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THE PARDONING POWER OF THE MAYOR OF THE CITY OF MANILA

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INTRODUCTION

Is the provision of Article II, Section 8 (j) of the Charter of the City of Manila constitutional? .

This Section reads thus: The Mayor shall be the chief executive of the city, and shall * * * (j) Have power to release any person imprisoned or confined in a reformatory or any institution of a similar nature, for violation of a city ordinance and remit the sentence of such person, or any part thereof.

In order to test the constitutionality of this Section we have to search the Organic Laws of the Philippine Islands which are embodied in the Jones Act. This is the constitution of the Philippines in the meantime. Let us reproduce the section of the Jones Law which is in point.

"Section 21. That the supreme executive power shall be vested in an executive officer whose official title shall be 'The Governor General of the Philippine Islands' * * * He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided * * *."

This is reiterated by the Administrative Code. Section 58 gives among the powers granted to the Governor General the following:

* * * The Governor General is vested with exclusive power to grant pardons and reprieves and remit fines and forfeitures * * *.

And, Section 64 of the same elucidated the grant to the chief executive.

Section 64. Particular powers and duties of the Governor General. In addition to his general supervisory authority, the Governor General shall have such specific powers and duties as are expressly conferred or imposed on him by law and also in particular, the powers and duties set forth in this chapter. (i) To grant to convicted persons reprieves or pardons either plenary or partial, conditional, or unconditional; to suspend

LL.B. (U. P.), member of the Philippine Bar.

sentences without pardon, remit fines, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and to authorize the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition or conditions, of his pardon, parole, or suspension of sentence * * *

HISTORICAL BACKGROUND

In England the pardoning power is vested in the crown, by whom it has been exercised from time immemorial. The United States constitution confers the power to grant reprieves and pardons on the President, and in most of the States such power is expressly vested by the constitutions of the states in the Governor. He does not, however, hold the power simply because he is the chief executive; but because the sole power to pardon is delegated to his office. The pardoning power is not, under our system of government, inherent in any office of the state or any department of the state, and the people in framing and adopting their constitution, may lodge the power in any department they see fit, or in a board of pardons. However, there are many reasons why a power of this kind should be confided to the highest executive officer. It involves a wide discretion. The proceedings upon the trial may be reviewed. New evidence may be taken upon which to rest the pardon, thus, in effect, granting a new trial. It may be ex parte, after the witnesses have disappeared or are dead. It may and often is based upon an alleged reform of an offender. Youth or age may furnish an excuse for its exercise. Petitions which a good natured public sign without reading, and importunities of interested persons and friends, may be expected whenever there is hope of success. It is therefore of the highest importance to the public that this power should be carefully exercised, and that the fullest responsibility should rest upon the person to whom it is confided. The office of governor seems to be generally considered the proper one in which to lodge such responsibility, and the public has the right to insist on his performance of the duty. (Ex parte Ridley, 3 Oka. Crim. 350, 106 Pac. 549, 26 L. R. A. (N. S.) 110).

Nature of Pardoning Power.—It is evident then that in our system of government the pardoning power is not inherent in any officer of the State or any department of the state and, the people in framing and adopting their constitution, may lodge the power in any department they see fit, or in a board of pardons. In the Philippines the Jones Law takes the place

of the constitution and hence instead of examining the intention of the people we have to analyze the purpose of the United States Congress in the terms used in the very section containing the grant of powers to the Governor General.

CONFLICTING OPINIONS

An Inquiry into the Purpose of U. S. Congress.—Did the Congress of the United States intend to confide exclusively to the Governor General of the Philippines the power to grant pardons and reprieves and remit fines and forfeitures? In answering this question we are introduced to two conflicting trends of decisions.

According to a number of decisions the constitutional pardoning power of the governor does not extend to violations of municipal ordinances and it does not, therefore, prevent the legislature from conferring upon municipal authorities the power to remit penalties for violation of municipal ordinances. (Paris vs. Hinton, 132 Ky. 684, 116 S. W. 1197, 19 Ann. Cas. 114; Allen vs. McGuire, 100 Miss. 781, 57 So. 217, Ann. Cas. 1914 A 483, and note 38 L. R. A. (N. S.) 196.

