



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Complaint Regarding the Award of Contract(s) to Construct/Repair and to Rent Shops at the Spalding Market

Clarendon Parish Council

Ministry of Local Government & Community Development

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INTRODUCTION

The Office of the Contractor General (OCG), on 2013 April 15, publicly announced that it had formally commenced an investigation into the circumstances which surrounded the alleged award of contract(s) to construct/repair and to rent shops at the Spalding Market from as early as 2013 March 6.

It is instructive to note that the OCG's Investigation into the matter was triggered by the receipt of an anonymous letter of complaint from a 'Concerned citizen of Spauldings'. The referenced complaint stated, *inter alia*, as follows:

"The market is owned by the Clarendon Parish Council and there are shops that were constructed by persons who it is alleged are affiliated to Mr. Richard Azan, Member of Parliament for North



West Clarendon and who is also the Minister of State in the Ministry of Transport, Works and Housing. It is also alleged that this John Bryant was the contractor who recently built the Spauldings Market...Our investigations reveal that there was no permission sought of or granted by the Parish Council.

The shops are being rented for Five Thousand Dollars (\$5,000) per month and a security deposit of Five Thousand Dollars (\$5,000) is required.

*There is a contract that is entered into between the owner, who on the contract document is stated as Mr. John Bryant... and the tenant...Note as well that the instructions on the contract state ‘...that all **rents and notices** are to be given at the North West Clarendon Constituency Office’.*

This development is a major concern to us the citizens and I would like that there be an investigation into the matter to find out how comes [sic] construction of building can take place on Government property without permission of the Government and how comes [sic] these buildings are rented and the Parish Council is not benefitting



from the proceeds of the rental of its own property...”

Section 15 (1) of the Act provides that “... a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –

- (a) the registration of contractors;*
- (b) tender procedures relating to contracts awarded by public bodies;*
- (c) the award of any government contract;*
- (d) the implementation of the terms of any government contract;*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.”*

Section 16 of the Act expressly provides that “An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted.”



TERMS OF REFERENCE

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions of the Act (1983), the applicable Government of Jamaica (GOJ) Public Sector Procurement Procedures and the GOJ Public Sector Procurement Regulations (2008), in the award of contract(s) to construct/repair and to rent shops at the Spalding Market.

The OCG's Investigation sought to address the following questions, among others:

- (a) The particulars of the contract(s) that have been subjected to the alleged arrangement;
- (b) Whether the prescribed GOJ Procurement Procedures and Parish Council Rules and approvals were complied with in the award of the referenced contracts;
- (c) Whether a contract(s) was/were awarded in compliance with the standards that are prescribed by Section 4 (1) (a) of the Contractor General Act, that is to say, whether same was/were awarded impartially and on merit, and in circumstances that did not involve impropriety or irregularity; and
- (d) Whether any other laws or regulations were contravened having regard to the alleged circumstances which surround the award of the contract(s).



JURISDICTION

The OCG's jurisdiction into the matter is grounded upon the fact that there is no contract for the construction of the wooden shops which were placed in the parking lot of the Spalding Market. In the instant matter, the CG contends that there ought to have been a contract for the erection of the structures subsequent upon the granting of planning approval, by the Clarendon Parish Council, a public body, for the construction of the now illegal wooden shops. Both the Parish Council and the Contractor, Mr. John Bryant, have confirmed that no such approval exists nor is any contract in place.

Detailed below is the legal basis upon which the CG has enquired in the erection of the wooden shops and the attendant issue of the collection of rental fees for the same shops.

Section 2 of the Act provides as follows:

"government contract" includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;

"prescribed licence" means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

"public body" means -

- (a) Ministry, department or agency of government;
- (b) a statutory body or authority;



(c) any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company.

The Clarendon Parish Council, being a department of the Ministry of Local Government and Community Development is in fact a public body as defined by the Act.

Consequently, the mandatory approval process, or the absence of an approval process, inclusive of the right to construct the wooden shops on Government of Jamaica owned lands, is the reason for the OCG's Investigation. In particular, the OCG has sought to ascertain how and under what circumstances was the erection of the wooden shops at the Spalding Market allowed.

Ownership of the Spalding Market at which the wooden shops were erected

Having regard to the fact that the wooden shops were erected on the property of the Parish Council, without the requisite approval of the Clarendon Parish Council, and also the fact that the occupants of the wooden shops were allegedly paying fees for the occupation of the said shops, the OCG, by way of letter dated 2013 April 2, addressed to the Commissioner of Lands, sought to determine particulars of the ownership of the land on which the Spalding Market is located.

In response thereto, the National Land Agency, through the Director, Corporate Legal Services Division, Mrs. Lois Edwards-Bourne, by way of letter dated 2013 April 29 advised, *inter alia*, that the property upon which the Spalding Market is located is owned by the Commissioner of Lands and is 0.27 hectares in size. It is, therefore, public property.



The CG was also provided with a copy of the Certificate of Title and a sketch plan for the referenced property.



METHODOLOGY OF INVESTIGATION

The Requisitions/Questionnaires, which formed a part of the OCG's Investigative methodology were directed by the CG to the Public Officials/Officers and other persons of interest who are listed below. In addition, comprehensive reviews of certain relevant information were undertaken by the CG to assist in the investigation. Details of these are also summarized below.

1. The following Public Officials/Officers and other person(s) were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
 - a. The Hon. Richard Azan, Member of Parliament, North West Clarendon, and Minister of State in the Ministry of Transport, Works and Housing;
 - b. Mr. Rowhan Blake, Secretary Manager, Clarendon Parish Council;
 - c. Mr. E.G. Hunter, Chief Executive Officer, National Works Agency;
 - d. Mrs. Scarlett Gillings, C.D., Managing Director, Jamaica Social Investment Fund (JSIF); and
 - e. Mrs. Kelly Tomblin, Chief Executive Officer, Jamaica Public Service Company Limited.
2. Field interviews were conducted with the following persons:
 - a. The Hon. Richard Azan, Member of Parliament, North West Clarendon, and Minister of State in the Ministry of Transport, Works and Housing;
 - b. Mr. Ralston Peters, former Commercial Services Manager, Clarendon Parish Council;
 - c. Mrs. Bridget Daley-Dixon, Constituency Secretary, North West Clarendon Constituency;



- d. Mr. John Bryant, Proprietor, Bryant Construction;
 - e. Mrs. Judy Lawrence, former Secretary Manager, Clarendon Parish Council;
 - f. Mr. Scean Barnswell, Mayor and Chairman of the Clarendon Parish Council;
 - g. Mr. Rowhan Blake, Secretary Manager, Clarendon Parish Council;
 - h. Mr. Wayne Brown, Director of Finance, Clarendon Parish Council;
 - i. Ms. Opal Dodd, Internal Auditor, Clarendon Parish Council;
 - j. Mr. Garfield Thompson, Deputy Superintendent of Roads and Works, Clarendon Parish Council;
 - k. Mr. Wayne Mitchell, Superintendent of Roads and Works, Clarendon Parish Council;
 - l. Ms. Michele Brown, Accountant, Revenue and Budget Officer and Acting Commercial Services Manager, Clarendon Parish Council;
 - m. Ms. Charmaine Williams, Director of Administration, Clarendon Parish Council;
and
 - n. Mr. Jumaane Robinson, former Director of Planning and Development, Clarendon Parish Council.
3. The following persons were summoned and did appear before the Contractor General pursuant to Section 18 of the Contractor General Act.
- a. The Hon. Richard Azan, Member of Parliament, North West Clarendon, and Minister of State in the Ministry of Transport, Works and Housing;
 - b. Mr. Ralston Peters, former Commercial Services Manager, Clarendon Parish Council;
 - c. Mr. John Bryant, Proprietor, Bryant Construction;
 - d. Mrs. Judy Lawrence, former Secretary Manager, Clarendon Parish Council;



- e. Mr. Milton Brown, former Mayor, Clarendon Parish Council;
 - f. Mr. Trevor Gordon, Councillor, Clarendon Parish Council;
 - g. Mr. Wayne Mitchell, Superintendent of Roads and Works, Clarendon Parish Council;
 - h. Mr. Wayne Brown, Director Finance, Clarendon Parish Council;
 - i. Ms. Charmaine Williams, Director of Administration, Clarendon Parish Council;
 - j. Ms. Michele Brown, Accountant, Revenue and Budget Officer and Acting Commercial Services Manager, Clarendon Parish Council;
 - k. Mr. Sceán Barnswell, Mayor, Clarendon Parish Council;
 - l. Mr. Rowhan Blake, Secretary Manager, Clarendon Parish Council;
 - m. Mr. Garfield Thompson, Deputy Superintendent of Roads and Works, Clarendon Parish Council; and
 - n. Winston Maragh, Councillor, Clarendon Parish Council.
4. The OCG conducted a detailed review and cross-referencing of the **sworn** certified Statements, supporting documents and the records which were submitted by the referenced Public Officials/Officers in their respective responses to the OCG's Statutory Requisitions.

During the conduct of its Investigation, the OCG, on 2013 May 8, visited the office of the Ministry of Local Government and Community Development to conduct an interview with the Hon. Noel Arscott, Minister of Local Government and Community Development, in regard to his knowledge and role, if any, as it concerns the construction/rental of the wooden shops at the Spalding Market.



PRELIMINARY FINDINGS OF FACT

Particulars of a Contract which was awarded to Bryant Construction

Detailed hereunder are the particulars of the circumstances under which Mr. John Bryant obtained a contract with the Clarendon Parish Council for the rehabilitation of the Spalding Market in Clarendon.

The OCG has seen a report¹ from the Evaluation Committee of the Clarendon Parish Council, which advised that it met on 2012 May 31 to discuss the rehabilitation of the Spalding Market. The said rehabilitation had been locally advertised. The referenced document indicated that the Invitation to Tender was posted on 2012 May 9 and closed on 2012 May 25 at 12:15 p.m.

The document indicated that bids were received from the following companies:

1. Maxwell Construction;
2. THLC Co. Ltd; and
3. Bryant Construction.

The Evaluation Committee, in its report posited as follows, “*Recommendation was noted for Bryants Construction who had the lowest bid and also due [sic] good track record of previous work done for the Council.*”²

¹ Document entitled, “Evaluation Committee – the Parish Council of Clarendon” which was submitted by Mr. Rowhan Blake under cover of letter dated 2013 April 26.

² Document entitled, “Evaluation Committee – the Parish Council of Clarendon” which was submitted by Mr. Rowhan Blake under cover of letter dated 2013 April 26.



The bid which was submitted by Bryant Construction for the rehabilitation of the Spalding Market was in the sum of \$3,257,800.00.

Based upon the foregoing, Bryant Construction was awarded the contract **only** for the rehabilitation of the Spalding Market.

In an effort to verify whether the contract to Bryant Construction involved the construction of wooden shops, the OCG issued a Requisition to Mr. Rowhan Blake, Secretary Manager, Clarendon Parish Council. In response to the OCG Requisition, Mr. Blake, by way of letter dated 2013 April 26 advised, *inter alia*, as follows:

"I have seen no evidence to substantiate that approval was granted for Bryant's construction to erect shops for which the said Bryant's Construction was collecting rent at the Spalding Market.

*I have seen no documentation regarding discussions or communication with any private individual and/or Bryant's Construction concerning a partnership with the Council to develop the Spalding Market."*³

The rehabilitation of the market, therefore, did not involve the erection of wooden shops.

³ Response from Mr. Rowhan Blake, dated 2013 April 26. Response # 5 and 6.



Having regard to the foregoing it is instructive to note that the erection of the wooden shops in the parking lot of the Spalding Market, by Mr. John Bryant, who was engaged to conduct rehabilitative work only on the Spalding Market, occurred without the knowledge and/or approval of the Clarendon Parish Council. When that is coupled with the fact that revenue for the wooden shops was collected by a third party, external to the Clarendon Parish Council, the entire affair is, without question, of serious import for the governance and fiduciary responsibilities of the Parish Council and its Officers/Officials.

The CG must highlight that it has seen at least one Development Order which was approved for the rehabilitation of the Spalding Market but has not seen any evidence of any Order in regard to the erection of the wooden shops in the parking lot of the said market.

The OCG has relied upon the testimonies of Mr. John Bryant, Councillor Trevor Gordon and the Hon. Richard Azan, himself, to conclude that the Hon. Richard Azan, invited the Contractor to erect the shops or facilitated the erection of the shops without the consent and/or approval of the Clarendon Parish Council.

Mr. John Bryant has advised the OCG that it was the Hon. Richard Azan who approached him in regard to the construction of the wooden shops whilst Councillor Trevor Gordon confirmed that the Hon. Richard Azan in fact approached Mr. John Bryant after previously approaching another individual who declined the offer.⁴

According to Transparency International, it must be noted that **Political corruption** is defined as a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and

⁴ More detailed particulars are provided in the OCGs Report of Investigation.



wealth.

As such, careful consideration must then be given to the incidence of the perception of political corruption and the degree of political interference which forms the basis of the erection of the shops at the Spalding Market. Whilst the Jamaican legislative framework and regulations do not make reference to the issue of Political Corruption, its relevance and foreseeable implications to the governance framework in Jamaica can neither be discounted nor ignored.

Physical Observations made by the OCG at the Spalding Market

The OCG, during the course of its Investigation, and through physical verification, found and confirmed, as at 2013 April 12, the presence of ten (10) wooden shops at the Spalding Market, Clarendon. The referenced ten (10) shops are contained in four (4) wooden structures which have been erected in the parking lot of the recently renovated/rehabilitated Spalding Market.

First-hand observation of the wooden shops, by OCG Investigators, has revealed that the shops housed numerous tenants ranging from haberdashery and dry goods vendors and one occupant who was conducting electrical repairs to small appliances.



*Three (3) of the wooden structures, comprising six shops, which have been erected in the parking lot of the Spalding Market. Same were constructed by Mr. John Bryant, Proprietor, Bryant Construction.



*The fourth wooden structure, comprising four shops, which was erected in the parking lot of the Spaldings Market.

A further site visit confirmed that there are three (3) shops that are located in the sub-basement of the market. The shops in the sub-basement are not the subject of the OCG's Investigation.

OCG Officers were advised by an 'associate' of a tenant of a shop in the sub-basement that



rental payment for the shops which are located in the sub-basement is paid monthly and directly to the Parish Council in May Pen. Documentation reviewed by the OCG revealed that the referenced shops in the sub-basement are those which are legitimately owned and operated by the Clarendon Parish Council.

While on site at the Spalding Market, OCG investigators observed two (2) persons collecting market fees from the market vendors. The two (2) persons identified themselves to the OCG Officers as being employed to the Clarendon Parish Council for that specific purpose, that is, as Market Collectors.

A vendor on site advised the OCG investigators that a daily fee of \$100.00 is paid for use of the market and that the two (2) previously mentioned Market Collectors would collect market fees during the week whilst on Fridays and Saturdays, Officers from the Parish Council would come by and collect the fees.

The tenants who occupied the wooden shops, which are the subject of the OCG's investigation, refused to provide the OCG with statements regarding the circumstances under which they have come to occupy the wooden shops and particulars regarding the payment of the monthly rental fees.

By way of comment, an article which was published in the Jamaica Gleaner, on 2013 April 14, and which published the name of at least one (1) occupant of the wooden shops, has left the occupants reluctant to speak out of fear of being named. At least one occupant of the wooden shops expressed to an OCG investigator that vending in the market is his livelihood and he cannot afford to be victimized.



During the visit to the Spalding Market, OCG investigators observed an electrical wire running from a shop in the sub-basement area of the market to at least two (2) of the illegal wooden shops which are the subject of the OCG's Investigation.

Having seen the electrical connection, the CG sought to determine whether the connection was legal or illegal, and whether authorized or unauthorized by the Clarendon Parish Council. Overleaf is an actual photo of the electrical wiring which was observed by the OCG investigators as at 2013 April 18.





Pictures identifying an electrical connection from the concrete structures located in the sub-basement of the Market providing electricity to certain of the wooden shops

It was also observed by the OCG's investigators that there appears to be three different groups of persons/vendors at the Spalding Market, specifically as follows:

1. The legitimate market/food vendors, occupying spaces on the market compound and within the main market building, who pay a daily fee of \$100.00 and upwards;
2. The legitimate operators of the three (3) sub-basement shops who pay rent to the Parish Council; and
3. The tenants who occupy and utilize the illegally constructed wooden shops.

The subject of the OCG's Investigation are the wooden shops which are listed at No.3 above.

The OCG's investigators also observed the presence of a Jamaica Public Service Company



Limited (JPS) electricity meter at the front of the main market building from which power is supplied to the concrete structure which houses the shops which are legitimately owned by the Parish Council. The referenced JPS meter is numbered 1380606.

The electrical wire, which runs to at least two (2) of the illegally constructed wooden shops, is plugged into the main market building which receives electricity from the identified JPS meter.



Photo of the JPS Meter which is assigned to the Spalding Market and from which electricity is supplied to the main market building, from which electricity is abstracted and supplied to at least two (2) of the illegally constructed wooden shops.



