empowered to receive and consider applications for motor carrier certificates, and these certificates must contain details of the service, fares etc.[2] Control over local authorities thus arises from the power of the Boards to grant motor carrier certificates to transport operators, and this includes local authorities. The Act lays down what factors must be taken into account in determining whether an application shall be granted, and one of the factors is "the views on any matter referred to in this sub-section, of any local authority within whose area of jurisdiction the transportation to which the application relates [illegible]."[3] Furthermore, a later amendment to the Act empowered a Board to refer an application for [illegible] to the existing operator of a service to [illegible] whether the proposed service could be co-ordinated [illegible] existing service, and if so the existing

(1) [illegible] Annexure [illegible].
(2) Sections [illegible] Annexure 'A'
(3) Sub-section [illegible] section 13.

operator would be given the opportunity of submitting an application.[1]

The Motor Carrier Transportation Act 1930 brought unified control to passenger transport services in South Africa. Local authorities have undoubtedly benefited from the control over competition in urban areas, although there have been many criticisms of the methods and extent of control. For example, Mr. D. Heron, formerly General Manager of the Durban Corporation Transport Department, while admitting the importance of the Act in controlling passenger transport services, considered that the appointment by local authorities of one member of the Board, and the fact that applications for certificates are referred to local authorities, are concessions which in practice are of no great value to local authorities, because the municipal nominee does not represent local authorities but sits as an impartial observer and there is no obligation on the part of the Board to pay any regard to the views of a local authority.[2]

Turning now to the nature of control, the above brief survey of the national control over road transport services by the issue of carrier certificates indicates two important spheres of control over local authorities.

(a) Direct control over routes and fare-structures.

(b) Indirect control over the profitability of a municipal transport undertaking, as a result of the issue of certificates to operators other than local authorities.

(a) Direct Control: When a motor carrier certificate is issued by a road transportation board, enforcement of the conditions contained in the certificate takes place by means of the inspectorate of the Department of Transport in collaboration with the South African Police and provincial traffic inspectors. Local authorities as well as private operators may be prosecuted for non-compliance with conditions laid down in the certificate. Although a great deal of this control is irksome to local authorities, the control has the effect of keeping services up to standard. If, for instance, the Department of Transport through

(1) Motor Carrier Transportation Amendment Act No. 15 of 1941, which added Section 13(3) Bis.

(2) "Some aspects of Urban Passenger Transportation with particular reference to South African Conditions" (I.M.T.A. S.A. (Inc.) Conference Proceedings 1949. Pages 190-191)

its inspectors discovers that a municipal service is inadequate, and that long queues of passengers take a long time to be cleared, they will urge upon the local authority the necessity for increasing the number of vehicles, or recommend the issue of certificates to other operators and taxis.

Of greater importance to local authorities is the direct financial control exercised by the transportation boards in the conditions they lay down in the carrier certificates regarding routes and fares. Every route traversed by municipal passenger vehicles must be approved by the local road transportation board and no route may be altered without their consent. The stages must be approved and also the entire fare structure. It is easy to envisage a position where a local authority applies to a road transportation board for an increase in fares in order to reduce losses on its passenger transport undertaking, and the board refuses the application. In such a case the control over the finances of a local authority would be direct and it may necessitate a greater contribution from the general rate fund of a local authority to balance the income and expenditure of the transport undertaking. Most municipal transport undertakings are run at a loss.(1) Since 1929 the tendency has been for losses to increase; in 1929 the percentage of losses to total net expenditure on revenue account was .7%, and in 1949 it was 4.7%.(2) However, the losses borne by local authorities have little to do with the control exercised by road transporation boards, which do not lightly turn down any application for increased fares. Losses on municipal transport undertakings can in no way be attributed to central control, but must be sought in wider economic factors such as competition from the private car, central congestion and urban sprawl. There is also the dilemma of diminishing returns as a consequence of fare increases and the weight of public opinion which has come to accept as inevitable a subsidy from general revenue to municipal transport undertakings, and the conveyance of certain categories of passengers at sub-economic fares e.g. scholars.