The famous McGuire Case.—The most outstanding authority holding that the mayor of a city may exercise some pardoning power to remit penalties for violation of municipal ordinances when conferred by the legislature in the charter is the case of "C. B. Allen, City Marshal, Appt. vs. T. J. McGuire (Miss.—, 57 So. 217)."

A brief statement of facts which are in point is as follows: "In August, 1911, T. J. McGuire was convicted in the court of the police justice of the city of Jackson of a violation of the municipal ordinances and given a jail sentence of thirty days and a fine of \$100 and costs. Subsequently, acting under Article 3384 of the Code of 1906, the mayor and board of aldermen of the city remitted sixteen days of the jail sentence of McGuire on condition that he pay the fine and costs. It is indicated that the fine and costs were paid, but the city marshal refused to grant McGuire a release in accordance with the direction of the mayor and board of aldermen. The contention of the marshal is that the statute authorizing the mayor and board of aldermen to remit any part of any sentence imposed for a violation of the ordinances of the town is void, because it conflicts with the power of pardon exclusively committed to the governor of the state by Article 124 of the Constitution of 1890 of the State. A writ of habeas corpus was applied for by

McGuire, and as heard. The chancellor ordered the release of McGuire, and from this judgment an appeal is prosecuted to this court.

Section 3384 of the Code provides as follows: "The mayor shall have power to remit fines and forfeitures, and to vacate and annul penalties of all kinds, for offenses against the ordinances of the municipality, by and with the consent of the board of aldermen; but a fine or penalty shall not be remitted or annulled unless the reasons therefor be entered on the minutes by the clerk together with and as a part of the order so doing." Counsel prosecuting this appeal for the marshal concedes that Article 3384 was complied with in every particular, and we accept the concession of the marshal's counsel on this point, though the record indicates that the mayor commuted the sentence in August and the board acted on the matter in September. Section 3384 of the Code clearly contemplates that the consent of the board of aldermen shall be obtained before the remission can become effective. But, as stated, it seems to be conceded in this record, and we shall accept it as true, that Article 3384 was complied with, and this consent of the board of aldermen obtained prior to any effect given the remission by the mayor of any part of the sentence.

It seems to be well settled that Article 124 of the Constitution, confiding to the governor the power to grant reprieves and pardons and to remit fines, etc., has no application to punishments imposed by virtue of municipal ordinances. In the case of *Paris vs. Hinton* 132 Ky. 684, 116 S. W. 1197, 19 Ann. Cas. 114, and note, is found the best discussion of this subject that we have been able to find. It is held in the above case, citing numerous authorities, that the governor of a state has no authority to pardon or remit a fine imposed on one who has been convicted in a municipal court of violating a municipal ordinance. The power given to the governor to pardon contemplates that he shall have this power only in regard to infraction of state laws, and not municipal ordinances. Of course, the legislature can confide the power to the governor to pardon for offenses against municipal ordinances; but, until it has done so, he has no such power under the constitution. This question is so ably discussed in the authorities above cited that any attempt on our part to add any thought to what has already been said would be futile and a waste of time.

The doctrine laid down in Paris vs. Hinton.—In view of the fact that much weight is attached to the opinion ventilated

in this case (*Paris vs. Hinton*) I shall reproduce it fully at this juncture.

City of Paris vs. Hinton, Judge, et al. (Court of Appeals of Kentucky. March 10, 1909).

Pardon (Article 4)—Authority of Governor to Pardon.