Particulars of Rental Payments Collected

In light of the allegations which were made that the rental income from the wooden shops was being collected at the Constituency Office of the Hon. Richard Azan, Member of Parliament for North West Clarendon, the OCG investigators, on Friday, 2013 April 12 and Monday, 2013 April 15, visited the Constituency Office of the Hon. Richard Azan.

During the initial visit on 2013 April 12 and the follow-up visit on 2013 April 15, the OCG investigators interviewed Mrs. Bridget Daley-Dixon, Constituency Secretary at the North West Clarendon Constituency Office of the Hon. Richard Azan. The Constituency Secretary advised OCG investigators that she had in fact been collecting the rental payments for the ten (10) wooden shops, on behalf of Mr. John Bryant, for approximately six (6) months and had, as at 2013 February, collected in excess of two hundred thousand dollars (\$200,000.00).

In support of same, Mrs. Daley-Dixon, the Constituency Secretary, provided the OCG with a spreadsheet which she said she had created and which detailed the rental income which had been collected by her, since September 2012. Detailed below are particulars of the collections.

Rent Monies Collected for the Board Shops at the Market

Names	Months of Collection					
	September	October	November	December	January	February
	\$10,000.00	\$5,000.00	\$5,000.00	-	vacated	
	\$10,000.00	\$5,000.00	-	-	vacated	
	\$10,000.00	\$5,000.00	-	vacated	-	
	\$10,000.00	\$5,000.00	-	\$5,000.00	-	
	\$10,000.00	\$5,000.00	-	\$5,000.00	\$3,000.00	
	\$10,000.00	\$5,000.00	-	\$5,000.00	vacated	
	\$10,000.00	\$5,000.00	-	vacated	-	
	\$10,000.00	\$5,000.00	-	\$5,000.00	\$5,000.00	
	\$10,000.00	\$5,000.00	-	\$5,000.00	\$5,000.00	
	\$10,000.00				Moved into shop	\$5,000.00
					\$10,000.00	
						\$10,000.00
Total Collections Made	\$100,000.00	\$45,000.00	\$5,000.00	\$25,000.00	\$23,000.00	\$15,000.00
TOTAL	\$213,000.00					



Concerning the arrangement for the collection of rental payment for the illegal wooden shops, Mr. John Bryant advised the CG during a judicial proceeding, in accordance with Section 18 of the Act, and to which he had been summoned to appear, that he had asked Mrs. Daley-Dixon, the Constituency Secretary, to collect the rent on his behalf. According to Mr. Bryant, upon collecting rent, he would, on occasion, offer Mrs. Daley-Dixon Five Hundred Dollars (\$500.00) to 'buy a drink or soda'. There was no other disclosed arrangement between Mr. John Bryant and Mrs. Daley-Dixon.

Mrs. Daley-Dixon in a statement which was given to the OCG on 2013 April 15, stated:

*"About a day or two after the opening of the market there was a meeting which was held at the Constituency Office, between Mr. Azan and Mr. Bryant. **I was introduced to Mr. Bryant by Mr. Richard Azan after the meeting. Mr. Azan told me that Mr. Bryant was the person who built the shops at the market, he was the contractor.***

I was then asked by Mr. Bryant to collect the rent, in the presence of Mr. Azan. Mr. Bryant told me that he did not want to have direct contact with the persons who would have rented the shops. It was agreed that the money would be paid to me at the Constituency Office, by the persons renting the shops. Mr. Bryant suggested to me that a rental agreement be used and gave me the terms of the



rental agreements. I created the rental agreements, showed them to Mr. Bryant for his approval. Mr. Bryant approved it and I gave him a copy. The rental agreements were signed when the tenants came to make the initial payments and deposit. I signed the agreements on behalf of Mr. Bryant.

Mr. Azan did not object to the payments being collected by me at the Constituency Office and no subsequent objections were voiced by Mr. Azan.”⁵

In her Statement to the OCG, Mrs. Daley-Dixon further advised as follows:

“I received two payments of \$5000.00 on two separate occasions, from Mr. Bryant for assisting him with the process. I submitted all payments which were collected by me to Mr. Bryant. I did not give Mr. Azan anything from the money which I collected....”⁶

The CG enquired of Mr. Richard Azan whether he, himself, had received any benefit as a result of the construction of the shops. Detailed, hereunder, is a verbatim extract of the evidence from the Judicial Proceeding concerning this issue.

⁵ Statement given to the OCG by Mrs. Daley-Dixon on 2013 April 15. Page 2.

⁶ Statement given to the OCG by Mrs. Daley-Dixon on 2013 April 15. Page 4.



“Chairman: Did you receive any money from the rental? And before you answer, I just remind you of the Contractor General’s Act.

A: No, I would tell you pass the Bible across here.

Chairman: Just wait, Mr. Azan, just wait on me. The Contractor General’s Act indicates that you are not compelled to give any answer to a question that you would not have ordinarily been asked to give in another court so I am just advising you of that before you answer just to be fair. So I am just asking you again, and you can utilize that proviso if you wish.

Attorney: He asked for the Bible again.

A: Yes, I would want the Bible to swear.

Chairman: You are being given the Bible, sir.

A: Yes, and I love the colour too, its red.

Chairman: I asked them to get a black one because the first one was another colour.

A: Green?



Chairman: It wasn't green, it was pink or yellow.

A: Well I am telling you now, I swear I never get a cent, or a sweetie or even a drink of water from anything that was collected from the Spalding Market.”⁷

As it regards Mrs. Daley-Dixon being remunerated for facilitating the collection of rental payments, detailed hereunder are the particulars of the question posed to the Hon. Richard Azan and the response given during the referenced judicial proceeding.

“Chairman: Are you aware that your Secretary got two payments of \$5,000.00 totaling \$10,000.00 to collect rental on behalf of Mr. Bryant in your office?

A: No, I wasn't aware of that.”⁸

As it regards the circumstances surrounding the collection of the rental monies, Mayor Scean Barnswell advised the OCG that from as early as 2012 October it was brought to his attention that money was being collected at the Northwest Constituency Office of Mr. Richard Azan. However, and according to Mayor Scean Barnswell, he did not become aware of the person who

⁷ Transcript of Judicial Proceeding with the Hon. Richard Azan. Pages 73- 74

⁸ Transcript of Judicial Proceeding with the Hon. Richard Azan. Page 74



had been collecting the monies until particulars of same were made public in the print media on 2013 April 7⁹.

It is instructive to note that the Minutes of the Meeting of the Public Health and Sanitation Committee of the Clarendon Parish Council, which was held on 2012 September 19, records, *inter alia*, as follows:

“Councillor T. Gordon reported that the 1st phase of work on the Spalding market was completed although minor works were ongoing on some sections. The vendors he said were utilizing same and additional assistance was needed from the Municipal Police to maintain order.

He said the vendors were allowed to use the market without being charged a fee for about 2 weeks. However, effective November they would all have to pay.”¹⁰

Despite the record of the foregoing Minutes, the evidence which is contained in the previously mentioned Receipt Book reflects that the first rental fees were collected from at least seven (7)

⁹ Transcript of Judicial Proceeding with Mayor Scean Barnswell. Pages 8- 9

¹⁰ Minutes of the Meeting of the Public Health and Sanitation Committee of the Clarendon Parish Council which was held on September 19, 2012. Page 1. Mr. Richard Azan also presented the OCG with the referenced Minutes as evidence that the shops were in fact discussed at the Clarendon Parish Council and that Officers of the Council were aware of there presence.



persons who were occupying the illegally constructed wooden shops, by Mrs. Daley-Dixon, the Constituency Secretary of the Hon. Richard Azan, from as early as 2012 September 6.

Quite importantly, the CG required the Hon. Richard Azan, at the judicial proceeding, to indicate whether he was of the belief that the Clarendon Parish Council had an entitlement to collect rental for the wooden shops which were located on its lands at the Spalding Market.

Detailed hereunder is a verbatim extract of the judicial proceeding involving the Hon. Richard Azan at which time the aforementioned matter was addressed and responded to by the Hon. Richard Azan.

“Chairman: ...In terms of the shops that were on the Parish Council land, the Parish Council as Mr. Dabdoub has directed me, is entitled to collect its revenue?”

A: Yes.”¹¹

Detailed below is the verbatim extract of the transcript of a judicial proceeding with the Hon. Richard Azan as it regards the issue of the involvement of his Constituency Secretary in the collection of rental payments for the wooden shops:

“Chairman: ...What I am asking specifically, you having knowledge of this arrangement between your Secretary

¹¹ Transcript of judicial proceeding with the Hon. Richard Azan. Page 90



and Mr. Bryant where money was being collected for property on the government's land, the Parish Council, did you do anything in respect of what I would call an attempt to defraud the revenue at anytime?"

A: The answer would be no."¹²

Further, the CG, during the course of its judicial proceeding with the Hon. Richard Azan posed the following questions and received the following responses as it regards the agreement between Mr. John Bryant and the Clarendon Parish Council:

Chairman: I have asked specifically, in terms of prefacing it in terms of revenue collection; I have asked specifically in terms of the Parish Council's role; I have asked specifically about somebody who places something on somebody else's property, and I have asked specifically in terms of there is a loss, I am not asking a legal question interpretation.

¹² Transcript of judicial proceeding with the Hon. Richard Azan. Page # 90



Mr. Dabdoub: But you need to phrase it properly in terms of the facts then.

Chairman: Okay, you want me to rephrase for the...

Mr. Dabdoub: The facts are that the Parish Council doesn't own the shops, the Parish Council owns the land on which the shops are placed. The rental of the shops for instance, would be for Mr. Bryant. Whether or not Mr. Bryant should be paying the Parish Council for the space on which those shops are occupied is another question.

Chairman: Do you adopt to what Mr. Dabdoub has said?

A: Yes.

Chairman: Now, in that regard my question that I was getting at, would you consider yourself the facilitator of this agreement between the Parish Council and Mr. Bryant?

A: Yes.

Chairman: In terms of being the facilitator would you consider that if money is being paid to your Secretary on his behalf, would you consider that it is



the Parish Council who should get the money and not Mr. Bryant for placing a shop on the Parish Council's land?

A: Yes. I said it before that, you know, it was a temporary agreement.

Chairman: I am not getting an answer. So you are saying that because it is temporary your Secretary on behalf of Mr. Bryant could collect the money and not the Parish Council?

A: No, because the Parish Council should make the arrangement because that is what was the agreement.

Chairman: the agreement?

A: that Mr. Bryant put up the shops and the Parish Council...

Chairman: I am sorry, where is the agreement?

A: No, there is no agreement.

Chairman: No, it's your words.

A: Yes, the Parish Council should regularize the shops on the property.”¹³

¹³ Transcript of judicial proceeding with the Hon. Richard Azan. Page # 92 -93



Decision regarding the Rental Fees

The Hon. Richard Azan, in his written response of 2013 April 23, to the CG, further advised that:

“Sometime in late September 2012 on the night of the opening of the market the vendors requested a meeting with me as Member of Parliament. I along with Mr. Trevor Gordon, Councillor for the Spalding Division met with the Vendors. Also present was Mr. Bryant and my constituency secretary.

During this meeting a payment fee of Five Thousand Dollars (\$5,000) monthly was agreed to. It was also agreed, that as a temporary basis, until the Parish Council was able to regularize the situation and the payment procedure, that the rental payments would be made to Bryants Construction at my constituency office and Mrs. Bridgette Daley-Dixon, my constituency secretary, was the person appointed by Mr. Bryant to make collection of the rental on behalf of Bryant’s Construction. I was never involved in the collection of rental, nor was I ever involved in the day to day running of the shops. I was not aware that the Parish Council had not taken charge of the shops until the matter became



*public. Thereafter, upon enquiry, I became aware that no agreement had been arrived at between the Parish Council and Bryant's Construction with respect to the manner in which Bryant would be compensated and I spoke with Mr. Bryant and advised him to seek to hand over the shops to the Parish Council and seek to conclude an agreement with them as to how he would be compensated. I also spoke to the Mayor in this regard."*¹⁴

It must be noted that Mr. Trevor Gordon, Councillor, Clarendon Parish Council, also made the following disclosure during a judicial proceeding:

"Q: Were you involved in any other meetings thereafter concerning the shops, either with the vendors, Contractor, both together or any other person?...

A: After the opening the vendors decide [sic] they want to talk to us.

Q: And who is us?

A: Me, Mr Azan, I can remember the Contractor was there.

Q: Anyone else apart from the vendors?

A: No, just curious people who were there and Mr. Azan outlined that the Contractor is

¹⁴ Response to Requisition. Question # 7.



willing to invest his money and put up some shops and it going to turn over to the Parish Council and the Parish Council going to take it from there. Then they were talking about price and one of the vendor through [sic] she have a big stall, she's one of the top vender[sic], said she would pay \$8000 for the shop and they having a discussion until the vendors come down to \$5000, they would pay \$5000 to rent the shops. Then it come down to money, the money, where it going to pay to, then they turned and said, 'Let the Councillor collect the money.' I turn to them and said no, I not collecting any money.

Q: Why didn't you want to collect any money?

A: One, I am a busy person and two, I just didn't – I and the Contractor not even have any relation so I don't see why I should handle his personal thing. Then they said where they could leave the money. Some even suggesting that somebody can collect it at the market, the gate, the morning, and some suggested that they could just leave it



*at the Constituency Office until the Parish
Council take over.”¹⁵*

¹⁵ Transcript of judicial proceeding with Mr. Trevor Gordon. Pages 8-9.



Particulars of the Receipt Book which was used by the Constituency Secretary of Mr. Richard Azan

The OCG verified, by examination, the particulars of the payments/monies collected which were exhibited on a Spreadsheet, which were provided by Mrs. Daley-Dixon, the Constituency Secretary, and the physical inspection of the receipt book which was used to record the payments which were received from the respective lessees of the wooden shops.

The OCG investigators were presented with the actual Receipt Book by Mr. John Bryant, at the Clarendon Parish Council Office.

In this regard, the OCG was presented with a receipt book containing one hundred (100) numbered pages. Forty one (41) of the numbered pages bore a carbon copy of the particulars of the rental payments which had been collected from numerous persons for the illegally constructed shops which were located in the parking lot of the Spalding Market, for the period of 2012 September 6, 2012 through to 2013 February 6.

The referenced receipt book reflected rental payment and deposit sums which were collected by Mrs. Daley-Dixon from the respective tenants who had rented the wooden shops. In the majority of instances the receipts bore the signature of Mrs. Daley-Dixon and reflected full payment sums of \$5000.00, security deposits and the receipt of partial payments in varying amounts.

The particulars of the receipt book were verified by Mrs. Daley-Dixon on 2013 April 15, during an interview session which was held with OCG Officers.



It is instructive to note that an article was published in the Jamaica Gleaner Newspaper, on 2013 April 14, which made reference to the presence of a Justice of the Peace Stamp belonging to Mr. Richard Azan being affixed to at least one of the receipts which were issued to the occupants of the illegally constructed wooden shops.

Consequently, the OCG investigators, in an interview session with Mrs. Daley-Dixon, Constituency Secretary, the person who collected the rental fees for the ten (10) wooden shops, put the allegation of the Justice of the Peace stamp of the Hon. Richard Azan appearing on the receipts to her for verification.

Detailed, hereunder is a verbatim extract of the representations which were made by Mrs. Daley-Dixon in her statement to the OCG:

"I am aware, by reading the Sunday Gleaner, that mention was made of a stamp on one of the receipts which was allegedly issued to a tenant. I read it in the Sunday Gleaner, and I have no access to such a stamp and there was no other receipt with this stamp. I have never used a stamp on the receipts.

I read the contents of the rent receipts which I had previously identified in my statement. I stated that there was a receipt in the Sunday Gleaner with a stamp. At no time was I told to use a JP stamp. For one, JP stamps are not done here. In such an instance, the document would be sent to Mr. Azan in



*which case Mr. Azan does not use a stamp, he uses a seal.*¹⁶

Mrs. Daley- Dixon was shown a copy of the forty-one (41) invoices which were in the Receipt Book and asked to verify same. Same was verified by her in the presence of OCG Investigators. The CG can neither confirm nor deny the actual stamp or seal which was used on the invoice published by the Jamaica Gleaner and, therefore, makes no finding on this matter.

Further, the CG, during the course of the judicial proceeding raised with the Hon. Richard Azan the issue of the Justice of the Peace Stamp which was allegedly present on at least one of the invoices which was issued to an occupant of the wooden shops.

Mr. Richard Azan advised the CG that he has been a Justice of the Peace since 1991/1992 and that he has a seal for his designation as a Justice of the Peace but not a stamp.¹⁷

Detailed below is a verbatim extract of the judicial proceeding with Mr. Richard Azan regarding his stamp and/or seal as a Justice of the Peace:

“Answer: I don’t have a stamp and from 2001 we are not authorized to use a stamp unless you are doing a photograph. It is a seal, so no document is valid unless you use a seal.

¹⁶ Statement of Mrs. Bridget Daley-Dixon. 2013 April 15. Page 3

¹⁷ Judicial Proceeding with Mr. Richard Azan. Page # 64-65



Question: Have you ever had a stamp as Justice of the Peace?