(1) See statistical details of municipal omnibus undertakings - Municipal Year Book 1962/3. Page 196.
(2) See "Memorandum on Replies given by 51 Local Authorities to Questionnaire LAC/A/2A" prepared by the I.M.T.A. S.A. (Inc.) 1959.

(b) Indirect Control: Of greater significance to local authorities than the direct control over the fare structure is the control over competition. Several local authorities have consistently since 1930 pressed for a complete monopoly over road passenger transport in their areas, and they have ascribed the heavy losses borne by their undertakings to the failure to secure a monopoly. For instance, the Durban City Council in a memorandum submitted to the Committee appointed by the National Transport Commission to investigate Road Passenger Transportation in the principal Urban Transport Areas in 1950, ascribed their difficulties to the existence of numerous small-scale operators, and recommended strongly the unification of all services under one suitably constituted body.(1) The General Manager of the Durban Corporation Transport Department (Mr. D. Heron) stated in 1962 "The answer appears undoubtedly to lie in the establishment of a single monopolistic operator for given transport regions, the regions to be defined regardless of local authority boundaries.......".(2)

Mr. J.C. Laight, after analysing the financial results of motor bus, tramways and trolley bus undertakings in S.A. from 1920/1 to 1947/48, came to the following conclusion:-

"A careful study of the annual figures given in the tables of financial results p.p. 110/111 shows that by far the greatest portion of this large total represents deficits incurred, not during the period of intense competition from 1920 - 1930, but after 1930, when the protection of the Motor Carrier Transportation Act was increasingly felt and the municipal monopoly of urban passenger transport became virtually complete... The inescapable conclusion is that whatever the cause of the heavy losses incurred by municipal transport undertakings, it was not the incidence of private competition."(3)

The Government has never accepted the view that municipalities should have a monopoly of road passenger transportation within their areas. Though local authorities are entitled to a strong measure of protection "it would

(1) Memorandum quoted in The South African Treasurer - June 1950. Page 121.
(2) "Regional Planning and Organisation with special reference to Urban Road Passenger Transportation". Paper delivered to the annual conference of the Urban Passenger Transport Association S.A. (1962).
(3) Monopolistic Competition in Relation to Municipal Passenger Transportation in the Union of South Africa. Op. cit. (Page 112)

not be in the [illegible] ast the sole control [illegible] rities.[1] In August 1963 the Uni[illegible] e repre- sentations to the Minister o[illegible] nd the Motor Carrier Transportation Act to grant local authorities the exclusive right to provide and operate services within their areas of jurisdiction, but the Minister replied that he was not prepared to consider such an amendment to the Act.[2] This is in line with the Page Commissions views, after hearing the submissions of the Road Passenger Transport Association for a complete monopoly by local authorities. The Commission did not support this view, and recommended that control of urban passenger transportation remain with the local transportation boards.[3]

From the above facts, it seems clear that the indirect control by the State over the financial position of the transport undertakings will continue, mainly on the grounds that motor carrier control is considered preferable to unregulated competition. The National Transport Commission is obliged to consider the public interest and although local authorities are represented on local transportation boards and although applications for carrier certificates are referred to local authorities, their interest is not paramount. For example, the Pietermaritzburg municipality in 1951 wanted to buy out two private operators running between Pietermaritzburg and Edenvale. After holding a public enquiry, the Commission came to the conclusion "that the withdrawal of the relative motor carrier certificates and the granting thereof to another operator could in no way improve the transport position there at that stage, and as it was felt that for other reasons it would also not be in the public interest, it was recommended that the status quo be maintained."[4]

The two spheres of financial control described in this section do not appear to have had any serious effect on local authorities. Notwithstanding the potential control which local transportation boards could exercise over local authorities, the safeguards appear to be sufficient to ensure that

(1) Annual Report of Central Transportation Board 1934/5 (U.G. No. 40 of 1935) Quoted by J.C. Laight. Op. cit. Page 64.