Const. Article 77, provides that the Governor shall have power to grant pardons, but "he shall have no power to remit the fees of the clerk, sheriff, or commonwealth's attorney in penal or criminal cases." Section 79 provides that the Governor shall from time to time give to the General Assembly information of the state of the commonwealth, and recommend such measures as he may deem expedient. Section 81 provides that the Governor shall take care that the laws be faithfully executed. K. S. 1909 Article 3499 (Russell's St. Article 1556), provides that the mayor or chief executive of a city of the fourth class shall see that the laws and ordinances of the city are duly enforced. Section 3500 (Section 1557) provides that the mayor or chief executive, with two councilmen selected by the city council, may remit or suspend the imprisonment portion of any sentence and the fine imposed, when such punishment shall have been imposed for violation of any ordinance. Held, that the Governor has no authority to pardon one convicted of a violation of a city ordinance of a municipality of the fourth class.

(Ed. Note.—For other cases, see Pardon, Cent. Dig. Article 4; Dec. Dig. Article 4).

Appeal from Circuit Court, Bourbon County.

"To be officially reported."

Action by the City of Paris against E. R. Hinton, Judge, and others. Judgment for defendants, and plaintiff appeals. Reversed.

Jas. M. O'Brien and Wm. Grannan, for appellant. Mc-Millan and Talbott, for appellees.

Barker, J. The question arising on this record is whether or not the Governor of the commonwealth of Kentucky may legally pardon one who has been convicted in the police court of a city for an infraction of a municipal ordinance, or remit the fee imposed. The power to pardon offenses and remit fines is given to the Governor by section 77 of the Constitution, which is as follows: "He shall have power to remit fines and

forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the clerk, sheriff, or commonwealth's attorney in penal or criminal cases." The following sections of the Constitution seem, also, to bear upon the subject in hand:

"Section 79. He shall from time to time give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may deem expedient."

"Section 81. He shall take care that the laws be faithfully executed."

There is no intimation in any of these sections of the Constitution that the Governor has any duty with reference to the enforcement of the local laws of a municipal corporation, and we see no reason which requires us to extend the meaning of the words used in them to embrace the enforcement of municipal ordinances or so as to give him the power to pardon infractions of them. On the contrary, some of the words used in section 77 seem to restrict the pardoning power of the Governor to infractions of the State laws. The last sentence of Section 77 is as follows: "* * * But he shall have no power to remit the fees of the clerk, sheriff, or commonwealth's attorney in penal or criminal cases." Now, neither the sheriff nor the commonwealth's attorney has anything to do with the enforcement of municipal ordinances, and therefore they could not have an interest in the fines or penalties. Municipal corporations usually have an officer called the marshal or bailiff, and a city attorney, whose duties are in part the enforcement of the ordinances of the city. And those officers usually have an interest in the fines and penalties; but, if the Governor may pardon those convicted of infractions of municipal ordinances, he is not prohibited by the Constitution from releasing or remitting the fees due the marshal or bailiff or city attorney. No good reason can be given for such invidious distinction, and we think the fact that the framers of the Constitution so particularly guarded the rights of the officers interested in the fines or penalties for infractions of state laws without a similar protection being extended to the interests of municipal officers

shows that it was not contemplated that the Governor should have any pardoning power of infractions of municipal ordinances.

Paris is a city of the fourth class, and sections 3499, 3500, Ky. St. (Russell's St. Articles 1556, 1557) which relate to the charter of cities of that class, are as follows:

"Section 3499. The mayor or chief executive shall see that the laws and ordinances of the city are duly enforced and observed, and are faithfully executed. He may require information, in writing, from all officers of the city upon any subject relating to the duties of their respective offices.

"Section 3500. The mayor or chief executive may, with two councilmen selected by the city council, at their first regular meeting in each fiscal year upon due investigation and in the exercise of a sound discretion, remit or suspend the imprisonment portion of any sentence, and the fine when the defendant is confined for nonpayment of the fine, when such punishment shall have been imposed for violation of any ordinance."