*Answer: **In the earlier part but not one that I see in the newspaper; and I ask the question that from you don't see a signature on it, I don't know how it becomes valid.***

Question: Is that stamp in your possession, though?

Answer: Which stamp?

Question: The stamp that you had before.

Answer: The stamp that I had yes, it would have Richard Azan. JP, P.O. Box 56, Spalding, Clarendon.”¹⁸ (OCG Emphasis)

Based upon the abovementioned disclosures, the OCG requested that Mr. Azan provide a certified copy imprint of the stamp which was in his possession. It was duly provided to the CG through Mr. Richard Azan's Attorney-at-Law.

¹⁸ Judicial proceeding with the Hon. Richard Azan. Page 65



Particulars of the Rental Agreements

The CG was provided with copies of nine (9) Rental Agreements for the shops which are located at the Spalding Market. The said Rental Agreements identified the Owner of the shops as one “*John Bryant, Osbourne Store, Clarendon*” and detailed the ‘Property’ as being shops located at the Spalding Market, Spalding P.O., Clarendon.

The Rental Agreement also indicated that “*The rent shall be \$5000.00 monthly payable on the ...day of every month or in advance as long as this agreement is in force.*”

A security deposit, in the sum of \$5000.00 was also required to be deposited with the Landlord, by the Tenant, upon the execution of the Agreement.

It was also detailed on the Rental Agreements, *inter alia*, that “*All notices shall be in writing to the Tenant at the shop; all rents and notices are to [sic] given at the: North West Clarendon Constituency Office*”.

The Rental Agreement, whilst outlining the rights and obligations of the Tenant and the Owner, specifically stated that the “*Tenant shall not assign this agreement or sublet the shop without the written consent of owner.*”



Awareness of the Shops at the Spalding Market

The Opening Ceremony

An opening ceremony for the Spalding Market occurred on 2012 September 5 and was attended by the Most Hon. Portia Simpson-Miller, Prime Minister of Jamaica, the Hon. Noel Arscott, Minister of Local Government and Community Development, Mayor Scean Barnswell, amongst others, inclusive of some officers of the Clarendon Parish Council.

The CG has made no adverse findings regarding the opening ceremony and the persons who were in attendance, save to say that the timing of the said opening ceremony in proximity to the ‘time’ that the Hon. Richard Azan spoke to Mr. John Bryant (24-48 hours) about the construction of the wooden shops raises suspicion as to the credibility of certain statements which have been made by the Hon. Richard Azan.

Having regard to the aforementioned, the CG must highlight the following disclosures which were made by the Hon. Richard Azan during a judicial proceeding:

“Chairman: So at the time that you started the planning for the opening you had not yet gotten the approval of the Parish Council?”

A: The discussion with the Mayor was during the week of the first week of September, that is early, early



September, it could be about the 2nd or 3rd of September.

Chairman: So in relation to the week before when you started the planning of the opening you had not yet had the approval?

*A: We never had any discussion. It was something that we were – long, long time we had the discussion with the Parish Council about getting these vendors who have these little ugly things at the roadside, if we could get some people to help to construct some decent place that people can use. So that is nothing that just fly overnight and so forth...
No, nothing never started.*

Chairman: And a week before when you were planning the opening had the construction started?

A: No, no.

Chairman: So it's between the first discussion with Mayor Barnswell and the 4th that the construction started?



A: *On the 4th, that is the time I returned to Spalding.”¹⁹*

It is the CG’s considered view that the Hon. Richard Azan has not yet answered the question which was posed.

The Hon. Noel Arscott, under cover of letter dated 2013 June 13, and further to an interview which was conducted on 2013 May 8, advised the OCG, *inter alia*, that “*On the issue of my invitation to the Opening Ceremony, my office was unable to located an official invitation and checks reveal that it was the Office of the Prime Minister that organized the Opening Ceremony. I reiterate that whenever the Prime Minister is in attendance at any function, the Minister with portfolio responsibility to which the function relates must be in attendance.*”²⁰

Similarly, Mrs. Scarlett Gillings, Managing Director, JSIF, in response to a Statutory Requisition which was dated 2013 June 6, advised the OCG that on 2012 August 29, representatives from JSIF were invited to the opening ceremony. According to Mrs. Scarlett Gillings, the invitation to the opening ceremony was received by telephone from a Ms. Sonia Hyman, Director of Planning & Development, in the Office of the Prime Minister. The OCG was advised that no representative of the JSIF attended the opening ceremony.²¹

Neither the Hon. Noel Arscott or Mrs. Scarlett Gillings was able to provide the CG with information regarding the persons and/or entity(ies) who/which had paid for the expenses of the opening ceremony.

¹⁹ Transcript of Judicial proceeding with the Hon. Richard Azan. Pages 80 -81

²⁰ Letter from the Hon. Noel Arscott, dated 2013 June 13.

²¹ Sworn response from Mrs. Scarlett Gillings. Response to Question # 2.



Ms. Charmaine Williams, Director of Administration, Clarendon Parish Council, represented to the OCG that she did not play any part in the arrangement of the opening ceremony despite the fact that such an exercise would have fallen within her responsibilities. Ms. Williams was unaware of the reason(s) for which she was not involved and explicitly stated that she did not receive instructions in regard to arranging an opening ceremony.²²

The Hon. Richard Azan, in his appearance before the Contractor General, advised that the opening ceremony was funded by his Constituency and not his Constituency Development Fund. The Hon. Richard Azan indicated that his Constituency has regular fund raising events and that a percentage of his salary is placed in an account which is used to fund Constituency projects²³.

Quite curious is the 24 - 48 hour time period between which the Hon. Richard Azan purportedly approached Mr. John Bryant about the construction of the wooden shops, the erection of the wooden shops in the parking lot of the Spalding Market and the strategic inclusion and display of the wooden shops at the opening ceremony by the Hon. Richard Azan.

It is also the case that photographic evidence which was presented to the CG has clearly shown that construction had commenced on the wooden shops as at the date of the opening ceremony and at least two (2) of the shops were completed and within clear sight on the parking lot of the Spalding Market.

²² Transcript of Judicial proceeding with Ms. Charmaine Williams. Pages 9 -10.

²³ Refer to pages 10 and 15 of Transcript of Judicial proceeding involving the Hon. Richard Azan.



Amongst the persons from the Clarendon Parish Council who were in attendance at the referenced opening ceremony and who had some involvement with the Spalding Market are the following:

1. Mr. Ralston Peters – former Commercial Services Manager;
2. Mr. Scean Barnswell – Chairman of the Clarendon Parish Council and Mayor;
3. Mr. Wayne Brown – Director of Finance and then Acting Secretary Manager;
4. Mr. Jumaane Robinson – former Director of Planning and Development; and
5. Mr. Garfield Thompson – Deputy Superintendent of Roads and Works



Ralston Peters – Former Commercial Services Manager

The evidence which was given to the CG by Mr. Ralston Peters, the then Commercial Services Manager, on 2013 April 16, has revealed that he was aware of the wooden shops on the property of the Spalding Market. In his testimony to the OCG, Mr. Ralston Peters advised that he attended the opening ceremony on 2012 September 5 at which time “...the shops were already under construction. At least two shops were completed and/or were almost complete and there were about 2 more shops which had begun.”²⁴ Mr. Peters further advised that the wooden shops were in full view of persons in attendance at the opening ceremony and were located in the parking lot of the Spalding Market.

Of importance, are the following disclosures which were made by Mr. Ralston Peters during the judicial proceeding with the CG:

“...My first directive to be involved in any sort of way with the Spalding Market was given to me on the day prior to the official opening. When I got there those shops were already under construction; at least two were already finished. So these were not normal circumstances...”

I know that work was being done on the market itself, on the main building; we were aware of that – kind of in passing, but we were. I knew nothing about any other shops being built there. I will tell

²⁴ Statement from Mr. Ralston Peters dated 2013 April 16. Page # 1



you frankly, and it is probably in the –its probably in the earlier statement as well – but I will tell you frankly that I believe I was deliberately left out of whatever was happening there, and I kept my distance. I did not intervene. The only kind of intervention, if you could call it that, was when I asked the Planning and Building Officers, two persons with whom I had reasonably good relationship, how was it that they were constructing a market that Commercial Services would be responsible for operating and nobody ever saw it fit to involve us, or involve me in the planning of what is being done there. Not necessarily in those exact words, but what they were saying is that it really had nothing to do with them, they were just following instructions.”²⁵

His Worship the Mayor, Mr. Scean Barnswell

The evidence which was provided by Mayor Scean Barnswell, in the judicial proceeding and in a written Statement, as it regards the wooden shops, reveal that he had first hand knowledge of the presence of the wooden shops and the association of the Hon. Richard Azan concerning the construction of the wooden shops.

²⁵ Transcript of Section 18 Judicial proceeding with Mr. Ralston Peters on 2013 April 30. Page 24-26.



Mayor Barnswell advised the CG that *“I recall that at the Official Opening of the Spalding Market, I observed the presence of four (4) wooden shops, of which two (2) were complete and the remaining two (2) incomplete. Mr Richard Azan informed me that the shops were model shops which were built by the Contractor to accommodate the vendors who were selling dry goods.”*²⁶

It is important to note that Mayor Barnswell, while providing evidence to the CG, indicated that he responded to Mr. Richard Azan on the day of the opening ceremony and advised him that he, Mayor Barnswell, had *“...no objections with those shops being there, because they serve a purpose, based on the intents [sic] in which they were created.”*²⁷

Of material importance to the CG is an article which was published in the local print media, on 2013 April 10, and which was a letter penned by Mayor Barnswell, regarding the shops at the Spalding Market. The full particulars of the Mayor’s public pronouncement are detailed overleaf:

²⁶ Statement from Mayor Scean Barnswell dated 2013 April 18. Page 2

²⁷ Section 18 Judicial Proceeding with Mayor Scean Barnswell. Page 20



Setting the record straight

Dear Editor,

The Sunday Gleaner dated April 7, 2013, carried a front page article headlined, "**Mayor Blames Political Interference For Market Controversy**" and interpreted myself, Mayor Scean Barnswell as blaming MP of North West, Clarendon, Richard Azan of political interference – that is not accurate!

My reference to political interference was taken out of context.

At no time during the interview did I accuse or blame MP Azan for any form of political meddling. My response to your reporter was that, I think it is political interference from the previous (JLP) administration who couldn't achieve what we have accomplished in 12 months and they are throwing a spanner in the wheel of progress, by making public mischief of this matter.

Here is a brief history; when the issue was brought to the Clarendon Parish Council's attention in October 2012 that monies were paid directly to the contractor for rental of the shops. The then Commercial Services Manager with responsibility for markets in the parish was instructed to formalize an arrangement with the contractor to turn over the handling of the shop rentals, to the Clarendon parish Council.

The council had also hired the services of an Attorney to write to the contractor to cease and desist with immediate effect renting shops in the Spaulding market.

In making my enquiries, it was brought to my attention that up to January 2013 that instruction was not carried out and the contractor was called into a meeting to discuss the matter at hand.

Two proposals was put the contractor (1) to allow him to lease the section of the premises from the Council or (2) sell the parish council the shops. The contractor settled for the second option. Since then the parish council has full responsibility for the wooden structures.

We engaged our Technical Staff to assess the value and then report this to council. At one of the Council's Committee meetings the matter came up for discussion and a decision was reached for the monies already collected by the



contractor for the rental of the shops, to be deducted from the cost of the shops and a payment arrangement for all the structures made with the contractor for a specified period.

The other matter of Council and Mayor Barnswell having no knowledge of the wooden shops is also not accurate. Knowledge the Council lacked was that of monies being paid to a third party. But we were very much aware that the shops were built by the contractor.

This information was known and accessible to **ALL** Councilors at the Clarendon Parish Council. There was at one meeting a very robust debate as to whether or not the Council should consider demolishing the wooden shops. The final decision was that the shops would remain as they served a vital purpose and Council will compensate the contractor for same.

MP Azan was instrumental in the construction of the Spalding Market during his tenure as MP in 2007-2011. It continued with the then MP Michael Stern for a short period and stopped. The construction restarted in 2012 by the Parish Council under my stewardship and a section was completed to accommodate the vegetable and ground provision vendors.

MP Azan enjoys a favorable relationship with the leadership of the council and he has been working closely with the Clarendon Parish Council to restore public order to the town of Spaulding.

I am therefore requesting of your editorial team to withdraw statements from that Article which would paint a grim picture of the current relationship between me, the Council and MP Richard Azan.

I thank you for your cooperation.

Scean Barnswell (Councillor)

Mayor of May Pen

Scean Barnswell
Barnswell
8/5/2013



The foregoing article, which publicly conveyed the views and **knowledge** of Mayor Scean Barnswell, that the Clarendon Parish Council was aware that Mr. John Bryant had constructed the wooden shops in the Spalding Market, reinforces the CG's view that the Clarendon Parish Council may have, at a minimum, turned a blind eye to the illegally constructed shops in the parking lot of the Spalding Market and failed to exercise due care in ensuring that the necessary approval processes and enforcement actions were employed.

Mr. Wayne Brown- Director of Finance and then Acting Secretary Manager

Mr. Wayne Brown, Director of Finance, was, as at 2012 September 5, the then Acting Secretary Manager, in the absence of Mrs. Judy Lawrence, the then Secretary Manager, who had not yet returned from vacation leave.

According to Mr. Brown, his first and only visit to the Spalding Market occurred when he attended the opening ceremony on September 5, 2012. In a judicial proceeding, Mr. Brown advised the CG that he began acting as Secretary Manager on or around the last week of July 2012 and that due to the absence of Mrs. Judy Lawrence he attended the opening ceremony in that capacity. He also attended the opening ceremony in his capacity as the then Acting Secretary Manager.²⁸

Mr. Brown further advised that he was aware of the presence of one shop at the opening ceremony and that it was mentioned that same was a "proposed model shop". The CG was further advised by Mr. Brown that following the opening ceremony and sometime between then and 2012 December 31, he became aware of the existence of other wooden shops, albeit informally from the then Commercial Services Manager.

²⁸ Refer to pages 17 -18 of transcript of judicial proceeding with Mr. Brown on 2013 May 8.



Mr. Jumaane Robinson- then Director of Planning and Development

Mr. Jumaane Robinson, then Director of Planning and Development, in a Statement to the OCG, which was dated 2013 April 17, advised that a part of his job function included the “...monitoring of development in the Parish of Clarendon to ensure that same is conducted in an orderly manner.”

According to Mr. Robinson:

“I recall that on the September 5, 2012, while attending the official opening of the market, I observed an unfinished wooden structure which was erected in the parking area of the Spalding Market. This wooden structure was not a part of the design for the market for Phases 1 and 2.

On September 5, 2012, I conducted a tour of the market. This tour also included Mr. Garfield Thompson, Ms. Eleanor Coombs, Mr. William Shagoury, Mr. Esme of the Ministry of Local Government, Mr. Trevor Gordon and Mayor Scean Barnswell.”²⁹

It is instructive to note that Mr. Robinson informed the OCG that he had not subsequently visited the Spalding Market after September 5, and had no involvement in the official opening of the

²⁹ Statement from Mr. Jumaane Robinson, dated 2013 April 17.



market. Mr. Robinson also indicated that he was advised of the date and time of the opening by Mr. Wayne Brown.

Mr. Robinson further indicated as follows:

“I was not overly concerned about the presence of the incomplete wooden structure while attending the Opening of the market because it seemed to have been a temporary structure and not permanent. I would have only been concerned if the structure appeared to have been permanent.”³⁰

Mr. Garfield Thompson – Deputy Superintendent of Roads and Works

Mr. Thompson indicated that he attended the opening ceremony of 2012 September 5 at which time he made certain observations, inclusive of an incomplete wooden structure of a duplex shop on blocks.

According to Mr. Thompson “when he made enquiries he was told that the shop was a model structure for Vendor stalls”. The CG was further advised by Mr. Thompson that it was not stated whether the referenced structure was intended for the Spalding Market. Notably, Mr. Thompson indicated that it was not until 2012 November, that he became aware of the other shops that were being built by the said Contractor, in addition to that which he had seen at the opening ceremony.

³⁰ Statement from Mr. Jumaane Robinson, dated 2013 April 17. Page 4



The OCG is aware that not all members of the Clarendon Parish Council were present at the opening of the Spalding Market, as well as the fact that references were made to the presence of shops in the Minutes of Committee Meetings of the Clarendon Parish Council. As such, it is prudent to highlight, in particular, the Minutes of the Finance and Estate Management Committee which was held on 2012 November 22.

The referenced Minutes detailed the presence of twelve (12) shops and the proposal for the erection of stalls in the Spalding Market.

In regard to the foregoing, at least one (1) Councillor has advised the OCG that he was under the distinct impression that the shops being referred to were the shops which were located in the main concrete building at the Spalding Market.³¹

³¹Record of Judicial proceeding with Councillor Winston Maragh. Page 136. Minutes of the Meeting of the Finance and Estate Management Committee, November 22, 2012 and the Public Health and Sanitation Committee Meeting, January 16, 2013, were put to Councillor Winston Maragh.