(1) Annual Report of Central Transportation Board 1934/5 (U.G. No. 40 of 1935) Quoted by J.C. Laight. Op. cit. Page 64.

(2) Agenda of the United Municipal Executive, February, 1964. Page 8.

(3) Report of the Commission of Enquiry into Road Motor Transportation 1945. (U.G. No. 46 - 1947) Para. 404.

(4) Report of the National Transport Commission 1952-1954. (U.G. 53/1957)

the financial position of the transport undertakings of local authorities will be protected as well as the interests of the travelling public. Furthermore, the Native Transport Services Act 1957(1) makes provision for the subsidisation of Bantu passenger services by employers. A levy may be collected by the local authority and paid over to the Secretary for Transport, who may pay subsidies or loans to transport undertakings.

There is no evidence that the existing type of control will be abandoned or even modified, nor are local authorities likely to gain autonomy in the operation of local passenger transportation services. Control by the Government would probably be abandoned only in favour of a public corporation operating on a regional basis, irrespective of municipal boundaries, on the pattern of the London Passenger Transport Board.

2. Roads: The only State legislation which imposes any kind of control over local authorities is the National Roads Act 1935. There is no direct control. The only control is that which arises out of decisions of the National Transport Commission to construct national roads, or special roads; where these pass through local authorities the basis of subsidy has an impact on the finances of the local authorities concerned.

Nearly all the direct legislation affecting roads in the areas of local authorities is by way of ordinances passed by the Provincial Councils. Roads ordinances are usually very comprehensive, but as this chapter deals only with legislation by the Central Government, only the National Roads Act need be considered. There was little need for State legislation before 1930, for the motor vehicle had not then created the road traffic problems which exist today.

Professor C.D. Buchanan, Chairman of Transport at the Imperial College, London, and Chairman of the Commission which produced the well known report "Traffic in Towns" has indicated three clear stages in urban transport systems (a) when walking was the dominant means of movement (mediaeval cities up to 1800) (b) when public transport gained ascendancy (latter 19th century to first quarter of the 20th century) (c) when private motorised transport may be regarded as the potentially dominant form of urban transport.(2)

(1) See Annexure A.
(2) Inaugural Lecture. S.A. Municipal Magazine - April, 1964. See also Chapter I "Traffic in Towns(H.M.S.O. 1963)

Prior to the dominance of the private car, there was little need for any other system except the building of urban roads by local authorities. Cars did not venture great distances because the rural roads were so bad. As the performance of the motor vehicle improved technically, there arose a considerable demand to improve the roads which linked towns together, for the economic life of the country was affected. There war also pressure from the farming community and other rural interests to improve main roads, and the Government passed the National Roads Act in 1935. In terms of this Act over 5,000 miles of provincial road routes were declared national roads, and the National Roads Board (later replaced by the National Transport Commission) was charged with the responsibility of financing and constructing these roads.[1] In order to finance this programme the Government allocated a portion of the customs duty on imported petrol. The portion was originally 2½c per gallon. it has been increased from time to time and is now a fuel tax.

During the three decades since the National Roads Act was passed, urbanisation and motorisation have been important features in the growth of towns and cities. Local authorities had hitherto been satisfied with building their own local roads, leaving the extra-municipal roads to the Central Government and the Provinces. However, the building of good highways up to the boundaries forced local authorities to construct new through- roads, or widen existing roads, or build roads for the National Roads Board subject to financial conditions laid down in the Act, which amounted to 50% of the construction costs of the roadway only, and an annual subsidy for maintenance.

