

ATENEO LAW JOURNAL

A MEMORANDUM ON THE EXECUTIVE POWER

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WE have often wondered why our legal scholars and constitutional lawyers have not seriously considered the matter of interpreting certain provisions of the Administrative Code¹ on the powers of the Governor General, then the Islands' chief executive, to determine whether they are still in force now that we are independent.

In our opinion, whenever a doubt exists as to the proper interpretation of such provisions, the possibility that the powers granted thereby might have been for the interest of American sovereignty only, prior to our independence, must be weighed. That might have been the spirit behind such provisions, rather than an adherence to any abstract principle or theory on the inherent nature and scope of the executive power.

Of powers no doubt inspired by concern for the protection of American sovereignty, the following provisions, found in Section 64, may be cited:

For disloyalty to the United States the Governor General may at any time remove a person from any position of trust or authority under the Government of the Philippine Islands. (Underscoring supplied)

To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith, to designate the official committee, or person by whom such investigation shall be conducted.

We would go slow in holding that these powers originally intended for the American Governor had been inherited bodily by our elective chief magistrate. But we suggest that these powers, especially those respecting control and supervision of minor or local units of government, must be re-examined and re-evaluated, as were some provisions of the old Penal Code which were deemed abrogated with the change of sovereignty, or modified by more enlightened and more democratic legislation.²

The propriety of such institution, for instance, at the *Belo Boys System*,

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¹ REV. ADM. CODE §§ 65 & 66.

² See *People v. Perfecto*, 43 Phil. 887 (1922).

continued through such superbody as the PCAPE³ which was created by mere executive fiat, may well be looked into. No cogent reason exists for such an arrangement anymore. On the contrary, its creation reflects badly on department heads and bureau chiefs. It points to the unreliability of these officers as performance officers and investigators. It also detracts from good and efficient administration for it overlaps and duplicates functions.

In the case of the American Governor the practice can be justified. Then, there was a conflict between the Filipino legislature and the American executive, and America, naturally, in the exercise of her sovereignty, had to secure an arrangement whereby her sovereign representative could count upon the services of advisers and technical assistants, owing no allegiance to Filipino participation in government affairs and therefore whose loyalty he had no reason to doubt. That was the basic philosophy behind the enactment of the Belo Law.⁴

Under the present regime, the only justification we can conjure for creating a superbody is to accept that the President has dictatorial powers under the Constitution, which we are not ready to grant. On the contrary: where a specific power, function, or duty is expressly conferred by law upon a given official, may he intervene invoking his constitutional power of supervision and control? We find interesting this opinion in British constitutional law: the royal prerogative is subject absolutely to the legislative power of Parliament and when a statute has directed the exercise of the prerogative in a certain way there is no remnant prerogative.⁵

In our jurisdiction the Supreme Court provided us with the vehicle in the case of *Lacson v. Roque*.⁶ There it was held: the contention that the President has inherent power to remove or suspend municipal officers is without doubt not well taken. Removal and suspension of public officers are always controlled by the particular law applicable and its proper construction subject to constitutional limitations. So it has been declared that the governor of a state (who is to the state what the President is to the Republic of the Philippines) can only remove where the power is expressly given or arises by necessary implication under the Constitution or statutes.

The limiting provision in our jurisdiction is found in the Constitution and the Revised Administrative Code: no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law.⁷ Applying this provision the Supreme Court held in the case of

³ Presidential Committee on Administration Performance Efficiency which replaced the Presidential Complaints Action Committee established by Executive Order No. 19, March 17, 1954.

⁴ Act 3431.

⁵ CORWIN, THE HIGHER LAW BACKGROUND OF AMERICAN CONSTITUTIONAL LAW.

⁶ 49 O. G. 93 (1953).

⁷ PHIL. CONST. art. III § 4; REV. ADM. CODE § 694.

Lacson v. Romero:⁸ where the Constitution forbids the removal of an official or employee like the petitioner, except for cause as provided by law, said right of the Chief Executive is qualified and limited. That constitutional prohibition is a limitation to the inherent power of the Executive to remove those civil service officials whom he appoints.

Corollarily, it may be worthwhile inquiring whether the Chief Executive, in the removal or suspension of subordinate officers and employees, may directly act in the exercise of his constitutional power of supervision and control, notwithstanding the provision of Section 695 of the Revised Administrative Code, which confers upon the Bureau of Civil Service exclusive jurisdiction over the removal, separation and suspension of subordinate officers and employees in the civil service, and providing for the procedure in case of appeal. For instance, may the Executive *motu proprio* interfere with the action taken by the Bureau of Civil Service or the Civil Service Board of Appeals?

In *Negado v. Castro*⁹ the Supreme Court suggested the affirmative. It held that the President, as department head of the two bodies and by virtue of his constitutional control of the executive department, may review or revise their decisions.

With due respect to the opinion of the Court, we wish to point out that although the President is constitutionally vested with broad powers of control and supervision, the law nevertheless is careful to provide a specific appeal procedure consisting of graduated steps, i.e., from the Bureau of Civil Service to the Civil Service Board of Appeals, then to the President.¹⁰

While Section 37 of the Reorganization Law of 1932,¹¹ which states that "whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify or revoke any decision or action of said chief of bureau, office, division or service," may be invoked to justify direct action by the Chief Executive, it is doubted whether the said provision is superior to the provisions of Section 695 of the Revised Administrative Code in so far as the decision in an administrative case against a classified officer or employee is concerned. The use of the word "exclusive" found in Section 695 seems to indicate at least an intention to provide an exception to the general rule found in Section 37 of the Reorganization Law. In other words it partakes of the nature of a special provision or particular law to govern a particular case.

⁸ 47 O. G. 1778 (1949).

⁹ G. R. No. L-11089, June 30, 1958.

¹⁰ REV. ADM. CODE § 695, as amended by C. A. No. 598; see also Opinion No. 61, s. 1958 of the Secretary of Justice.

¹¹ Act No. 4007.

To conclude, we concur in the observation of Dr. Aruego that as regards the Executive Department "there was a general opinion in the Convention in favor of a strong Executive in the Philippines. *But he must be, above all, an Executive in a republican constitutional government.*"¹² (Underscoring supplied)

¹² I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 397 (1949).