Electrical Connection

In a judicial proceeding with Mayor Sean Barnswell, the CG raised the question of the JPS electricity supply to at least two (2) of the wooden shops which are located in Spalding Market. Detailed below is a verbatim extract of the judicial proceeding involving Mayor Sean Barnswell:

“Chairman: Okay. Now, sir, are you aware that the Parish Council – let me ask you another way. You aware that they [sic] are ten shops presently, wooden shops on the parking lot of the Parish Council in Spalding?”

Mr. Barnswell: Yes.

Chairman: Are you aware that at least two of these shops have illegal light?

Mr. Barnswell: No. No, I am not. I am not.

Chairman: All right. Are you aware that the Parish Council has paid the bill for these illegal lights from the two shops? Since the construction of these ten shops, to date, the Parish Council has paid the light bill for two of these shops which have illegal light?



Mr. Barnswell: Well, I am not sure – I am not aware when the light was connected to the shops you make reference to, so I can't speak on it as to the period in which we have been paying for those illegal connections, as you state.

Chairman: You are not aware of any Minutes of Council that speak to illegal connection from any of the shops to the power supply on the market and the Council is paying for it?

Mr. Barnswell: I remember this matter came up for discussion where it was asked about power to be or electricity to be provided for those wooden shops and I also recall my response to that. No need to have electricity for those shops because market close at 6:00 and the perimeter lights would provide enough lighting for them to close and to exit the premises.”³²

The observations which were made by the OCG investigators, during the site visits to the Spalding Market, confirmed the presence of electrical wiring leading from the main concrete

³² Judicial Proceeding with Mayor Scean Barnswell. Pages # 14-15



building in the market to at least two (2) of the wooden shops which were present in the parking lot of the Spalding Market.

Consequently, the OCG as a part of its investigation, requested that the JPS investigate the matter.

By way of letter dated 2013 May 8, the JPS provided the OCG with the following results of its investigations:

“Meter Number 1380606 is assigned to Customer Number 108862 Premises Number 938564 and this JPS account is in the name of the Manchester Parish Council. There was no visible illegal connection to this meter.

During the course of the investigation several cords connected to form a makeshift extension was seen coming from a plug inside the market. The cord stretched across the parking lot of the market and was used to supply electricity to the new shops located in the parking lot of the market. Bearing in mind this ‘set up’ it would therefore appear that the value of the consumption for shops connected to this ‘set up’ would be billed to the account for the Manchester Parish Council. This would however,



not be illegal connection per se, as the connection is legitimate.

However could be deemed sub-letting of electricity which is contrary to the JPS Standard Terms and Conditions of the Contract for Electricity Supply.”³³

The foregoing view, that is, “*This would however, not be illegal connection per se, as the connection is legitimate*”, which has been put forward by the JPS is not one that is shared by the CG and shall be addressed in the Conclusions of this Report.

In keeping with the findings of the JPS Investigation, whilst there is no evidence of abstracting electricity from the JPS power source, the CG contends that there is an unauthorized connection from the main market building to at least two (2) of the wooden shops which are located in the parking lot of the Spalding Market. This matter shall be addressed in the Conclusions of the Report.

It is important to note that during the course of the judicial proceeding, the CG reviewed electricity bills for the Spalding Market which was in the name of the Manchester Parish Council. Due to its geo-physical location, the Manchester Parish Council was originally billed for the usage of JPS electricity at the Spalding Market, in error, however, the bills were in fact paid by the Clarendon Parish Council.

With reference to the electrical connection and wiring which were seen at the Spalding Market and which led to certain of the wooden shops, the OCG, during the course of its investigation

³³ Letter from the JPS which was dated 2013 May 8.



sought to ascertain from Officers of the Clarendon Parish Council their awareness of them and how the matter was being managed by the Parish Council.

Consequently, Ms. Michelle Brown, Budget and Revenue Officer, at the judicial proceeding, advised the CG that she became aware of the electrical connections³⁴ in 2013 February³⁵ and instructed the official market collector to charge the vendors for the use of the electrical connection.

The CG was advised by Ms. Michelle Brown that a rate, (“gestimate”) ranging between J\$100 – J\$200/per day, was arrived at based upon the amount which is charged in the May Pen Market. Ms. Brown was unaware of the basis upon which the Parish Council had determined the foregoing rates and the adequacy, if any, between the amount charged, and recovered by the Parish Council, and the actual electricity consumed by the respective vendors.

Ms. Brown, in her wisdom, further indicated that by ensuring that the vendors were paying a nominal rate for the electricity she had handled the matter and did not report same to any other Officer of the Clarendon Parish Council.

During a judicial proceeding which was convened with Mr. Wayne Brown, Director of Finance, Clarendon Parish Council, the following was expressed:

*“Chairman: Between September 2012 and March 2013,
are you aware that the Parish Council paid
for the supply of electricity that was being*

³⁴ The electrical connection refers to what has been established as an extension cord plugged into the wall socket within the main market building and which runs through the parking lot to certain wooden shops.

³⁵ Judicial proceeding with Ms. Michelle Brown. 2013 May 8. Page 37.



utilized by two shops, two shops situated on the parking lot of the Spalding market?

A: *Well, I am aware that in all of our markets, in fact, the Parish Council pays the electricity bills. Whether persons are attached to our meter, well to our supply or not, I am aware of that. Because presently the system which we have in place which is one which we are now trying to regularize, because we have been absorbing on the cost of electricity over these many years, and just in recent time we have actually moved and to regularize that supply in the May Pen market, because persons from time to time would come in and just connect to our system. With regards to the Spalding market, I wasn't aware that there were persons who were actually taking light from us in any of those shops.”³⁶*

Mr. Brown advised the CG that he was in fact aware that persons are charged a minimum of J\$100.00 upwards at the Spalding Market for the use of the electricity supply from the main market building. According to Mr. Brown, the collection of this money was based upon a precedent which was set in the other markets, such as the May Pen Market.³⁷

³⁶ Judicial proceeding convened with Mr. Wayne Brown. Page 6 -7

³⁷ Judicial proceeding convened with Mr. Wayne Brown. Page 10



Whilst the OCG notes that the Clarendon Parish Council has attempted to recover some amount of revenue by charging for the use of unauthorised electricity. The CG, based upon representations made to him, does not, without more, deem the rates charged and recovered by the Clarendon Parish Council to be adequate and/or commensurate with the actual consumption costs at the Spalding Market. In any event, the JPS confirmed that such subletting is a breach of the contract for electricity supply.

Further, it must be noted that abstracting electricity is a criminal offence and the Parish Council, by charging for same, would have, on the face of it, actively legitimized such an act.

It is instructive to note that Mr. Ralston Peters, former Commercial Services Manager, Clarendon Parish Council, during the course of a judicial proceeding at the OCG, which touched upon and concerned the matter of the supply of electricity to the wooden shops in the Spalding Market, indicated, *inter alia*, as follows:

“...I am responsible for Commercial Services overall, so all the other markets, and I would have noticed not only that people were stealing electricity in other markets but also that the arrangement that the Parish Council has for those who do pay for electricity was also inadequate.”³⁸

³⁸ Transcript of judicial proceeding with Mr. Ralston Peters. Page 17.



Construction of the Wooden Shops by Mr. John Bryant

During the course of a judicial proceeding which was held with Mr. John Bryant of Bryant Construction, Mr. Bryant advised the CG of the following:

“...I was the Contractor for the finishing of the market so meanwhile I there finish up the market some vendors who used to be on the road come inside and ask if they can get a shop there. So me say yea, okay, I will try, as soon as I actually finish the market I will assist with some temporary shops because I think you have Phase I and Phase 2.”³⁹

According to Mr. Bryant, he commenced construction of two (2) of the wooden shops in time for the opening of the Spalding Market. Mr. Bryant advised that for each of the ten (10) shops which were constructed by him he expended one hundred and seventy five thousand dollars (\$175,000.00) on material, labour and transportation.⁴⁰

It is later shown, in the Report of Investigation, that despite this stated construction cost, Mr. John Bryant, as a part of the regularization and negotiations with the Clarendon Parish Council, offered to sell the shops to the Parish Council for two hundred and fifty thousand dollars (\$250,000.00) each.

³⁹ Transcript of judicial proceeding with Mr. John Bryant. Page 4

⁴⁰ Particulars of the Construction Cost will be dealt with in further detail in the Report of Investigation.



Approval Process for the Erection of Structures

As it regards the approval process for the erection of structures, temporary or otherwise, the CG received conflicting accounts of the process governing same from the Hon. Richard Azan and Officers of the Parish Council. Detailed, herein, are the particulars of some of the observations made by the CG.

According to the Hon. Richard Azan, he had discussions with Mayor Scean Barnswell regarding the erection of the shops. Detailed, hereunder, is a verbatim extract of the judicial proceeding involving the Hon. Richard Azan in regard to a discussion with Mayor Scean Barnswell.

“Chairman: The shops that were constructed in the parking lot of the market, was this a project that required approval?”

A: No.

Chairman: And for the record the basis of saying that is what? Your basis for saying that it did not require approval.

A: Temporary building don’t have to go to any committee meeting for approval.

Chairman: Based on the three persons you mentioned, the Mayor, you mentioned two others, did you speak to any of the three in terms of the erection of these shops?

A: I had discussion with the Mayor.

Chairman: Could you tell us when and about what?



A: *I can't remember the date but I remember that Mr. Bryant discussed with me about the vendors and some of the vendors were saying it before when the police were saying that when the market is completed they cannot remain on the street, and Mr. Bryant said that some of the vendors approached him about the construction of these shops. I said to him I would have some discussion with the Mayor and I would get back to him. Well, time was on me, I know I had discussion with the Mayor, he said that the Parish Council didn't have the funding to construct the building, if he is willing to, it is no problem, the Parish Council along with Mr. Bryant would make the necessary arrangements. I think it was on the 3rd or 4th when I arrived in Spaulding.*

Chairman: *3rd or 4th what?*

A: *3rd or 4th of September, 2012. I know that one of the shops – I think it's the 4th, one of the buildings was under construction.*

Chairman: *to your mind...*

You wish to add something else?

A: *Yes, to say that the Mayor said that if Mr. Bryant...*



Chairman: I am just asking you, just to be clear, to say which Mayor please.

A: Mayor Barnswell. We are speaking about Clarendon so I think there is only one Mayor. He said that if Mr. Bryant would fund it he wouldn't have any problem with it and therefore both the Council and Mr. Bryant would work out the arrangements.

Chairman: And based on your understanding of these matters the say-so of the Mayor was sufficient, it did not need to go to Council or any of the Subcommittees?

A: No, no, because it would go to the next committee meeting to say that there is someone who has an interest in investing into any property that you have and therefore they would work out the proper arrangement.

Chairman: Just to be clear. Your understanding is that having spoken to the Mayor it was up to him to take it to a subcommittee?

A: To a committee.

Chairman: For an approval?

A: For approval.”⁴¹

⁴¹ Transcript of judicial proceeding with the Hon. Richard Azan. Pages 21 – 23.



The Hon. Richard Azan was of the opinion that the matter concerning the wooden shops resided with the Clarendon Parish Council subsequent to his discussion with the Mayor.

Having regard to the aforementioned, detailed below is a verbatim extract of the CG's judicial proceeding with Mayor Scean Barnswell:

“Q: So for the record Mayor, you had no discussions with Mr. Azan as it regards the construction of the wooden shops?

A: No, only on the official opening of the Spalding market.

Q: Did you indicate to Mr. Azan that you were in support of the shops as they were needed, however, the Clarendon Parish Council did not have the money to do so?

A: I don't recall that.

Q: Did you indicate to Mr. Azan that if Bryant Construction was prepared to fund the construction of the wooden shops an arrangement could be made with the Council as it regards compensation?

A: No.

Chairman: Did you indicate to Mr. Azan that if Bryant Construction was funding the project then the Clarendon Parish Council would have no objection?



A: No.”⁴²

The Hon Richard Azan also advised the CG of the fact that the rates which were to be charged for the rental of the shops or the use of the space had to be approved by the Parish Council⁴³ and made reference to a further meeting involving Mayor Scean Barnswell, at the Mayor’s Office, approximately two to three weeks after the opening, at which time the setting of rates and the taking over of the ‘building’ was allegedly discussed.⁴⁴

Mayor Scean Barnswell advised the CG that he gave his ‘non-objection’ to “*the idea of having the model shops to accommodate the vendors.*”⁴⁵ However, concerning his knowledge of the arrangements surrounding the construction of the wooden shops, Mayor Scean Barnswell advised as follows:

*“Well, I have no knowledge of the arrangement...
In my purview, knowing what Spaulding was like, I
wouldn’t have any objection that somebody is
making an attempt to assist us...*

*...But then there is processes as to how we go about
dealing with it from there. So whether I have no
problem with it but the Committee could have a
problem with it. **So as a single person, I can hardly***

⁴² Transcript of judicial proceeding with Mayor Scean Barnswell. Pages 88- 89

⁴³ Refer to Page 25 of the judicial proceeding with the Hon. Richard Azan.

⁴⁴ Refer to Pages 55 – 56 of the judicial proceeding with the Hon. Richard Azan.

⁴⁵ Transcript of judicial proceeding with Mayor Scean Barnswell. Page 34



**make a decision on those shops being removed or
being there.**⁴⁶ (OCG Emphasis)

Mayor Scean Barnswell was of the opinion that the wooden shops which were erected in the parking lot of the Spalding Market did not require ‘approval’, so long as they remained ‘model shops’.⁴⁷

However, the Mayor stated that once the shops were in use ‘permission’ would have been needed from the Planning Department and the Planning Committee of the Clarendon Parish Council.⁴⁸

The CG has seen no evidence whatsoever that permission was granted for the erection of the wooden shops.

It is important to note a distinction which was made by Mayor Scean Barnswell between the terms “Approval” and “Permission”. Detailed, herein, is a verbatim extract of the Mayor’s conceptualization of the two terms and the respective requirements which are intrinsic to each:

‘Approval’

“In my estimation ‘approval’ means for person to submit structural diagram, which would have to go through different technical departments.”⁴⁹

⁴⁶ Transcript of judicial proceeding with Mayor Scean Barnswell. Page 35. The OCG notes that the foregoing does not reconcile with the statement made by Mayor Barnswell that he did not advise Mr. Azan that the Clarendon Parish Council would have no objection to the construction of the shops.

⁴⁷ Refer to Transcript of judicial proceeding with Mayor Scean Barnswell. Pages 38-39.

⁴⁸ Transcript of judicial proceeding with Mayor Scean Barnswell. Page 39-42

⁴⁹ Transcript of judicial proceeding with Mayor Scean Barnswell. Page 40



According to Mayor Scean Barnswell, approval would have required the submission of blueprints and an examination of the proposed structure.

'Permission'

*"Permission" means somebody ask if they can put a particular structure on a place and then Council would look at it and decide where it is placed, would it create any objections to persons using the facility? Is it hazardous? Is it safe to do? So it doesn't need to go through all that rigours of approval..."*⁵⁰

However, Mrs. Judy Lawrence, then Secretary Manager of the Clarendon Parish Council, advised the CG that even for the model shops the following approvals would have to be obtained:

1. Permission to put the shops on Parish Council Land; and
2. Planning permission would have to be obtained, whether the structure was temporary or not.⁵¹

In support of her argument Mrs. Judy Lawrence advised the CG that when events such as the annual Denbigh Agricultural Show is being held and structures are being erected for the event, permission must be obtained for all the structures which are erected on the show ground.

⁵⁰ Transcript of judicial proceeding with Mayor Scean Barnswell. Page 40.

⁵¹ Transcript of judicial proceeding with Mrs. Judy Lawrence. Pages 13- 15



Similarly concerning the wooden shops the CG accepts the view of Mrs. Judy Lawrence and categorically rejects that of Mayor Scean Barnswell as it relates to when approval is required.

Note that Mayor Scean Barnswell also advised the OCG that the Clarendon Parish Council had no lease agreement with Mr. John Bryant nor had any licence or permit been granted to Mr. John Bryant authorising the construction of the wooden shops.

The representations which were made to the CG by Mr. Wayne Mitchell, Superintendent of Road and Works, bear relevance to the requirements for approval. According to Mr. Mitchell, he became aware of the wooden shops upon resumption of his duties in 2012 September. He was advised by the Deputy Superintendent of Roads and Works, Mr. Garfield Thompson, that the wooden structures were model shops.⁵²

Mr. Mitchell indicated that he undertook a site visit to the Spalding Market approximately two to three weeks after resuming duties in 2012 September, but took no action in regard to the shops due to a conversation which he had with the then Secretary Manager that “...*the matter was referred to the Commercial Services Manager for the arrangement to be formalized.*”⁵³

It is important to note the following assertion by Mr. Wayne Mitchell:

“Normally for structures they would have to do a plan and submit to Council, due process would have

⁵² Refer to pages 107 – 109 of Transcript of judicial proceeding with Mr. Wayne Mitchell.