Now, of course, these sections are invalid if they are in contravention of section 77 of the Constitution; but the fact that they impose upon the mayor the duty of enforcing all city laws and establish a board for the remission of fines and penalties is a legislative construction that Section 77 of the Constitution does not give to the Governor the power to remit fines inflicted for infractions of municipal ordinances. The very question we have here arose in the case of *State vs. Renick*, 157 Mo. 292, 57 S. W. 713. In that case one Garrie Neal had been convicted and sentenced in the police court of Kansas City for violating a city ordinance, and a fine of \$500 inflicted upon her. This fine the Governor of the State of Missouri sought to remit. The Constitution of the State of Missouri authorizing the pardoning of offenses by the Governor is substantially the same as ours. It was there held that the Governor of the State can pardon only those who are convicted of violations of State laws, and that his pardon of Carrie Neal was invalid. To the same effect is *Shoop vs. Commonwealth*, 3 Pa. 126. In 24 Am. and Eng. Encyc. of law, p. 569, the rule is thus stated: "The pardoning power of a Governor of a State or territory is confined in its operation to offenses against the laws of that state or territory. It does not include offenses vs. the laws of the United States, since such an offense is solely within the pardoning power of the President. Neither does it include an offense against a municipal corporation, such, for instance, as

the violation of city ordinance." We have been referred to no authority extending the power of a Governor of a state to pardon offenses other than infractions of state law, and we believe none exists.

Appellees rely in their brief upon the doctrine of contemporaneous construction as authorizing the Governor to pardon violations of municipal ordinances. They cite in their brief various instances where the Governor of the State have pardoned persons punished in the police courts of the municipalities of the Commonwealth. We do not attach the same importance to the exercise of this power by the Governors as do appellees. An examination of the instances cited shows, however, that the pardons were granted for infractions of State laws, and not of municipal ordinances. It is true, the judgments against the defendants were inflicted in the police courts of the various municipalities, but the offenses were violations of State laws, and most of the instances were for violations of the Statute against carrying concealed deadly weapons.

We are of opinion, both upon reason and authority, that the Governor in this case had no authority to pardon the defendant, who had been convicted of a violation of a city ordinance of the municipality of Paris, and that his pardon was invalid.

The judgment is reversed for proceedings consistent with this opinion.

The Test.—In plain words, according to this case unless the legislature confides the power to pardon for offenses against municipal ordinances to the governor, he has no such power under the constitution. By analogy we have to inquire as to whether the Congress of the United States in the Organic Act (Jones Law) has confided to the Governor General the power to pardon for offenses against municipal ordinances as contemplated in the charter of the City of Manila, Article II, Section 8 (j).

DIFFERENCE BETWEEN CONSTITUTIONAL PROVISIONS OF MISSISSIPPI AND THE PHILIPPINE ISLANDS

In order to arrive at a most reliable conclusion on this matter it is necessary to make a careful comparison of the corresponding constitutional provisions of the constitution of the State of Mississippi and the Organic Act of the Philippines.

For this purpose I shall reproduce only the pertinent article and section of the constitution of Mississippi inasmuch

as the corresponding provision from the Jones Law has already been reproduced heretofore.

Let us turn our attention to the following: "Article IV. Executive Department. Section 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power to grant reprieves and pardons, by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the general assembly." (The Federal and State Constitutions—Volume 4—Compiled and edited under the Act of Congress of June 30, 1906, by Francis Newton Thorpe, Ph.D., LL.D.).

Nowhere in this section can we find the term "exclusive" or its equivalent which is repeatedly mentioned in the Jones Law. Truly in the case of McGuire, a case within the scope of the constitutional provision just cited above, there was a reference made, as alleged by one side, to the apparent conflict with the power of pardon "exclusively committed to the governor of the state"—but the phrase was merely a creation of an interpretation given to the provision by the counsel and not at all included in the very provision itself.

It is evident then that there are some discrepancies between the Mississippi decision and what may be held as an authority here in the Philippine Islands on a similar case. Unless these discrepancies are cleared away the Mississippi holding can not be acceptable as a conclusive authority.