For many years the United Municipal Executive pressed the Central Government for a better financial basis.[2] The Borckenhagen Committee was appointed in 1956 and gave attention to the whole question of road finance. The United Municipal Exicutive gave evidence to this Committee as well as to the Schumann Commission, and submitted a comprehensive memorandum on the subject prepared by

(1) Note, however, that the actual construction is done by Provincial Roads Departments.
(2) See Memorandum on Financial Relations. Op. cit. 1944. (Para. 159-161), 1949 (Para. 285-297).

the Institute of Municipal Treasurers and Accountants S.A. (Inc.).(1) This memorandum urged that urban roads were no longer a fair charge on the assessment rates, and that all three governing authorities (the State, the Provinces and Local Authorities) which expend money on roads are entitled to an equitable share of motor taxation. At present the State receives the income from the levy on motor fuel the Provinces receive the income from motor vehicle licences; local authorities receive little income from motor taxation.(2) The Institution of Municipal Engineers also prepared a memorandum for the United Municipal Executive, which was laid before the Borckenhagen Committee, and one of their conclusions was that arterial roads in urban areas should be financed on a national or regional basis.(3) "Local authorities should receive further financial assistance towards the cost of local roads in the form of a proportion of the revenue derived from the tax on motor vehicles and motor fuel."(4) The Chairman of the Finance Committee of the Pretoria City Council in his Budget Speech for the year 1959/60 examined the various methods of financing urban road expenditure and concluded that a separate additional tax on fuel, to be allocated to local authorities, would be the most equitable way of financing urban road construction; in this way the greatest road user would contribute the most. The President of the Institute of Municipal Treasurers and Accountants S.A. (Inc.) in his Presidential Address in 1961 stated "The case of local authorities for a share in fuel taxes is very strong indeed and is supported by many world authorities. Why build a magnificent system of national roads for choking traffic circulation in the cities? In a recent publication 'The Metropolitan Transportation Problem' Wilfred Owen makes the point that too large a proportion of highway expenditure goes on rural improvements and too little on city road systems."(5)

The Borckenhagen Committee rejected these arguments in its Third Interim Report.(6) The Committee considered that the National Road Fund had always been primarily intended for the provision of rural roads and not for urban

(1) "The case for a more equitable and up-to-date system of financing road expenditure." - March, 1960.
(2) Ibid. Page 13.
(3) "Main and Through Roads in Urban Areas" - June 1960.
(4) Ibid. Page 17.
(5) I.M.T.A. Conference Proceedings 1961. Page 74.
(6) Third Interim Report of the Committee of Enquiry into the Financial Relations between the Central Government, the Provinces and Local Authorities: "The Financing of Road Works".(G.P. S.8206349 - 1960-61 - 1000).

roads and quotes figures showing that from 1948 to 1960 only R1,266,000 was paid by the National Road Fund in subsidies to local authorities out of a total expenditure of R180,782,000.(1) The Committee also disagrees with the United Municipal Executive's views that all income from motor taxation should be earmarked for road expenditure - "It is generally accepted by economists and by experts in matters of taxation that the earmarking of sources of revenue for predetermined and specified purposes is unsound in principle because it tends to place the fiscal authorities in a straightjacket and leads to a most undesirable regidity in the administration of public affairs."(2) The Committee does agree that a "substantial portion" of the costs of roads should be borne by road users, but there is also justification for imposing portion of the burden on property owners and to a lesser extent on the general taxpayer.(3)

The Committee recognises the need for the expenditure of considerable sums of money to take up the backlog of roadworks. Local authorities should themselves meet the cost of ordinary urban streets because this is a fair charge against property taxation. With regard to those urban streets which link up with the national arterial network of national and main roads, the financial responsibility should be shared between the local authority and the higher authority concerned, and the minimum cost which should be borne by the higher authority is 50%, and the total cost should be taken into account in determining the share of cost (i.e. cost should include cost of acquiring property etc. and not only the actual cost of the road, as is the case at present.(4) The Committee considers that a substantial portion of the additional costs should be raised by duties on motor fuels either by additional transfers from present taxation or from an increase thereof, but is opposed to any direct allocation of such revenues to local authorities.(5) Because of the Committee's proposals for additional financial assistance from the State for arterial roads in urban areas, the Committee recommends that where the Province pays to local authorities