⁵³ Transcript of judicial proceeding with Mr. Wayne Mitchell. Pages 116-117



*to be followed, the officer would have to go through
verify and make recommendations.”⁵⁴*

Evenmoreso, and in light of the statements of Mrs. Judy Lawrence and Mr. Wayne Mitchell, the CG rejects the view that has been put on the record by Mayor Scean Barnswell.

Detailed below is a verbatim extract of a direct question which was posed to Mr. Mitchell during a judicial proceeding and his response thereto:

*“Chairman: And you are stating for the record that
structures such as the ones that were erected
at the Spalding Market did not require
permission from Council?”*

A: I didn’t say that.

*Chairman: So could you say whether or not that is so
yes or no?*

*A: Based on the regulations, once you are
doing any form of development you need to
get planning permission.*

*Chairman: All right, so let me just go over again. So
structures, shops as the ones which were
erected at the Spalding Market required
permission from the Council?*

A: Uh-huh.

⁵⁴ Transcript of judicial proceeding with Mr. Wayne Mitchell. Page 127.



Chairman: Could you speak a little louder for me, please?

A: Yes.

Chairman: Yes, all right. Thank you.”⁵⁵

When all has been considered, and the sworn testimony of the witnesses examined, the CG has grave difficulty in accepting the responses which have been forthcoming from the Hon. Richard Azan. The OCG’s position is buttressed by the fact that the Minister has been involved with the Parish Council from as early as 1989 and has previously served as a Councillor and ought to have been familiar with the approval process.⁵⁶

⁵⁵ Transcript of Judicial proceeding with Mr. Wayne Mitchell. Pages 121-122

⁵⁶ Refer to page 15 of the Judicial proceeding with the Hon. Richard Azan.



Involvement of Mr. Richard Azan

The Hon. Richard Azan, in his written response to the OCG's Statutory Requisition, which was dated 2013 April 23, stated, *inter alia*, as follows:

“Sometime in early September I had discussions with the Mayor of May Pen who is the Chairman of the Clarendon Parish Council in which I enquired whether he would have any objections to Bryant’s Construction, who had the contract to refurbish the Spalding Market, building shops for the Spalding Market. The Mayor felt that the shops were needed but said that the Parish Council did not have the money to do so. I advised him that I had spoken with Mr. Bryant who said that Bryant’s Construction was prepared to fund the building of the shops and to come to some arrangement with the Parish Council as to how they would be compensated. The Mayor advised that if Bryants Construction was funding the project the Parish Council would have no objection to the shops being constructed and Mr. Bryant could go ahead with the construction. I so advised Mr. Bryant and thereafter observed that Bryant’s Construction had commenced construction of the shops.



I had no discussions with anyone whatsoever regarding the possibility of a public private partnership concerning the development of the Spalding Market...”⁵⁷

According to Mr. Azan:

“I did not specifically give instructions or permission to any person or entity concerning the building of shops at Spalding Market. I did however, convey to Mr. Bryant my discussion with the Mayor, and did tell Mr. Bryant that, if the funding for the construction of the shops were being provided by Bryant Construction on the basis of Bryant working out with the Council how they would be compensated, the Mayor had no objection to the shops being constructed and it was therefore okay for him to construct the shops on that basis.”⁵⁸ (OCG Emphasis)

Importantly, in a Statement to the OCG, which was given on 2013 April 15, Mr. Bryant initially advised that he approached the Hon. Richard Azan. However, in the very same Statement he recanted and stated that it was in fact the Hon. Richard Azan who had approached him.

⁵⁷ Sworn response from the Hon. Richard Azan, dated 2013 April 23. Response to question # 3.

⁵⁸ Sworn response from the Hon. Richard Azan dated 2013 April 23. Response to question #'s 4 and 5.



A fortiori, it must be placed upon the record that Mr. John Bryant, during the course of the Section 18 judicial proceeding where he appeared, he was advised that he had two conflicting assertions in a formal Statement, which he had previously given to the CG, regarding whether it was he or Mr. Azan who had made the first approach regarding the construction of the shops.

After some back and forth and the intervention of his Attorney, Mr. Bryant eventually advised the CG that it was the Hon. Richard. Azan who had approached him. Detailed below is an extract of the disclosures which were made by Mr. Bryant:

Mr. Dabdoub: So which one is it, did he approach you or did you approach him?

A: He approached me.

Mr. Dabdoub: Listen to me, this is not a statement under oath, so anything you say in here that is not true you cannot be prosecuted for but when you take the affirmation if you tell a lie you can be prosecuted for that lie, okay, so you need to just state the truth.

A: Okay. He approached me.

Q: When did Mr. Azan approach you?

A: I think a few days before the opening.

Q: A month before?

A: No.

Q: What did Mr. Azan instruct you to do? Be specific, a few days before the opening,



when exactly, three days before, four days before, five days before, a month before?

A: No is not a month before, it can be a week or a week and a half before.

Q: What conversation or discussion, what did Mr. Azan say to you when you approached him?

A: Okay. He ask if me [sic] want to invest in some shops, model shop like for vendors and I said no problem, I'll try.

Q: Can you repeat for me.

A: He ask me if I could invest in some temporary shops and so on.

Q: Did he give you an idea at the time what he – did he explain to you at the time a design or what he was expecting?

A: No.

Q: He did not?

A: No....

Chairman: Mr. Bryant, is this statement true or also untrue? Forgive me for the way I am putting it. Did the vendors approach you or is it Mr. Azan who approached you to build the shops? Did the vendors approach you at all?

A: The vendors them ask 'bout the shop fi true.



Attorney: Them approached you?

A: Yea, them approach me 'bout the shop.⁵⁹

It is of critical importance at this juncture, to highlight the sworn testimony of Mr. Trevor Earl Gordon, Councillor, Clarendon Parish Council. The testimony was given by Mr. Gordon, under oath, during a judicial proceeding which was convened with him at the OCG, on May 2, 2013.

Detailed hereunder, is a verbatim extract of the evidence given at the judicial proceeding involving Mr. Gordon:

“Q: Do you know a Mr. Richard Azan?

A: Yes sir.

Q: What is the nature of your relationship with Mr. Azan?

A: Mr. Azan is the Member of Parliament for Northwest Clarendon.

Q: How long have you known him?

A: About thirty years, sir.

Q: So how would you characterize the type of relationship?

A: Good, close, very good and very close.

Q: Were you at the time [sic] opening of Spalding Market?

A: Yes I was.

⁵⁹ Transcript of Judicial proceeding with Mr. John Bryant. Pages 30-31



Q: When was the opening?

A: 5th of September, 2012.

Q: When were you made aware of the illegally constructed shops?

A: That is the shops in question now?

Q: The shops in question?

*A: We were, before the opening of the market Mr. Azan, we were talking about some shops to accommodate the vendors, especially the vendors with haberdashery, clothes, and **I can remember he asked a businessman in front of the market, Mr. Patmore, Patmore Hardware, if he would be interested in erecting some shops for the vendors. Mr. Patmore said no, he don't think so because once the vendors know that is him doing the venture they are not going to pay and Mr. Azan turn to him and no, you wouldn't be in charge of any collection, the Parish Council would and they would reimburse you. Anyway he said he would not be interested. About the Sunday before, the last Sunday in August we were at a NEC meeting in Ocho Rios and we were driving pass a vending area where some small shops were, neatly, and we were talking about it and said we would love that in Spalding then the whole argument about the shops came about.***



*Then I remember he called me and said,
“Councillor, I talk to the Contractor, Mr. Bryant
and I am going to try and call the Mayor and
discuss it with the Mayor to erect some shops.*

Q: When was this?

A: Sometime before the opening.

Q: It was still before the opening?

*A: Yes. This was the Monday before the opening, that
would be about the 3rd.*

Q: The 3rd of which month?

A: September.”⁶⁰ (OCG Emphasis)

Having regard to the aforementioned, the CG must highlight (once again for emphasis) the following disclosures which were made by the Hon. Richard Azan during a judicial proceeding:

*“Chairman: So at the time that you started the
planning for the opening you had not
yet gotten the approval of the Parish
Council?*

*A: The discussion with the Mayor was
during the week of the first week of
September, that is early, early
September, it could be about the 2nd
or 3rd of September.*

⁶⁰ Transcript of Judicial Proceeding with Mr. Trevor Gordon. Pages 4-5



Chairman: So in relation to the week before when you started the planning of the opening you had not yet had the approval?

*A: We never had any discussion. It was something that we were – long, long time we had the discussion with the Parish Council about getting these vendors who have these little ugly things at the roadside, if we could get some people to help to construct some decent place that people can use. So that is nothing that just fly overnight and so forth...
No, nothing never started.*

Chairman: And a week before when you were planning the opening had the construction started?

A: No, no.

Chairman: So it's between the first discussion with Mayor Barnswell and the 4th that the construction started?

A: On the 4th, that is the time I returned to Spalding.”⁶¹

⁶¹ Transcript of judicial proceeding with the Hon. Richard Azan. Pages 80 -81



It is the CG's considered view that the Hon. Richard Azan has not yet answered the question which was posed.

Photographic evidence, as seen overleaf, was provided to the CG, which shows that on the day of the opening ceremony, two (2) of the illegally constructed wooden shops were well advanced in construction and ought to have been within plain sight of the persons in attendance at the opening ceremony.

The relationship/association between Mr. Richard Azan and Mr. John Bryant

Mr. Richard Azan, in response to an OCG Statutory Requisition advised that *"I do know and have known Mr. John Bryant for a number of years. I met him when I was a Member of Parliament and Minister of State during the previous People's National Party Administration which lost power in 2007. I enjoy a very cordial relationship with Mr. Bryant as I do with other contractors who do business with the Government of Jamaica. I have no affiliation, whether business or family wise, with Mr. John Bryant."*⁶²

Mr. John Bryant, during the course of a judicial proceeding was asked if he knew the Hon. Richard Azan and for how long. In response, Mr. Bryant advised that *"...I hear the name, is not somebody what I did close to but I hear the name."*⁶³

In this regard, Mr. Bryant was further asked if he had done a number of jobs for the Hon. Richard Azan. In response Mr. Bryant advised that it was *"Not really a number of jobs"*. When

⁶² Response to Statutory Requisition dated 2013 April 23. Question # 8

⁶³ John Bryant Transcript. Page 10.



further questioned regarding effecting repairs to a Post Office, Mr. Bryant advised that he had fixed the Post Office as a part of a Labour Day Project in Hon. Richard Azan's Constituency.⁶⁴

⁶⁴ Further particulars of the OCG's investigation into the Post Office in Thompson Town will be provided in another Report of Investigation.



Collection of Market Fees by the Clarendon Parish Council

The CG has seen evidence to indicate that market fees, which would have been due and payable to the Clarendon Parish Council as a result of the presence and occupation of the wooden shops in the parking lot of the Spalding Market **were not being paid to and/or collected by the Parish Council.**

Such is the case that for approximately six (6) months, the Clarendon Parish Council did not collect market fees from the vendors who occupied the ten (10) wooden shops.

Mr. Wayne Brown, Director of Finance, Clarendon Parish Council was asked by the OCG during a judicial proceeding whether the Clarendon Parish Council had collected any rental fees for the ten wooden shops which were erected in the parking Lot of the Spalding Market. Mr. Brown, upon being questioned, asserted that rental fees were now being collected by the Parish Council for some of the shops and that collection had commenced in April 2013.⁶⁵

It is important to note that Mr. Wayne Brown, during the course of the judicial proceeding indicated that he was aware of the wooden shops from the opening ceremony and that “...every now and again the then Commercial Services Manager would have said some things with regards to shops or wooden shops or other shops outside of the permanent structure...”⁶⁶

Mr. Brown indicated that that was done informally and that nothing was put in writing to him, by the then Commercial Services Manager, Mr. Ralston Peters.

⁶⁵ Judicial proceeding with Mr. Wayne Brown. Page 16.

⁶⁶ Judicial proceeding with Mr. Wayne Brown. Page 20



In light of the foregoing, the CG takes note of Section 5 of the Parochial Rates and Finance Rules, 1981 which provides as follows:

“5. (1) The Secretary shall have the overall responsibility for the proper assessment, collection and accounting of all moneys payable to the Council. The Chief Officer in each department shall be responsible for the collection and accounting of moneys (the duties of) which are assigned to his department.”

For the purposes of the aforementioned Rules, the ‘Chief Officer’ means *“the officer in charge of any department of the Council and includes the Superintendent of Roads and Works and the Medical Officer of Health.”*⁶⁷

Steps Taken to Regularize the Shops at the Spaldings Market

During the course of the Investigation it was observed that it was only in 2013 February, that the Clarendon Parish Council began the process of seeking to rectify the issue regarding the ten (10) illegally constructed wooden shops.


The CG acknowledges and endorses that steps needed to be taken by the Parish Council to remedy the situation at the Spalding Market. However, at the time the Parish Council first acted the damage had already been done and the actions of the Parish Council were only triggered when public scrutiny was brought to bear.

⁶⁷ Section 5 of the Parochial Rates and Rules.



Notwithstanding, that the CG has seen evidence that by way of a letter which was dated 2013 February 21, the Clarendon Parish Council, through its Attorneys-at-Law, Jess & Associates, wrote to Mr. John Bryant, regarding the illegally constructed wooden shops. Detailed below are the particulars of the referenced letter:





Zuleika A. Jess
LL.B (Hons)
Attorney-at-Law

HEAD OFFICE
6 Gordon Street
May Pen
Clarendon, Jamaica
Tel: (876) 786-0707
Cell: (876) 298-8788
Fax: (876) 786-0707
E: jess.jlaw@gmail.com

Jess & Associates
ATTORNEYS-AT-LAW

21st February 2013

Mr. John Bryan
Rock District
Osbourne Store P.O.
Clarendon

BY HAND

URGENT
WITHOUT PREJUDICE

Dear Sir,

Re: Collection of rental monies for stalls in the Spalding Market, Clarendon

Reference is made to the matter at caption.

I act on behalf of the Clarendon Parish Council. My instructions are that you have been collecting rental for approximately ten (10) stalls in the Spalding Market with the result that some vendors have refused to pay the requisite market fees to the Council.

I wish to advise that you have no authority to collect rental monies for the operation of the said stalls. I hereby formally demand that you **cease and desist** from this unlawful practice with immediate effect.

Please be advised that the Council is prepared to compensate you for the reasonable cost for the construction of the ten stalls. I, therefore, invite you to provide the Council with an estimate of the cost for constructing the said stalls. You are also required to provide the Council with an account of all sums collected as rental monies for the said stalls within **TWENTY-ONE (21)** days of the receipt of this letter.

Kindly indicate your position herein within **SEVEN (7)** days of this letter. Failure to comply with the foregoing will result, inter alia, in the demolition of the said stalls without further reference or compensation being made to you. This course of action is without prejudice to the Council's right to institute legal action against you according to law.

Please be guided accordingly.

Yours Sincerely,
JESS & ASSOCIATES

PER:.....
ZULEIKA A. JESS (MISS)

It must be noted that Mr. John Bryant, by way of a letter dated 2013 March 11, wrote to the Clarendon Parish Council regarding the sale of board shops at the Clarendon Parish Council. The



referenced letter indicated as follows:

“There are ten shops that were built on the property belonging to the Spalding Market. These were built based on the immediate needs observed due to the relocation of the vendors from the streets of the town of Spalding. With the construction of the market, vendors were forced to remove from the sidewalks of the town and also the bathroom facilities they normally use for vending.

I am hereby now proposing that the Clarendon Parish council purchase each of these shops at a cost of two hundred and fifty thousand dollars (\$250,000.00). This cost will only reimburse me the material cost and labour cost incurred with the construction of these shops.

I am willing to meet with the Clarendon Parish Council to have further dialogue concerning the sale of these shops...”⁶⁸

Irrespective of any justification which has been given by Mr. John Bryant, it does not alter the fact that several wooden structures were erected on Parish Council land without the approval of the Clarendon Parish Council.

⁶⁸ Letter dated 2013 March 11 from Mr. John Bryant to the Clarendon Parish Council.



It is instructive to note that by way of a letter dated 2013 April 29, Mr. John Bryant, of Bryant Construction, again wrote to the Mayor of the Clarendon Parish Council regarding the wooden shops which had been constructed at the Spalding Market by Bryant Construction.

In the said letter Mr. Bryant advised the Mayor, *inter alia*, that the ten (10) shops were constructed on the understanding that:

“...the Parish Council would negotiate with Bryant’s Construction an arrangement whereby the Company could recover the monies expended in building the shops which are now sited on the market compound.

Discussions have been taking place with the Parish Council since January of this year with the view to the Parish Council acquiring ownership of the shops and arranging for Bryant’s to recover money spent by it. Bryant’s has accounted for and paid over to the Parish Council all monies collected by it from Vendors yet to date no agreement has been arrived at for the Parish Council to acquire ownership or the Company to recover the money spent.

Based on legal advice received, the shops are still the property of Bryant’s Construction as there is



no contract between Bryant's and the Parish Council or anyone else for the Company to construct them and to date there is no agreement for the Parish Council to acquire them.”⁶⁹ (OCG Emphasis)

The said letter from Mr. John Bryant, also advised that Bryant Construction would seek to have the shops removed from the property if the matter was not amicably resolved by Friday, 2013 May 3.