THREE SETS OF DECISIONS

In some of the state constitutions I consulted there is a clear intention of the purpose of the respective constituencies with regards to the grant of power to pardon as vested exclusively upon the executive officer of the state. (a) In a few cases where the plain word "exclusive" or its equivalent is found in the constitutional provision the corresponding decisions of the state supreme courts are to the effect that any encroachment upon the prerogative is held unconstitutional. (b) Whereas in cases where no term "exclusive" or its equivalent is inserted there are some where the holding is that some encroachments are not unconstitutional and (c) *there are a few even* that hold and sustain the unconstitutionality of any award to other departments or offices thus tending to decrease the

pardoning power to be exercised by the executive officer of the State.

First Set.—The following are some sample cases with the corresponding basic constitutional provisions hereinafter reproduced:

People vs. Moore 62 Mich. 496.

“The constitution of Michigan, Article 5, Section 11, vests the whole pardoning power in the executive, impeachments and treason only excepted. The law of Michigan (How. St. Articles 9630-9633) authorizing the summary recaption, without warrant, of a convict charged with violating the conditions of the next session of the circuit court, is unconstitutional and void.” In this case the equivalent phrase employed is “whole pardoning power” and the holding is to the effect that the law authorizing the summary recaption, without warrant, of a convict charged with violating the conditions of his pardon * * * is an encroachment and therefore void and unconstitutional.

In another case in the same court of the State of Michigan the following was the holding: (People vs. Cummings, 88 Michigan 249) Act No. 228, Pub. Acts Mich. 1889, which provides that the court may, in its discretion impose “a general sentence” of imprisonment upon any person thereafter convicted of a crime, and that the board of control of prisons may establish rules and regulations, under which a person so sentenced, who has served the minimum term provide for his crime, may be allowed to go on parole outside of the prison buildings and inclosures, but to remain, while on parole, “in the legal custody and under the control of the board,” and subject at any time, upon being “declared a delinquent” for violation of his parole, “by a formal order, entered in the board’s proceedings,” to “be treated as an escaped prisoner,” and made, “when arrested,” to serve out the unexpired period of the “maximum possible imprisonment” etc., is void, as it clothes said board with authority tantamount to judicial and pardoning powers, which Const. Mich. art. 6, section 1, and article 5 sec. 11 vest exclusively in special courts and the governor, respectively.” Here again the law tending to usurp pardoning powers from the state governor was held void and unconstitutional.

Parenthetically, however, it may be said here that there are cases wherein slight encroachments are permitted. In the case of Rich, Governor vs. Chamberlain, Warden 104 Mich. 436” it was held that public acts 1893, No. 150, article 6, providing for a board of pardons, whose duty it shall be to investi-

gate petitions for pardons, and to report to the governor the result of their investigation with such recommendations as they shall deem fit, and that the governor, on receipt of such report, may, as he shall deem fit, grant or refuse the pardon, does not violate Const. article 5, section 11, vesting the pardoning power exclusively in the governor, subject to regulations by the legislature in regard to the manner of making applications for pardons.

Second Set.—Now I shall present an example of a constitutional provision where the term “exclusive” or its equivalent is not found. The following is extracted from the state constitution of Illinois. Article III, Section 5 reads: “He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.”

I shall also reproduce here three decisions based upon this provision to show that in every case it was held that there was no encroachment upon the executive powers of the Governor.

In the case of “People vs. Joyce 246 Ill. 124” it was held that the final discharge of a paroled prisoner under the section does not encroach upon the executive powers of the Governor so as to be unconstitutional or interfere with his constitutional right of granting pardons and commuting sentences; the action of the board of pardons being merely recommendatory.

In the case of “People vs. Peters 246 Ill. 351” it was held that where accused was subject to sentence under the parole law (Hurd’s Rev. St. 1908, c. 38, Articles 498-509), providing for an indeterminate term of imprisonment on conviction of certain offenses, a sentence to the penitentiary until accused was discharged by the state board of pardons, as authorized by law, provided the imprisonment should not exceed the maximum term prescribed for the offense, was not invalid because the Governor, and not the board of pardons, was the authority from whom a discharge must emanate under such law.

Likewise in the case of “People vs. Nowasky, 254 Ill. 146” it was also held that parole law (Hurd’s Rev. St. 1909, c. 38) Articles 498-509, does not violate the constitutional right of the Governor to grant pardons or reprieves, or commute sentence, nor limit the right of any person convicted of crime to apply to the Governor for such pardon in accordance with the general statute regulating such applications.