(1) Ibid. Para. 9.
(2) Ibid. Para. 81.
(3) Ibid. Para. 85.
(4) Ibid. Para. 195.
(5) Ibid Para. 195.

a portion of revenue from motor licenses as in Natal and Transvaal, these subsidies should cease in the future. The existing sources of income for financing road construction in South Africa are, in the view of the committee satisfactory and these sources in 1959/60 were estimated to be as follows:-

Import and excise duties on fuel	40%
Vehicle Licence fees etc.	20.1%
Other Provincial Revenues	.5%
Property Taxation and other local authority resources	16.7%
Long Term Loans	22.7%
	100.0%

There is clearly no direct form of financial control over local authorities.

There would be a form of latent control over the finances of local authorities if the National Transport Commission designed its national arterial network only up to the boundaries of municipalities and called upon them to construct, to the same standard as national roads, the sections within the boundaries at their own cost. The National Transport Commission, however, accepts responsibility for national roads in urban areas and prefers to bypass towns, in the national interest. Local authorities have sometimes criticised this bypassing policy, but it is usually because of sectional commercial interests.

There is, however, no evidence that local authorities have suffered to any serious degree financially as a result of the National Roads Act 1935, although the basis of subsidy has caused minor financial difficulties for certain local authorities.

At present the Government receives approximately R90 million annually from fuel and vehicle taxation, of which R35 million goes straight to the National Road Fund, R27 million to the Provinces for provincial roads and R28 million approximately to general revenue.(1) If the impact of large future road programmes on the finances of local authorities is to be alleviated insofar as arterial

(1) "Financing of Urban Roads in South Africa" by Dr. C. Verburgh, Professor of Transport Economics, University of Stellenbosch. S.A. Financial Gazette - 14th April, 1965.

through-routes are concerned, there appears to be room for a larger contribution from road users by means of larger contributions from fuel and vehicle taxation, instead of transferring so much to the general revenue needs of the State.

It is unlikely that the State will share sources of revenue such as fuel and vehicle taxes with local authorities. It has reserved the motorist, like the liquor drinker, as a source of national taxation. As far as motor vehicle licences are concerned, there are no indications that the Provinces will give up this source of revenue. The Marais commission recommended that "local authorities be granted the power, amongst others, to levy a minicipal motor vehicle tax and an entertainment tax",(1) but this recommendation was not implemented.

Financial control by the State is remote. However, an important form of indirect control is evident inasmuch as local authorities may be forced to increase the level of fixed property taxation if the contribution from road users is inadequate.

3. __Traffic Control__: The control of traffic within the areas of local authorities is undertaken by local authorities themsleves under powers conferred on them by Provincial Ordinances. There is one aspect of State control, however, which is important. In terms of the Financial Adjustments Act, No. 25 of 1932, the Government pays over to local authorities all traffic fines imposed within their areas of jurisdiction. The total amount collected by the Department of Justice and paid over to local authorities amounted to R1,075,966 in 1954/55.(2)

Prior to 1932 traffic control duties in South African towns were undertaken by the South African Police, except in Durban and Pietermaritzburg. In 1932, responsibility for traffic was handed over by the Government to local authorities and at the same time the Government agreed to pay over to local authorities the amount collected in traffic fines within the areas of jurisdiction of local authorities.

Local authorities later complained that they were showing deficits on their traffic control accounts.(3) Local authorities believed that if the Government handed over a particular function such as traffic control, they should bear the entire cost thereof. This led to the important question whether

(1) Third and Final Report of the Commission of Enquiry into the System of Local Government in the Transvaal (T.P.5/1957) Part. 2.
(2) Second Interim Report of the Committee of Enquiry into the Financial Relations between the Central Government, the Provinces and Local Authorities (G.P.S770-2462 1959/60) Page3[illegible]
(3) See figures quoted in "The Financial Relations between the Central Government, Provincial Administrations and Local [illegible]