

The following was published in the *Stabroek News* on the 26th August 2000 under the caption "**Guyana Gold Board has usurped powers**" and in the *Guyana Chronicle* in August 2000 under the caption "**The functions of the Guyana Gold Board**".

The Guyana Gold Board was established in 1981 by Act No. 12 of 1981. As set out in section 4, the purpose was to make the Gold Board the sole statutory body to carry on the business of trading in gold which included the purchase and sale of all gold in or out of Guyana. It was illegal for others to trade in gold.

Fifteen years later, it was decided that there was a need to reform this policy and a decision was taken to demonopolise the Gold Board and allow other persons to trade in gold.

The Attorney General and the Chief Parliamentary Counsel took the view that under section 9(1) of the Act, the Gold Board had the authority to issue licences and give private dealers the power to trade in gold. I gave a dissenting view.

Section 9(1) states that "... where application is made to the Board by any person in the prescribed manner the Board may authorise that person to have in his possession or to sell or export such quantity of gold as the Board may allow subject to such conditions as the Board may think fit to impose."

Sections 4 and 9(1) may well appear to be conflicting. Upon proper analysis, it would be realised that Parliament could not have intended that the Gold Board with the sole and exclusive power to trade in gold would have the authority to give that power to others. The only sensible interpretation of Parliament's intention was a situation where the Gold Board was unable to purchase gold

from a producer. Parliament intended a specific exemption in special cases to allow a producer to sell and export the gold. It is for this reason that Parliament deliberately excluded the word "purchase" from section 9(1). The power to purchase gold is a matter for Parliament and no Regulation could vest the Gold Board with the authority to give that right.

The problem is not solved by attaching an appendix to the authorisation and referring to the power of purchase which was never intended. Section 9(1) never intended that the Gold Board would give *carte blanche* power to a dealer to purchase, sell and export gold.

The attempt to define the word "possess" to give it the unnatural meaning of "purchase" is most disturbing and contrary to the principles of legislative drafting.

Subsidiary legislation must derive its power from the Principal Act. Regulations which allow the Gold Board to give authority to others to purchase, sell or export any quantity of gold, and subject to conditions which do not apply to the Board, would be *ultra vires* the Principal Act because the Gold Board did not have the power to issue authorisations for that purpose. The Regulations are outside the purpose of the Act. Section 9(1) could not and did not intend this purpose.

What was needed was to amend Act 12 of 1981 and draft separate legislation to allow private dealers to carry on the same business as the Gold Board.

The policy of the Government in relation to the demonopolising of the gold trade should be carried out within the proper legal framework. So far this has not been done.

Jamela A. Ali
LL.B.(Hons.)(UWI), LL.M.
Attorney-at-Law

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