Third Set.—The third set of samples will show the tendency of court decisions in the interpretation of the provision of the constitution pertaining to the grant of powers to pardon

in the chief executive. So far I have cited authorities which hold that only when the constitution is *silent* about whether the pardoning power is to be exclusively exercised by the governor may encroachments upon such power be permitted. And whenever the constitutional provision is specific as to the fact that the pardoning power should be vested wholly or exclusively upon the governor, I have shown that the decisions were very strict in holding that any encroachments are void and unconstitutional.

A SPECIAL CASE

It may be of additional interest to note that there are some cases even where, based upon constitutional provisions which are silent as to whether the governor should exclusively exercise the pardoning power it is held that some encroachments are void and unconstitutional. Such is the holding in one of the cases in Oklahoma which I shall reproduce here in its decision on the pertinent point.

Following my usual procedure I shall first give the provision of the constitution of the State of Oklahoma. "Article VI Section 10—The Governor shall power to grant, after conviction, reprieves, commutations, paroles, and pardons for all offenses except cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to such regulations as may be prescribed by law. He shall communicate to the legislature, at each regular session, each case of reprieve, commutation, parole, or pardon granted, stating the name of the convict, the crime of which he was convicted, the date and place of conviction, and the date of commutation, pardon, parole, or reprieve."

Nowhere in this section do we encounter the term "exclusive" or its equivalent. Yet in the decision given by the Supreme Court of that state based upon this very section of the constitution it is held (in the case *Re-William Ridley* 106 Pac. 549; 26 L. R. A. (N. S.) 110) that under the constitutional provisions conferring the pardoning power upon the governor (Const. Art. 5 section 10), the governor has exclusive power to parole a convict, with such restrictions and limitations as he may deem proper * * *, and any law which restricted this power would be unconstitutional and void. The co-ordinate departments of the government have nothing to do with the pardoning power, except that the legislature may by law provide how applications may be made, and is entitled to a report at each regular session of the action taken.

People vs. Brown, 54 Mich. 15, 19 N. W. 571; People vs. Moore, 62 Mich. 496, 29 N. W. 80; People vs. Cummings, 88 Mich. 249, 14 L. R. A. 285; 50 N. W. 310; United States vs. Wilson 7 Pet. 150, 8 L. Ed. 640; Ex parte Wells, 18 How. 307, 15 L. Ed. 421; Ex parte Garland, 4 Wall. 333, 18 L. Ed. 366; Rich vs. Chamberlain, 104 Mich. 436, 27 L. R. A. 573, 62 N. W. 584.

The power conferred by article 10 of the Constitution is practically unrestricted, and the exercise of executive clemency is a matter of discretion. It cannot, however, be treated as a privilege. It is as much an official duty as any other act. It is vested in the governor, not for the benefit of the convict only, but for the welfare of the people who may properly insist upon the performance of that duty by him if a pardon or parole is to be granted.

EXERCISE OF PARDONING POWER BY CITY MAYORS

There is no question as to whether the mayors of the City of Manila have exercised the pardoning power granted to that office by the terms of that provisions of the City Charter. In order to throw some light on this topic I shall give a brief summary of the most important items as revealed by the records kept in the office of the mayor of the City of Manila.

Thru the courtesy of the Secretary of the Mayor of the City of Manila, Mr. Payawal, I was permitted to ransack the thick files of the documents of pardons awarded by the chief executive of the City of Manila. These documents bear signatures of the incumbents from Ex-Mayor Justo Lukban to the one just out, Mayor Miguel Romualdez. With the exceptions of Artiaga and Santiago who by the way were mere acting all the rest awarded clemency. Most of them refer to reformatory inmates seeking release but several are violations of City Ordinances.

The following are self-explanatory:

May 4, 1920.