By way of a letter dated 2013 May 2, the Clarendon Parish Council responded to the foregoing letter and advised as follows:

“The Council reiterates its willingness to enter negotiations with you to amicably and expeditiously resolve this matter.

The Council however remains clear that it did not at any time authorize you to build shops on its market premises or at all. As a consequence, The Council does not agree with your claims of entitlement to property monies as set out in your letter dated April 29, 2013.

In the circumstances where these shops have been

⁶⁹ Letter dated 2013 April 29 from Mr. John Bryant to the Clarendon Parish Council.



constructed on our land without our permission as owner, or as the Building Authority or as the Local Planning Authority, and considering also that innocent third parties were put in possession of these shops (and are still in occupation), we see no prudence in your threat to enter onto our lands to engage in any further activity that may well prove to be unlawful.”⁷⁰

It must be noted that the CG had sight of the letters and by way of a letter dated 2013 May 1, wrote to Mr. John Bryant as follows:

⁷⁰ Letter from the Clarendon Parish Council in response to Mr. John Bryant.



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

No. :

TELEPHONE No.: 876-929-8560/6466
FAX No. : 876-929-2476
E-mail: dharrison@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL

PIOJ Building

16 Oxford Road

P.O. Box 540

KINGSTON 5

JAMAICA, W.I.

URGENT AND IMMEDIATE

May 1, 2013

COPY

Mr. John Bryant
Bryant's Construction
Rock District
Osbourne Store P.O.
Clarendon

Dear Mr. Bryant:

Re: Special Statutory Investigation –Complaint regarding the Award of Contracts to Construct/Repair and the Rental of Shops at the Spalding Market

I am in receipt of a letter dated April 29, 2013 addressed to the Mayor of Clarendon Parish Council, May Pen P.O. Clarendon and copied for the attention of the Contractor General and the Secretary Manager of Clarendon Parish Council, May Pen, Clarendon.

Please be advised that the Office of the Contractor General's statutory investigation is on-going. A fortiori, the removal of these shops prior to my indication that our investigation is complete shall be perceived as an attempt to interfere with the investigation.

Kindly be warned and accordingly, I would invite all parties to seek further legal advice.

Please be guided accordingly.

Respectfully yours,

Dirk Harrison
Contractor General

Copy: His Worship the Mayor Councillor Scean Barnswell - Clarendon Parish Council
Mr. Rowhan Blake, Secretary/Manager - Clarendon Parish Council



It must be noted that during the course of the judicial proceedings, Mr. Ralston Peters advised the CG that he could not recall having received any instructions and/or recommendations from the Mayor of the Clarendon Parish Council and/or the Commercial Services Committee as it regards regularizing the matter of the construction of the wooden shops.⁷¹ Mr. Peters asserted that he was the person who continuously raised the issue and was under the distinct impression that “...*the issue was being side-stepped by the Mayor.*”⁷²

Mr. Peters was of the opinion that since the wooden shops came about due to the actions of a member of the political directorate “... *for [him] to be the one interacting with all of these politicians to have it regularized could not have been the proper thing to do. Nonetheless because of where I sat I mentioned it to the Mayor on several occasions with the request that he do what he could to have the thing properly organized.*”⁷³

The CG enquired from Mr. Ralston Peters whether, during the period of 2012 September through to December, the issue of the wooden shops were raised at the Commercial Services Committee Meeting. In response, Mr. Peters advised that:

*“The shops as a topic were not discussed in any fulsome way but the shops were mentioned repeatedly. Certainly they were mentioned when I sought to assign fees and they were mentioned at other times too.”*⁷⁴

⁷¹ Judicial proceeding convened with Mr. Ralston Peters. 2013 May 8. Page 65

⁷² Judicial proceeding convened with Mr. Ralston Peters. 2013 May 8. Page 65

⁷³ Judicial proceeding convened with Mr. Ralston Peters. 2013 May 8. Page 67

⁷⁴ Judicial proceeding convened with Mr. Ralston Peters. 2013 May 8. Page 69



The CG also sought to ascertain from Mr. Peters whether an individual attending the meeting would have known that the discussions were about the wooden shops. Mr. Peters advised the CG that persons in attendance would have known that the discussions pertained to the wooden shops.⁷⁵

⁷⁵ Judicial proceeding convened with Mr. Ralston Peters. 2013 May 8. Page 69



Records of the Committee Meetings

Commercial Services Meeting of 2012 November 20

The referenced Minutes, under the caption – **Re: Spalding Market**, indicated as follows:

“The Chairman asked what the collection was for the captioned.

The Commercial Services Manager said the collection was shown in the report under the captioned of the Transportation Centre.

*The Clerk informed that the collection for November was approximately **Twenty Three Thousand (\$23,000.00)***

The Chairman enquired of the salary package for the persons employed at the market.

The Commercial Services Manager said that the persons were in line with the amounts paid at the May Pen Market which was also a six (6) day market.

The Chairman suggested that the rate be revised



upon the observation that the market was operating at a deficit.”

Based upon the foregoing Committee records, there exists *prima facie* evidence that the Clarendon Parish Council was aware that the Spalding Market was operating at a loss. The foregoing is compounded by the fact that the Clarendon Parish Council had still not yet begun to collect rental income from the illegal wooden shops.

Minutes of the Finance & Estate Management Committee Meeting – 2012 December 12

The referenced Minutes of the Meeting, under the caption **Re: Markets**, stated, *inter alia*, as follows:

“Superintendent, Roads & Works Department informed that the Deputy Superintendent went to a meeting with JSIF representatives regarding the Spalding Market. He reminded that the Commercial Services Manager should present rental rates for the Spalding Market.

***The Clerk mentioned that the amount collected to date could not suffice for the maintenance of the market.** She further mentioned that the Financial Statement was not available to view the financial position of the markets...*



...The Chairman said that he visited the market on the last Saturday and observed the collection process. He further stated that when vendors were approached and mentioned that they do not have the money to pay, the Collectors do not compel them to pay.

He said he was aware of three (3) persons who wanted to make payment of \$30,000 each for the rental of shops at the Spalding Market. He also said these persons visited the Council on more than one occasion.”⁷⁶

The shops which are alluded to above, and for which persons were interested in paying \$30,000.00 each are not the wooden shops which are the subject of the OCG’s Investigation.

Consequently, the foregoing record does not reflect any discussion or decision by the Council to impose rental fees for the wooden shops in the parking lot of the Spalding Market.

⁷⁶ Minutes of Meeting of Finance and Estate Management Committee of the Clarendon Parish Council. 2012 December 12.



Minutes of the Commercial Services Committee Meeting - 2013 January 22

The Minutes of the abovementioned Meeting, under the caption, **Re: Spalding Markets**, indicated, *inter alia*, as follows:

“...The Chairman informed that the individual who constructed ten (10) shops in the market spoke with the Secretary/Manager in order that the Council regularizes same.”

Action Sheet from the Commercial Services Committee Meeting Held on 2013 February 26

The referenced Action Sheet revealed, *inter alia*, the following in regard to the Spalding Market:

- *“Operation to be conducted to entail the monitoring of vendors and the collection of fees by the Municipal Officers;*
- *Conduct an assessment of the shops resulting from an arrangement between Mr. John Bryant and Minister Azan.”*

The foregoing Minutes are indicative of certain of the key documented discussions which ensued at the Clarendon Parish Council in regard to the erection of the wooden shops in the Spalding Market but make no specific mention of rental fees.



Approvals granted for the Construction/Rehabilitation of the Spalding Market

‘The Town and Country Planning Confirmed Development Order (1965)’ stipulated that the Local Planning Authority, i.e., the Clarendon Parish Council, approved the development of lands at ‘Spaldings’ for the purpose of the construction of the market (Arcade) on lands at ‘Spaldings’ on 2007 April 5, on, *inter alia*, the following terms and conditions:

- i. *A minimum of twenty two (22) parking spaces must be provided.*
- ii. *Parking spaces should be a minimum of 18 feet in length by 8 feet in width.*
- iii. *A minimum of two (2) parking spaces must be reserved for the disabled and should have wheel chair transfer area and also be marked with a sign displaying the international symbol of access and the words “Reserved for Disabled Person”⁷⁷.*

It must be noted that the CG has had sight of another document entitled ‘Parish Council of Clarendon – The Town and Country Planning Confirmed Development Order, 1965’. The said document stated, *inter alia*, as follows:

“The Local Planning Authority hereby approves the Extension of Market on lands located at Lands Part of Spalding on the following terms and conditions:

⁷⁷ Development Order which approved the rehabilitation of the Spalding Market.



“20. A minimum of (26) twenty six rectangular parking bays, 2.55m x 5.55m in size, with at least a 9.096 metres wide driveway for maneuvering should be provided within the site.”

The foregoing was detailed as approved on February 4, 2013 and was signed by the one “R Blake” Secretary, Local Planning Authority on “8/2/2013” and the Chairman of the Local Planning Authority on “12/2/2013”.

The said Development Orders gave no indication of consideration for the erection of the wooden shops in the parking lot of the Spalding Market. Further, a Development Order must be obtained for approval to erect the said shops in the parking lot; instructively, the OCG has seen no evidence of this.




Clarendon Parish Council – Estimate for the Construction of the Wooden Shops

In an Inter-Office Memorandum, which was dated “1/03/2013”, from Mr. Wayne Mitchell, Superintendent, Roads & Works, to Mr. Rowhan Blake, Secretary Manager, Clarendon Parish Council, an Estimate for the construction of six (6) of the wooden shops at the Spalding Market is exhibited.

Detailed below are particulars of the referenced Estimate for the construction of six (6) of the wooden shops:

Project: Estimate for Temporary Shops that was Constructed at Spaulding market					
Location: Spaulding					
Item	Description	Qty	Unit	Rate	Amount
	Estimate is For: Material, Labour and Transport.				
	6 NO (8- 0 x 10- 0) Shops				
A	Erected 2 x4 framing	1308	ft	107.00	139,956.00
B	Erected 5/8 ply board walling and flooring	2208	sqft	102.00	225,216.00
C	Erect timber frame roofs with decromastic tiles	108	sqyds	4890.00	528,120.00
D	Frame and erect doors and windows with 5/8 form ply	198	ft	171.00	33,858.00
E	Apply two coats of emulsion paint to walls	75	sqyds	350.00	26,250.00
F	Install bolts and locks to doors and windows		Sum		12,000.00
	Total				965,400.00



Prepare Eric Rochester Asst. Supt.

CLARENDON PARISH COUNCIL
Superintendent Road & Works

Checked by Superintendent



Having regard to the Estimate which was prepared by the Clarendon Parish Council and the proposed selling price of \$250,000.00 which was proposed by Mr. John Bryant, for each of the wooden shops, the CG sought to determine, through its Construction Inspectorate Division, a true cost of construction of the wooden shops. Detailed overleaf is the OCG's quantification of same:



Spalding Market Estimates for Constructing Wooden Shops

Labour Cost 6 No. Sizes (10 - 0 x 8 - 0) Shops

Item	Description	Qty	Unit	Rate	Amt.
1	Cut & fix 2x4 as studs for framing and to include floor joist	226	ft. run	53.13	\$12,007.38
2	Cut & fix 1x6 as cladding	59.8	sq. ft.	47.96	\$2,868.01
3	Cut & fix 2x2 for roof battens	30	ft. run	25.98	\$779.40
4	Install 5/8" thick plywood as wall	264.3	sq. ft.	30.16	\$7,971.29
5	Install 5/8" thick plywood as floor	80	sq. ft.	30.16	\$2,412.80
6	Cut & fix and Install 2x4 as roof rafters	56	ft. run	54.37	\$3,044.72
7	Install decramastic tiles to roof	143	sq.ft	42.89	\$6,133.27
8	Install ridge and fascia capping	37.4	ft. run	99	\$3,702.60
9	Apply two coats of oil paint to exterior walls	32	sqyds	100	\$3,200.00
10	Construct & install door size 3x 6-8, to include 2x4 perimeter frame and middle rail all covered with 5x8" thick ply board.	1	No.	5000	\$5,000.00
11	Construct & install window size 2-6x7-0, to include 2x4 perimeter frame and middle rail all covered with 5x8" thick ply board.	1	No.	5000	\$5,000.00
12	Install bolts and locks	3	No.	500	\$1,500.00
Totals					\$53,619.47

Rates used are derived from the basic rates of the Master Builders Association of Jamaica Labour Management Agreement 2011-2013.

Note: All rates includes 16% After Jobs Bonus (A.J.B.) mark up.

Total Labour for Cost for 6 Units	\$321,716.80
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Labour Cost 4 No. Sizes (40 - 0 x 8 - 0) Shops

Item	Description	Qty	Unit	Rate	Amt.
1	Cut & fix 2x4 as studs for framing and to include floor joist	683	ft. run	53.13	\$36,287.79
2	Cut & fix 2x2 for roof battens	166	ft. run	25.98	\$4,312.68
3	Install 2x4 as roof rafters	248.4	ft. run	54.37	\$13,505.51
4	Install 5/8" thick plywood as wall	1216	sq. ft.	30.16	\$36,674.56
5	Install 5/8" thick plywood as floor	320	sq. ft.	30.16	\$9,651.20
6	Erect Aluminium Sheet to roof rafters	473	sq. ft.	46.75	\$22,112.75
7	Apply two coats of oil paint to exterior walls	106.6	sqyds	100	\$10,660.00
8	Construct & install door size 3x6-8, to include 2x4 perimeter frame and middle rail all covered with 5x8" thick ply board.	4	No.	5000	\$20,000.00
9	Construct & install window size 2-6x7-0, to include 2x4 perimeter frame and middle rail all covered with 5x8" thick ply board.	4	No.	5000	\$20,000.00
10	Install bolts and locks	12	No.	500	\$6,000.00
Totals					\$179,204.49

Summary

Total Construction Cost 6 No. Sizes (10 - 0 x 8 - 0) Shops	Labour	\$321,716.80
	Material	\$ 661,167.73
	Totals	\$982,884.52

Cost per shop	\$163,814.09
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Total Construction Cost 4 No. Sizes (40 - 0 x 8 - 0) Shops	Labour	\$179,204.49
	Material	\$322,559.84
	Totals	\$501,764.33

Cost per shop	\$125,441.08
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Addition:

Add 5% mark up for transportation cost.

6 No. Sizes (10 - 0 x 8 - 0) Shops	\$1,032,028.75
4 No. Sizes (40 - 0 x 8 - 0) Shops	\$526,852.54
Overall Cost for Construction	\$1,558,881.29

Comparison Table

Item	OCG	Amt.	Clarendon Parish Council (CPC)	Amt.
A	6 No. Sizes (10 - 0 x 8 - 0) Shops	\$1,032,028.75	6 No. Sizes (10 - 0 x 8 - 0) Shops	\$965,400.00
B	4 No. Sizes (40 - 0 x 8 - 0) Shops	\$526,852.54	4 No. Sizes (40 - 0 x 8 - 0) Shops	None Provided

Note:

CPC estimate includes Material Labour and Transport cost, in addition Government entities are zero rated and does not include GCT cost.

It must be noted that the average construction cost for each of the wooden structures, as determined by the OCG is in the sum of \$155,000. Same varies from the estimate provided by Mr. John Bryant by \$20,000.00 each.



Legal Considerations

Given the extenuating circumstances surrounding the construction of the wooden shops at the Spalding Market and the manner in which it has been dealt with by the Officers/Officials of the Clarendon Parish Council, the following pieces of applicable legislation must be noted:

The Town and Country Planning Act

Section 22A. Stop notice of the Town and Country Planning Act, provides as follows:

22A. (1) Where it appears to a local planning authority, the Government Town Planner or the Authority that a development specified in subsection (2) is unauthorized or is hazardous or otherwise dangerous to the public, the local planning authority, the Government Town Planner or the Authority, as the case may be, shall serve or cause to be served on any of the persons specified in subsection (3), a stop notice requiring that person to immediately cease the development.

(2) A development referred to in subsection (1) is a development-

(a) which is being carried out in breach of a



condition subject to which planning permission was granted; or

(b) which is being carried out without the grant of planning permission.”

It is instructive to note that the Clarendon Parish Council did not follow this route but instead sought to negotiate with the Contractor.

The provision of the foregoing provision of legislation is of particular importance given the fact that the construction of the wooden shops were done in violation of the Development Order which was granted by the Clarendon Parish Council for the rehabilitation of the Spalding Market.

In particular, the wooden shops are located in the parking lot of the said market, which, according to the Development Order, should have accommodated a minimum number of parking spots.

Although previous mention has been made of the Parochial Rates and Finance Act and Rules, consideration must also be given to the wider Legal Framework, which includes the Financial Administration Act.

Section 16 of the Financial Administration and Audit Act provides that:

16. Accounting officers.



16. (1) The Minister shall from time to time designate in writing public officers who shall be accounting officers of the departments specified in such designation.

