

E.R.

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19 SEP 1982

✓ MR KENNEDY - M

RECEIVED
1655
31 AUG 1982
MURPHY
STORMONT

cc PS/Sofs (L&B) - M
PS/Ministers (L&B) - M
PS/PUS (L&B) - M
PS/Sir Ewart Bell - M
Mr Marshall w/o encl
Mr Bourn - M
Mr Wyatt w/o encl - M
Mr Buxton - M
Miss Davies - M
Mr Angel
Mr Blatherwick - M
Mr Hammond HO
Mr Whiteside - M
Dr Hayes - M
Mr Blackwell w/o encl

SDLP ABSTENTIONISM

1. Following Mr Wyatt's minute of 26 August to Mr Marshall, copied to you and others, I sought advice from Mr Hammond, Legal Advisers, on the points raised in paragraphs 7, 8 and 9 of Mr Wyatt's minute.
2. As Mr Whiteside and I expected, the first point raised by Mr Wyatt does not in the event give rise to difficulty, but the position in relation to the mandatory committees in the event of an SDLP boycott is less clearcut. As Mr Hammond says, it will no doubt be for the Presiding Officer, advised presumably by you - and in the light of any legal advice which the Presiding Officer might decide to seek - to interpret Section 4. But you will wish to be aware of Mr Hammond's view. Perhaps we might have a word about this on your return from leave, and in any case I shall raise it at Sir Ewart Bell's meeting on 7 September. (Incidentally, in his "Northern Notebook" in the Irish Times of 28 August, Ed Maloney in his piece on the SDLP writes on the assumption that the mandatory committees will be established on a basis which will enable the SDLP to participate when they are ready to do so).

N.C. Abbott

N C ABBOTT

31 August 1982

Encl.

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E.R.

31 AUG 1982

Mr Abbott

CONFIDENTIAL (5)

cc Mr Marshall
Mr Wyatt H
Mr Blackwell

NORTHERN IRELAND ACT 1982 - SDLP ABSTENTION FROM THE ASSEMBLY

In Mr Blackwell's minute to you of 27 August and in your minute to me of the same date, the implications for the committees which are set up under section 4 of the Northern Ireland Act 1982 of the declared intention by the SDLP not to take part in the activities of the Assembly are discussed.

The first point which should be made is that once a person has been elected to the Assembly he is a member of the Assembly. Assuming that Standing Order 5 of the Assembly's Standing Orders remains in its present form, a member is not to be regarded as having "taken his seat" until he has signed the Roll of Members. The consequence of that is that a person does not draw his salary until he has signed the Roll. But whether or not he has taken his seat, he is still a member of the Assembly. That disposes of Mr Wyatt's fear (paragraph 7 of his minute to Mr Marshall of 26 August) that any member who has not turned up or signed the Roll is to be disregarded for the purposes either of section 1 or of section 4 of the Act.

This means that the SDLP members will have to be counted for the purpose of determining whether any proposals submitted by the Assembly under section 1 have the support of at least 70 per cent of the members for the purposes of section 1(4)(a), whether those members have taken their seats or not.

I think that the question of the appointment of the members of the committees which section 4 requires the Presiding Officer to appoint is not quite so clear-cut and it will, no doubt, be for the Presiding Officer (advised, presumably, by Mr Kennedy) to decide how to interpret the section. But my own view is that it would be "practicable" to appoint to the committees members who have indicated that they will not take part in the Assembly's business. After all, they may change their minds. In the meantime, subject to the provisions which will have to be made about a quorum, the committees can conduct their business without the abstaining members. It would follow from this view that the Presiding Officer ought to exercise his powers to appoint the members of the committees so as to reflect the balance of the membership of the Assembly, ignoring the question whether any members have taken their seats.

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Whether the Presiding Officer should appoint a Chairman or Deputy Chairman of the committees from amongst members who have indicated that they will take no part in the Assembly's business is, perhaps, a moot point. It might be argued that it would be absurd to appoint as a Chairman or Deputy Chairman an absent member. But, again, once the appointments are made, the SDLP might change their minds. And if a Chairman or Deputy Chairman did not turn up, no doubt provision could be made for someone else to act in his place. (In the case of a Chairman, there would be no problem, since the Deputy Chairman would automatically take over.)

This seems to me to be such the better solution, since it would bring greater pressure on the SDLP to participate. If they are appointed to the committees and to the posts of Chairmen and Deputy Chairmen, where appropriate, the blame will be seen to be put squarely on them if the proceedings of the committees do not turn out as they would wish. If they are excluded from the beginning, it will surely be such easier for them to make mischievous propaganda.



A H HAMMOND
Legal Adviser's Branch

31 August 1982

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