By virtue of the authority conferred upon me by Section 2434 (b) (j) of Act 2774 of the Philippine Legislature, Aniceto Cardenas convicted by the Court of First Instance, Manila and sentenced to four months imprisonment and to pay a fine of Four Hundred pesos (P400.00), for violation of Section 736 of Ordinances No. 285 of the City of Manila, is hereby pardoned, and fine remitted.

(Sgd.) JUSTO LUKBAN,
Mayor, City of Manila.

January 3, 1921.

To Whom It May Concern :

The undersigned, Mayor of the City of Manila, by virtue of the authority conferred upon him by Section 2434 of the Administrative Code as amended by Act No. 2774 hereby pardons Romana Billares who has been convicted by the Municipal Court under the provisions of Ordinances No. 293 to pay a fine of ₱200.00 and costs.

(Sgd.) RAMON J. FERNANDEZ,
Mayor, City of Manila.

(The next was also granted by Ex-Mayor Fernandez)

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF INTERIOR
CITY OF MANILA

January 8, 1921.

Office of the Mayor,

To Whom It May Concern :

It appearing from the statement of the Superintendent of the City Girls' Reformatory that Pilar Antonio, convicted and sentenced to be confined in the City Girls' Reformatory for violation of ordinance of the City of Manila, has since her commitment on January 13, 1920, properly behaved and conducted herself in the said institution, the undersigned, Mayor of the City of Manila, by virtue of the authority conferred upon him by Section 2434 of the Administrative Code as amended by Act No. 2774, hereby pardons said minor, effective January 8, 1921; provided that, she would be sent to school and properly cared for by her mother.

Done at the City Hall, Manila, January 8, 1921.

(Sgd.) RAMON J. FERNANDEZ,
Mayor, City of Manila.

Communications similarly worded as the one immediately preceding were done on the 28th day of September, 1922, and on the 6th of October, 1922.

The one next following is characterized by a change in the tenor. For the sake of brevity I shall begin with the 5th Indorsement.

5th Indorsement

April 23, 1923

Respectfully forwarded to His Excellency, the Governor General, concurring in the next preceding indorsement.

(Sgd.) RAMON J. FERNANDEZ,
Mayor, City of Manila.

(Then follows) :

OFFICE OF THE GOVERNOR GENERAL OF THE
PHILIPPINE ISLANDS

By virtue of the authority conferred upon me by the Philippine Organic Act of August 29, 1916, and upon the recommendation of the Mayor of City of Manila, and the City Board of Pardons, the sentence in the case of Concepcion Abengaña, convicted by the Municipal Court, City of Manila, of disobedience to her parents and sentenced in July, 1922, to confinement in the City Girls' Reformatory until she reaches her majority, is hereby remitted, on condition that she shall be taken care of and educated by her parents and shall not again be guilty of any misconduct.

Upon acceptance of this pardon, Concepcion Abengaña will be released from confinement and delivered to her parents.

(Sgd.) LEONARD WOOD,
Governor-General.

I hereby certify that the foregoing is a true copy of the original.

(Sgd.) J. M. WOOLFOLK,
*Assistant Secretary to
the Governor-General*

Copy for

The Superintendent
City Girls' Reformatory
646 Legarda, Sampaloc, Manila.

ACTION TAKEN BY THE GOVERNOR GENERAL

Evidently there was a change in policy as to the granting of pardons on violations of Municipal ordinances. Whereas during the administration of Ex-Mayor Justo Lukban and during the early part of the term of Ex-Mayor Fernandez, the provision of Section 2434 of the Administrative Code as amended by Act No. 2774 was invoked, during the latter part of his (Fernandez) administration it was no longer this provision but that of the Organic Act of August 29, 1916—the Governor General granting, which was made the basis of the power to grant pardon.

From a reliable information I learned that, sometime between October 6, 1922 and April 23, 1923 the Governor General in a written communication called the attention of the office of the City Mayor to the encroachment on the prerogatives of the Chief-Executive of the Philippine Islands. A request was

also made by him that a list of all the pardons granted by the office of the City Mayor be submitted for confirmation by the Governor General and that said office (City Mayor) from that time on refrain from exercising the said power which it has very often wielded on violations of Municipal Ordinances, the provision of section 2434 of the Administrative Code being in the conflict with section 21 of the Jones Law.