(2) An accounting officer shall be responsible for the financial administration of the department specified in a designation under subsection (1) and shall be accountable to the Minister for-

(a) the assessment and collection of, and accounting for, all moneys lawfully receivable by his department;

(b) ensuring that the purpose for which an appropriation is approved by Parliament is accomplished;

(c) making any payment required to be made in relation to such appropriation;

(d) the custody and proper use of all materials, equipment or other public property administered by him;

(e) the administration of any fund for which he has



been assigned responsibility pursuant to section 14 (3);

(f) the discharge of any other financial responsibility assigned to him under this or any other enactment.

(3) The written assessment and recommendations of the Financial Secretary shall be obtained before an accounting officer-

(a) takes any step to implement a change that is likely to have adverse budgetary implications for the financial year that is then current and for the medium term; or

(b) submits to the Cabinet a proposal for any such change

(4) An accounting officer shall, upon being requested to do so by any committee of Parliament, attend before that committee to be examined respecting the exercise of that person's functions under this Act.”



Section 49 of the Financial Administration and Audit Act, which is cited as “*Responsibilities of accountable officers*” provides, *inter alia*, as follows:

“49. (1) Where it appears to any accounting officer or the Auditor General that a deficiency or loss or destruction as mentioned in section 20 (1) (c) has occurred, he shall forthwith make a report in accordance with subsection (2) of this section to the Financial Secretary.

(2) A report referred to in subsection (1) shall include information as to-

- (a) the amount or value of the deficiency or loss;*
- (b) the circumstances leading to such deficiency or loss; and*
- (c) the officer alleged to be responsible therefor.”*

Given the efforts of the Clarendon Parish Council to recover some of the money due and payable to it for electricity which is used by the tenants of the wooden shops within the Spalding Market, the question of the adequacy of the amount charged must again be raised. The OCG contends that there must be some true and direct relation between the funds which are recovered by the Clarendon Parish Council and the actual cost of electricity which is utilised by the tenants of the referenced shops in the Markets which are operated by the Clarendon Parish Council.



In light of the aforementioned provision, the OCG is of the considered opinion that the matter warrants the intervention of the Auditor General's Department. This matter is further elucidated in the Referral of the Report.



CREDIBILITY AND DEMEANOUR OF WITNESSES

The CG, during the course of its Investigation has had reason to examine and question the credibility and demeanour of certain witnesses who were summoned and who appeared during the Section 18 judicial proceeding which were convened at the OCG. In particular, certain of the witnesses either recanted representations made during the course of the judicial proceeding, provided conflicting accounts of the events involving the wooden shops at the Spalding Market or, on the face of it, attempted to mislead the Contractor General.

Detailed hereunder are the OCG's observations and findings regarding the credibility and demeanor of certain key witnesses:

1. Mayor Scean Barnswell

The CG has found that certain statements which were made by Mayor Scean Barnswell during the judicial proceeding were disingenuous and not all of his representations/utterances can be held to be credible. There exist varying conflicts between the discussions/meetings which he and the Hon. Richard Azan purportedly had regarding, for example, obtaining approval for the erection of the wooden shops and discussions surrounding the regularisation of same.

Beyond that, it is a matter which is of grave concern to the CG and which goes to the very heart of the matter regarding the credibility of Mayor Scean Barnswell. Detailed below is a verbatim extract of an incident which occurred during the judicial proceeding involving the response to the Requisition which was to be submitted to the OCG by Mayor Scean Barnswell:



“OCG Officer: All right. Were you assisted by anyone to prepare the responses to that requisition?

Mr. Barnswell: No.

Chairman: It was fully completed and prepared by yourself?

Mr. Barnswell: Yes.

OCG Officer: Have you shared your responses with any other persons?

Mr. Barnswell: No.

OCG Officer: Let me be more specific. Have you shared your response with Minister Azan or his Attorney, Mr. Abe Dabdoub?

Mr. Barnswell: No.

...

OCG Officer: Just to repeat again, have you shared your responses with anyone, any person, specifically Minister Azan or his Attorney Mr. Abe Dabdoub? Your prior response was no.

Chairman: And please remember, you are under oath.

Mr. Barnswell: You mean outside of my Council?



Mr. Stewart^{*78}: *Give me one moment, if this is alright. Just one moment.*

Chairman: *You can go outside, if you wish*⁷⁹

It must be noted that at that moment, Mayor Barnswell and his Counsel exited the Meeting Room and conferred for approximately three (3) minutes. Detailed below are the particulars of what transpired with Mayor Barnswell on his return to the room and upon resumption of the judicial proceeding:

“OCG Officer: *Yes, Mayor Barnswell. Do I need to ask back the question?*

Mr. Barnswell: *Yes, please.*

OCG Officer: *All right. Did you share your response with anyone at all?*

Mr. Barnswell: *Yes.*

OCG Officer: *The OCG’s Statutory Requisition?*

Mr. Barnswell: *The questions asked? Of the questions asked, yes, I have spoken to Mr. Dabdoub on the questions asked.*

OCG Officer: *So previously you said that that was not so.*

Chairman: *Sorry, you said ‘spoken’ to, you were asked if you had ‘shared’. That is not*

⁷⁸ *Mr. Seymour Stewart – Attorney-at-Law representing Mayor Scean Barnswell.

⁷⁹ Transcript of judicial proceeding involving Mayor Scean Barnswell. Pages 47-48



the question. The question was have you 'shared' not if you 'spoke' to.

Mr. Barnswell: With the question asked?

Chairman: The question was, 'have you shared?'

OCG Officer: Shared your response?

Mr. Barnswell: Yes, I have.

OCG Officer: With?

Mr. Barnswell: Mr. Dabdoub.

OCG Officer: And you were not aware of that before?

Mr. Barnswell: Sorry?

OCG Officer: You were not aware of that before? Prior to when I asked the question before you stepped out of the room?

Mr. Barnswell: Well, yes, I was – I wasn't certain, you know, what the question was really asking, but speaking to my Counsel...

Chairnman: The question was repeated twice, Mr. Mayor, with respect. It was repeated twice.

Mr. Barnswell: Oh.

OCG Officer: So essentially, you misled the Committee and the Panel, initially, with your response?



Mr. Barnswell: *No, the question was asked about Richard Azan.*

Chairman: *Mayor, Mayor, Mayor. With greatest of respect to you and your Counsel.*

OCG Officer: *We can actually go back to the record*

Chairman: *Let us stop wasting time. With greatest of respect, please don't insult anybody's intelligence, with the greatest of respect. Just answer the questions straight, that is all we ask you, with the greatest of respect.*

Mr. Barnswell: *I have no intention to.*

Chairman: *Okay. Just answer the question, sir.*

OCG Officer: *Yes. I asked the question whether or not you initially misled the Panel with your responses and I think it is a yes or no, having regard to you [sic] new response?*

Mr. Barnswell: *Yes.*⁸⁰

Having regard to the foregoing, the CG shares no confidence in these representations which have been made by Mayor Scean Barnswell and is of the considered opinion that the Mayor undermined his creditworthiness.

⁸⁰ Transcript of judicial proceeding involving Mayor Scean Barnswell. Pages 48-50



Further and more detailed particulars of the exchange between Mayor Scean Barnswell and Mr. Dabdoub were brought to the fore during the judicial proceeding. Nonetheless, by attempting to mislead the Contractor General, Mayor Scean Barnswell discredited himself and would have, on the face of it, breached Section 29 (a) of the Contractor General Act.

Section 29 (a) of the Contractor General Act provides as follows:

“29. Offences.

29. Every person who -

(a) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act...

....shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

Given the foregoing, the matter is hereby referred by the CG to the Director of Public Prosecutions (DPP) for due consideration and action.

The foregoing is only indicative of the disingenuous nature of certain responses which were forthcoming from Mayor Scean Barnswell and that is aggravated by the conflict between the



statements which he has made and the conflicting statements which were provided by other persons who had been summoned to appear before the Contractor General.

2. The Hon. Richard Azan

The testimony which was adduced by the Hon. Richard Azan, during the course of the OCG's judicial proceeding, in many instances, contradicted the testimony of other individuals who were summoned by the Contractor General, particularly as it concerns the extent of his involvement in facilitating the arrangement for the construction of the wooden shops.

Further, certain utterances from the Hon. Richard Azan, when viewed in the context of his near 20 year association with the Clarendon Parish Council, bring into question the accuracy and genuineness of certain representations which were made to the CG, in particular to the need for approval for the erection of the wooden shops.

In this regard, the following disclosures of the Hon. Richard Azan during the course of the judicial proceeding are of relevance:

“Chairman: The Parish Council members, or let me say the Parish Council, has indicated earlier the view that they are ignorant to one, the construction, two, to the opening, but more importantly, can you tell us how long – you have been a part of the Parish



Council system but as a Councillor, how long have you been a part of the system?

A: Well, I have been working with the Parish Council from 1989.

Chairman: In terms of...

A: Not as an MP, I was working with Carl Marshall as MP.

Chairman: And what function did you perform then?

A: Well, anything to deal with the Member of Parliament, I would have dialogue with the Parish Council.

Chairman: From then were you au fait with the systems that operated? Based on the Minutes that you referred to, are you au fait with the systems that operate?

A: Yes.

Chairman: Do you have any particular knowledge or had a knowledge of everything that happened in terms of all the different committees that you referred to, the Planning, Finance, are you aware of that?

A: Re what?



Chairman: I am just speaking generally. I am trying to get an understanding of as far back as you go in terms of your knowledge.

A: Yes, I would.

Chairman: Are you aware of the approval process in terms of the building, erection of anything on government land?

A: Yes.

Chairman: More particularly, land which the Parish Council – just like to return this document to you, could you just check to ensure you have all the pages you gave us.

A: Yes.

Chairman: In terms of the shops that were built on the market, the parking lot to be specific that we were are here about, did you authorise Mr. Bryant to construct them?

A: No. Mr. Bryant bring it to my attention that the vendors were interested in shops. I said to him that I would have discussions with the Mayor and get back to him. I was out



*of town, I returned, I think on the 3rd
of September.”*

The OCG must also, at this juncture, reiterate the following representation which was made by the Hon. Richard Azan by way of his sworn response to the OCG on 2013 April 23:

*“I did not specifically give instructions or permission to any person or entity concerning the building of shops at Spalding Market. I did however, convey to Mr. Bryant my discussion with the Mayor, and did tell Mr. Bryant that, if the funding for the construction of the shops were being provided by Bryant Construction on the basis of Bryant working out with the Council how they would be compensated, the Mayor had no objection to the shops being constructed and it was therefore okay for him to construct the shops on that basis.”*⁸¹ (OCG Emphasis)

It is important to note that the said representations bring into question that which was stated in the judicial proceeding by the Hon. Richard Azan regarding permission granted to Mr. John Bryant to construct the wooden shops at the Spalding Market.

⁸¹ Sworn response from the Hon. Richard Azan dated 2013 April 23. Response to question #'s 4 and 5.



Also, quite curious, is the assertion by the Hon. Richard Azan regarding the date on which he had discussions with Mr. John Bryant and the almost 24-48 hour time period within which the first two “model shops” were erected in the parking lot of the Spalding Market without the receipt of any permission to erect the referenced wooden shops.

3. Mr. John Bryant

The CG must place upon the record the fact that Mr. Abe Dabdoub, Attorney-at-Law, represented both Mr. John Bryant and Mr. Richard Azan at the judicial proceeding which were convened by the Contractor General. In the case of Mr. John Bryant, the CG can cite at least one incident in which Mr. Bryant had to be pressed in order to obtain the truth regarding whether (a) it was he who had approached the Hon. Richard Azan or (b) it was the Hon. Richard Azan who had approached him, regarding the construction of the wooden shops.

Mr. John Bryant initially advised the CG that it was he who approached Mr. Richard Azan in regard to the construction of the wooden shops. However, once confronted with the particulars of a sworn statement which he had previously provided to the CG, and upon the advice of his Attorney-at-Law, Mr. John Bryant advised the OCG that it was in fact Mr. Richard Azan who had approached him.⁸²

The latter disclosure by Mr. John Bryant was corroborated by Councillor Trevor Gordon who advised the CG of the actions of the Hon. Richard Azan in regard to soliciting assistance for the construction of the wooden shops.

⁸² Full particulars of same are detailed in the Report of Investigation under the caption “Involvement of Mr. Richard Azan”.



Despite the foregoing, the OCG has relied upon the statements of Mr. John Bryant, where same has been corroborated and/or is verifiable.



Findings of Fact

1. Mr. John Bryant was only awarded a contract in the sum of the \$3,257,800.00 for the rehabilitation of the Spalding Market. The referenced contract did not include the construction of wooden shops which is in the parking lot of the Spalding Market.
2. Located at the Spalding Market is an incomplete concrete structure, which is the main market building. The referenced building is the one which Mr. John Bryant executed rehabilitative works. Importantly, the construction details of the referenced building are known to the Clarendon Parish Council.
3. Ten (10) wooden shops were built in the parking lot of the newly renovated Spalding Market by Mr. John Bryant, proprietor of Bryant Construction, between the period of 2012 September and December.

There is a variance between witnesses whether it is ten (10) or twelve (12) shops which were constructed. The OCG opines that it is not of material significance whether it is ten (10) or twelve (12) shops which were constructed by Mr. John Bryant and placed upon the Clarendon Parish Council's property.

4. The property upon which the Spalding Market is located is owned by the Commissioner of Lands and, consequently, is rightfully Government of Jamaica owned property.
5. A rental fee of J\$5000.00 per month, per shop, was charged by Mr. John Bryant to the tenants who leased the ten (10) wooden shops from him. Mr. John Bryant had not



received any permission from the Clarendon Parish Council to charge or collect rental on the said property.

6. Rental payments were being collected for the ten (10) wooden shops from as early as 2012 September 6, up to 2013 February, and the CG has seen no evidence to suggest that definitive action was taken by the Clarendon Parish Council, prior to January 2013, to regularise same.
7. The aforementioned rental fee was collected by Mrs. Bridget Daley-Dixon, Constituency Secretary of the Hon. Richard Azan at his North West Clarendon Constituency Office.
8. Mrs. Bridget Daley-Dixon has admitted to receiving money for the assistance which she provided to Mr. John Bryant. Further, Mr. John Bryant has also admitted to giving Mrs. Daley-Dixon money, on occasion. It is not of material importance the amounts that were paid to Mrs. Daley-Dixon, but rather, the fact that she has admitted to receiving two (2) payments and that Mr. Bryant has admitted to paying her.
9. As at 2013 February, a total of J\$213,000.00 was collected as rental income by Mrs. Bridget Daley-Dixon, Constituency Secretary, for the illegally constructed wooden shops.
10. The Hon. Richard Azan considers himself to have been the ‘facilitator’ of the ‘arrangement’ between the Clarendon Parish Council and Mr. John Bryant.
11. The Clarendon Parish Council did not grant Mr. John Bryant permission or approval to construct or place the subject wooden shops in the parking lot of the Spalding Market.



12. The Hon. Richard Azan said it was Mr. John Bryant who approached him regarding the construction of the wooden shops. However, Councillor Trevor Gordon, has advised the OCG that the Hon. Richard Azan approached one other person before he approached Mr. John Bryant. It is also the case that Mr. John Bryant has advised the CG that it was Mr. Azan who had approached him in regard to the erection of the wooden shops. The OCG has accepted the testimony of Mr. John Bryant and Mr. Trevor Gordon in this regard and has rejected the evidence of the Hon. Richard Azan that Mr. John Bryant approached him.
13. Mr. John Bryant expended J\$175,000.00, inclusive of material, labour and transportation for the construction of each of the shops. The CG has accepted this figure produced by Mr. John Bryant based upon its own internal quantifications and calculations.
14. The CG could not substantiate the allegation which was made in the local print media that a Justice of the Peace Stamp belonging to the Hon. Richard Azan was affixed to one of the Invoices which was issued to one of the tenants of the wooden shops. The CG consequently rejects this allegation.
15. The OCG accepts, as a fact, that the wooden shops were erected, and that at least two (2) of the shops were present in the parking lot of the Spalding Market, a day or two before the official opening of the Spalding Market.
16. Mayor Scean Barnswell voiced his 'no-objection' to the 'model shops' being erected in the parking lot of the Spalding Market. I find he had no authority to do so without the approval of the Council. I further reject any notion that he did not give his no-objection.



17. The illegally constructed wooden shops were not a part of the design for the Spalding Market and no approval had been granted by the Clarendon Parish Council for their construction or placement in the parking lot of the Spalding Market. No provision for rental collection existed.
18. Despite having knowledge of the illegally constructed wooden shops, the Officers/Officials of the Clarendon Parish Council, inclusive of the Mayor, the Secretary Manager, the then Commercial Services Manager, the Superintendent of Roads and Works, did very little to remedy the situation.
19. Clear and definitive action regarding the presence of the wooden shops was not taken by the Clarendon Parish Council until approximately 2013 January/February, by which time the irregularity was already in the public domain.
20. An electrical cord was seen running from the sub-basement of the main concrete structure in the Spalding Market to certain of the illegally constructed wooden shops.
21. The electrical connection which was seen leading from the main market building to some of the wooden shops was described and certified by the JPS to be a makeshift extension plugged into a socket for which the Clarendon Parish Council was being billed.
22. In 2013 February, a fee ranging from J\$100 - \$200 per day, was charged by the Budget and Revenue Officer of the Clarendon Parish Council to the vendors who obtained electricity from the extension cord. The Budget and Revenue Officer did not advise her superiors of the decision which she had taken to recover the cost of the electricity utilized



by occupants of the market. For her non-action, disciplinary proceedings are recommended.

The aforementioned fee is stated to have been based upon a precedent which had been set in other markets belonging to the Clarendon Parish Council.

23. The fee of J\$100 -\$200 per day, is not commensurate with the cost of the electricity which the Clarendon Parish Council pays on a monthly basis and is not representative of the actual consumption of electricity in the Spalding Market.
24. The Clarendon Parish Council has sought to remedy the current breach with the shops at the Spalding Market by retroactively 'taking over' the wooden shops from Mr. John Bryant. This action, in my view, is at a late stage and is an attempt to validate an illegal activity.
25. A sum of J\$213,000.00, reflecting the rental collected for and on behalf of Mr. John Bryant, by Mrs. Bridget Daley-Dixon, was paid over to the Clarendon Parish Council, on 2013 April 12, as a part of the attempts to regularise the situation. This figure is the revenue which was diverted from the Parish Council by the collection of rental fees at the Constituency Office.
26. As at 2012 May, the Clarendon Parish Council was still in the process of negotiating with Mr. John Bryant to regularise/acquire the wooden shops.
27. For approximately six (6) months, the Clarendon Parish Council had foregone the collection of Rental Fees at the Spalding Market despite the fact that Officers were aware



of the presence of the shops and that no fees were being collected from the occupants of the illegally constructed wooden shops.

28. The then Commercial Services Manager, Mr. Ralston Peters, did not take any action in regard to the referenced shops, in particular, because the erection of the shops involved a member of the Political Directorate.
29. The then Secretary Manager, Mrs. Judy Lawrence, was on leave up to the date of the official opening ceremony. Mrs. Lawrence was advised of the illegally constructed shops by the then Commercial Services Manager and purportedly gave instructions for an investigation to be done.
30. Mrs. Lawrence did not follow-up with the then Commercial Services Manager prior to her leaving the post of Secretary Manager at the Clarendon Parish Council in 2012 October.
31. The Records of the meetings of several Committees of the Clarendon Parish Council has revealed a certain ambiguity as it regards the discussions surrounding shops and/or stalls in the Spalding Market. Same has formed a basis of dispute as to exactly what was being discussed in the referenced meetings.
32. No Enforcement Notices and/or Orders were issued to Mr. John Bryant by the Clarendon Parish Council in regard to the wooden shops which were erected by him in the parking lot of the Spalding Market.



CONCLUSIONS

Based upon the documentary evidence, inclusive of the sworn Statements which have been submitted to the CG, by the Hon. Richard Azan and the representatives of the Clarendon Parish Council, the CG has arrived at the following considered conclusions:

1. The CG has concluded that Mr. John Bryant was awarded a contract solely for the rehabilitation of the main concrete structure which is located at the Spalding Market. No other agreement and/or contract was entered into between the Clarendon Parish Council and Mr. John Bryant for any other works which were to be performed at the Spalding Market.
2. The CG has concluded that the ten (10) wooden shops were in fact erected on the parking lot of the Spalding Market by Mr. John Bryant without the permission/consent of the Clarendon Parish Council.
3. The CG has concluded that the Clarendon Parish Council did not set the rates which were charged by Mr. John Bryant on a monthly basis to the persons who had leased the referenced wooden shops. It is the purview of the Parish Council to establish the rates which are payable by vendors within its municipal boundaries.
4. Based upon the documentary evidence which has been reviewed, and the physical observations made by the CG at the Spalding Market, the wooden shops which were constructed/erected in the parking lot of the Spalding Market would have resulted in the violation of the Development Order which was granted for the construction of the Spalding Market. The referenced Development Order did not provide for the construction



of shops and clearly stipulated the minimum number of parking spaces which were to be made available in the parking lot.

5. The CG has concluded that the Hon. Richard Azan facilitated the construction of the wooden shops and, through both his actions and inaction, created the basis upon which Mr. John Bryant proceeded with the construction of the wooden shops on the premise of a conversation which was had by the Hon. Richard Azan with Mayor Scean Barnswell.

In arriving at its conclusion, and based upon the conflicting statements which were made by Mayor Scean Barnswell and the Hon. Richard Azan, the CG has placed greater reliance upon the statement of Mr. John Bryant and the Mr. Trevor Gordon, which speaks to material facts surrounding the approaches which were made for the construction of the wooden shops and their implied importance for the Spalding Division.

6. The testimony of Mr. Trevor Gordon and that of Mr. John Bryant suggests that the Hon. Richard Azan had an intent to have shops/vending facilities erected in the Spalding Market to facilitate the vendors and, as such, made more than one attempt to have same constructed by a party external to the Parish Council.
7. The CG has concluded that Minister Richard Azan overstepped his bounds by directly and/or indirectly usurping the rightful authority of the Clarendon Parish Council and then expecting/indicating that the matter would later be regularised by the Parish Council and the Contractor. The CG's conclusion is buttressed by the fact that the Hon. Richard Azan, being a former Councillor at the Clarendon Parish Council, ought to have known the proper process and the distinction between the activities and authority of the Political arm of the Parish Council and that of the Administrative arm of the Parish Council.



Further, the Hon. Richard Azan, in convening and/or participating in a meeting at which time rates were set for the lease of the illegally constructed wooden shops would have further overstepped his bounds and interfered in financial and administrative affairs which rightly resided within the remit of the Clarendon Parish Council.

8. The CG has concluded that certain Accountable Officers of the Clarendon Parish Council, who, based upon their job functions and duties, should have been more prudent and proactive, were reticent and/or negligent in the performance of their duties.

In particular, the CG must make special mention of Mrs. Judy Lawrence, the then Secretary Manager, Mr. Ralston Peters, the then Commercial Services Manager, Mr. Wayne Mitchell, the Superintendent of Roads and Works, Mr. Garfield Thompson, the Deputy Superintendent of Roads and Works and Mr. Wayne Brown, the Director of Finance, who, all had knowledge of, either, (a) the fact that the wooden shops were constructed illegally, (b) the fact that revenue which should have rightfully been collected by the Clarendon Parish Council was not being collected and/or (c) that the Clarendon Parish Council was charging a nominal fee for the electricity which was utilized by the tenants of the wooden shops and which, by all accounts is inadequate to meet the actual expenses incurred by the Parish Council.

9. It is concluded that Officers of the Parish Council, though having gained knowledge of the ten (10) wooden shops, allowed, whether wittingly or unwittingly, the problem to persist and for the revenue payable to the Parish Council, whether for vending on the market compound or the utilization of space on the market property, to remain uncollected for approximately six (6) months from the tenants who occupied the ten wooden structures.



In failing to collect the referenced sums of money, it is concluded that the Accountable Officers, inclusive of the Secretary Manager, who have responsibility for the collection of revenue would have violated Section 5 of the Parochial Rates and Rules.

10. It is concluded, herein, that the cost of construction of the wooden shops were in the region of approximately J\$170,000 each. This cost is, within the approximation of the OCG, a comparative cost for the construction of the wooden shops.
11. Based upon the compendium of fact circumstances, the OCG has concluded that Mr. John Bryant entered upon and placed several structures on the property of the Clarendon Parish Council, at the Spalding Market, without the due consent or authorization of the Clarendon Parish Council.
12. The Mayor, Mr. Scean Barnswell, by his own admission, did not have the authority, on his own, to grant permission to Mr. John Bryant or any other person to construct/erect the wooden shops in the parking lot of the Spalding Market.
13. The CG does not fully share the view of the findings of the JPS investigation, specifically the comment “...*This would however, not be illegal connection per se, as the connection is legitimate.*”. For example, if an individual plugs a cord into a socket at a public house, and with an extension cord runs that cord across the road, for the purposes of providing electricity to a business complex, in circumstances where the lawful owner of the premises from which access is gained, gives no permission to enter the premises, that act is unlawful per se. Further, where the lawful owner gives no permission for the ‘connection’ to be made, however, electricity is abstracted, I am of the view that the



consumption of electricity is deemed to be illegal. *A fortiori*, the Larceny Act, Section 15 states:

*“Every person who maliciously or fraudulently abstracts, causes to be wasted or diverted, **consumes**, or uses, any electricity shall be guilty of felony, and on conviction thereof liable to be punished as in the case of simple larceny.”* (OCG Emphasis)

Consequently, the CG is of the view that that connection is illegal.



REFERRAL

1. The Contractor General, pursuant to Sections 21 and 29 of the Contractor General Act, refers to the Honourable Director of Public Prosecutions, for due consideration, whether the conduct of Minister Richard Azan, MP for North West Clarendon, Mr. John Bryant, Bryant Construction, and Mrs. Bridget Daley-Dixon, Constituency Secretary, give(s) rise to a Conspiracy to Defraud the Revenue of the Clarendon Parish Council and/or any other criminal acts.

The offence of Conspiracy to Defraud is defined as *“An agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud.”* (Scott v Metropolitan Police Commissioner [1975] AC 819).

There is no evidential requirement that the actual loss must occur and in this case the collection is returned to the Clarendon Parish Council.

In the Privy Council decision of Wai Yu-tsang v The Queen [1991], the *ratio decidendi* is that the state of mind of the guilty party to be proved must be that of ‘dishonesty’.

Consequent upon the foregoing offence, a referral is being made in consideration of the fact that the Hon. Richard Azan admitted to facilitating the construction of the subject illegal wooden shops upon government land, without the requisite permission and/or approval. The noted actions bypassed the established approval process administered by the Clarendon Parish Council. It is of importance to note that approval, by the requisite



authority, is required to erect structures, and approval is needed to determine the rental to be charged for the occupation of these shops.

Minister Azan, through his action(s), inactions and/or omission, created the basis upon which Mr. John Bryant proceeded with the construction of the wooden shops. Further, having regard to his 20 years of association with the Clarendon Parish Council, it is not unreasonable to expect that Minister Azan is deemed to have known the proper approval process for the erection of structures, as well as a clear distinction between the activities and authority of the Political arm of the Parish Council and that of the Administrative arm. This the Member of Parliament has sought to address.

Due consideration must also be given to the fact that Minister Azan, in convening and/or participating in a meeting, where herein, rates were set for the lease of the illegally constructed wooden shops and the designation of the person responsible for the collection of the rent, further implicates the Hon. Richard Azan in the web of conspiracy.

It is also instructive to note that Mrs. Bridget Daley-Dixon, the Secretary at the Constituency Office of the Member of Parliament for North West Clarendon, admits to collecting the rental at the Constituency Office for the wooden shops which are situated on the land of the Clarendon Parish Council. As a consequence, the revenue that rightfully belonged to the Clarendon Parish Council was diverted to Mr. John Bryant through Mrs. Daley Dixon.

The instant matter raises significant concerns as to the possible revenue which was foregone by the Clarendon Parish Council during the approximate six (6) month period in



which the wooden shops were erected on the Parish Council land and the time which elapsed before the Parish Council took decisive action. Please note:

1. The shops were illegally erected by Mr. John Bryant.
2. Mr. John Bryant collected rent for the illegally erected wooden shops without the authority of the Clarendon Parish Council and, in particular, agreed to set the rates which were to be paid by the occupants, even though he had no authority to do so and with the facilitation of the Member of Parliament.
3. As a result of Mr. Bryant collecting rent from the occupants of the wooden shops, the usual market fees which were required to have been collected by the Parish Council for vending were not so collected from the occupants of the wooden shops.

The revenue, that is, the \$213,000.00 which was refunded by Mr. John Bryant to the Clarendon Parish Council, reinforces the point that Mr. Bryant realised that the money was not due to him. Where he may argue that the cost of the construction of the wooden shops is due to him, that is one matter, but more importantly the revenue of the Clarendon Parish Council was collected by Mr. John Bryant. But the law is clear that there is no legal requirement to prove actual loss based upon the decision in Wai Yu-tsang v The Queen [1991] Privy Council.

2. The Contractor General, refers to the Honourable Director of Public Prosecutions, His Worship the Mayor Scean Barnswell, in knowingly misleading the Contractor General during the conduct of the Section 18 Judicial Proceeding, contrary to Section 29 of the Contractor General Act.



3. The Contractor General, pursuant to Section 21 of the Contractor General Act, refers to the Auditor General its findings and consequent recommendations, for her to consider (a) conducting an investigation into the failure of the Clarendon Parish Council to either demand the collection of revenue and/or the payment of fees due and payable to it in relation to the wooden shops which were located in the parking lot of the Spalding Market, and (b) reviewing the financial operations with a view to, *inter alia*, quantify any revenue which was foregone by the Clarendon Parish Council.



RECOMMENDATIONS

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG’s Emphasis)

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the CG now makes the following Recommendations:

1. Given the Finding that Officers of the Clarendon Parish Council were reticent in addressing the issue of the illegally constructed wooden shops, the CG is recommending that an accountability framework be created and implemented to clearly outline the reporting relationships and obligations of Officers at the Parish Councils in order to ensure that there is no recurrence of the lack of action which has tainted the Clarendon Parish Council.
2. The CG recommends that there be an absolute separation of the responsibilities of the Members of Parliament in regard to the identification and/or approval of projects which are to be undertaken in their Constituency and the selection and/or approval of Contractors to execute the identified works. In the event that an absolute separation is not feasible, the CG recommends that the appropriate checks and balances be put in place to ensure that there is no undue political interference.



3. It is strongly recommended that Members of Parliament and/or Ministers of Government should not, unilaterally, irrespective of the intention, or lack thereof, commit Public Bodies to transactions and/or arrangements for which such decisions rightfully reside with the responsibility of the Head of Entity and/or established Committees.

The CG's recommendation is premised upon the fact that the selection and/or recommendation for the award of contracts, by a Public Official, in violation of established guidelines and procedural requirements, can create the perception of political corruption as defined by Transparency International. Suffice to say, without the proper checks and balances, and independent selection and award criterion, same presents an opportunity to politically colour a contract award and, if left unchecked, creates an opportunity for varied forms of corruption.

4. As it regards the Hon. Richard Azan, his actions have resulted in:
 - (a) the violation of internal approval processes at the Clarendon Parish Council;
 - (b) the invitation and facilitation of the erection of illegally constructed wooden shops;
 - (c) Mr. John Bryant's unauthorized entry upon Government of Jamaica property; and
 - (d) the usurping of the authority of the Clarendon Parish Council.

Wherefore, the CG is recommending that due consideration is given to instituting appropriate disciplinary action against the Hon. Richard Azan, in accordance with the Westminster Model of governance, as his actions have brought into disrepute the



Clarendon Parish Council and are, at best, tantamount to being politically corrupt as defined by Transparency International.

Irrespective of the arguments presented regarding the need for the referenced wooden shops and the benefits which have been derived from same, it is the OCG's considered opinion that due process and the rule of law must be adhered to, primarily by our Members of Parliament and other elected Officials.

5. The CG is recommending that disciplinary action be taken against the Officers of the Clarendon Parish Council, that is, the Superintendent of Roads and Works and the Deputy Superintendent of Roads and Works, who are charged with the responsibility of issuing enforcement Orders, pursuant to the Town and Country Planning Act and who, failed to actively report the issue of the illegally constructed wooden shops and/or to enforce the provisions of the Town and Country Planning Act, inclusive of the issuance of cease and desist/stop orders.
6. The CG is also recommending that the Auditor General undertake a review of the financial operations, and accounting systems and practices of the Clarendon Parish Council having regard to the numerous deficiencies which have been identified herein as it regards the collection of revenue, loss of revenue and the recovery of monies payable to the Clarendon Parish Council.
7. The CG is recommending that the Clarendon Parish Council, and any other Public Body which is seeking to recover the cost of electricity or any other utility, establish an equitable, legitimate, **measurable and realistic** basis upon which to charge and/or recover the cost of such utilities which are provided to third parties.



8. Having regard to the foregoing, and the actions of Ms. Michelle Brown, Budget and Revenue Officer, who failed to advise her superiors of her decision to impose and collect a fee from persons occupying the shops who obtained electricity from the Parish Council source, without the requisite authorisation. The CG is hereby recommending that appropriate disciplinary action is instituted by the Clarendon Parish Council and/or the Ministry of Local Government and Community Development.
9. Investigative journalists need to exercise greater care in the issuance of published material (articles) which have the potential to expose persons. The disclosure of names and/or sensitive information ought to be avoided.
10. Given the circumstances which have surrounded the entire Spalding affair, the OCG is recommending that a legislative and/or governance framework be established to guide Ministers of Government and Members of Parliament as it concerns their roles, functions, responsibilities and involvement in the decision making processes of Public Bodies. The legislative and/or governance framework should detail the appropriate sanctions which can be adopted should a Minister and/or Member of Parliament overstep his/her authority as it concerns the functions of a Public Body.