The Present Policy.

This policy has been observed by the successors of Mayor Fernandez as shown by the following:

OFFICE OF THE MAYOR

5th Indorsement

August 7, 1923

Respectfully forwarded to His Excellency, the Governor General, recommending the granting of an unconditional executive clemency in favor of Lazaro Alcantara, an inmate of the City Boys' Reformatory.

(Sgd.) EULOGIO RODRIGUEZ,
Mayor, City of Manila.

OFFICE OF THE MAYOR

6th Indorsement

Jan. 23, 1925

Respectfully forwarded to His Excellency the Governor General concurring in the above recommendation for the pardon of Leonardo Cuyugan.

(Sgd.) M. ROMUALDEZ,
Mayor, City of Manila.

I fail to know of any case ever decided by the Supreme Court of the Philippine Islands on this mooted provision. After consulting personally the card index of cases corresponding to the various provisions of law I found none as yet presented to the Supreme Court for decision.

CONCLUSION

This being the present status, that is, that it is only a matter of policy that the present mayor of the City of Manila is refraining from exercising the pardoning power formerly taken advantage of by the past incumbents, I venture to give in my conclusion what I believe would be the decision if ever this matter will be taken up for final settlement before the judiciary.

Truly it must be admitted that there are several authorities which hold that "the constitutional pardoning power of the governor does not extend to violations of municipal ordinances and it does not, therefore, prevent the legislature from conferring upon municipal authorities the power to remit penalties for violation of municipal ordinances. Sometimes the mayor of a municipality possesses charter powers to remit fines and penalties imposed for a violation of municipal ordinances, but it is not necessary that the legislature act in that regard, and the board of alderman may pass an ordinance vesting authority to grant pardons and remit fines in the mayor and board of aldermen." (20 R. C. L. p. 546.)

A quick perusal of the quotation cited above may lead one to the conclusion that the mayor may be invested with pardoning power in the charter. But let us make a further analysis of the important phrases. It says: * * * "and it does not, therefore, prevent the legislature from conferring upon municipal authorities the power to remit penalties, etc. * * * ." This cannot be interpreted to mean that the legislature cannot confer upon the governor the power to remit penalties for violation of municipal ordinances. I hold and in this I am supported by numerous authorities that the legislature can confer such power to the governor thus, leaving none to the municipal officers. As my authority for this contention of mine I cite again the case of "C. B. Allen, City Marshal, Appt., vs. T. J. McGuire (-Miss., 57 So. 217)" * * * The power given to the governor to pardon contemplates that he shall have this power only in regard to infraction of state laws, and not municipal ordinances. Of course, (the decision further states), *the legislature can confide the power to the governor to pardon for offenses against municipal ordinances*; but, until it has done so, he has no such power under the Constitution." * * *

The question then as to whether the legislature can confer or confide the power to pardon for offenses against municipal ordinances to the governor is *conclusively answered in the affirmative* and can therefore be dropped out in the meanwhile. The next proposition to be solved is as to whether (there being no legal impediment to prevent the legislature from so confiding to the governor such prerogative) the said legislative body (in our case the United States Congress) has so confided to the Governor General of the Philippines the power to grant pardons for offenses against municipal ordinances as contemplated by the provision of Section 21 of the Jones Law—in words as follows: "That the Supreme executive power shall be vested in

an executive officer whose official title shall be "the Governor General of the Philippine Islands." * * *. He is hereby vested with the *exclusive power* to grant pardons reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. * * *. The only possible way of harmonizing the apparently conflicting decisions which I have cited heretofore is to assume a common understanding that wherever there is a general grant of pardoning power and that there is doubt as to whether the legislature has confided or conferred upon the governor even the pardoning power with respect to the offenses against the municipal ordinances it should be understood or considered that there is no such grant. On the other hand if however, there is a clear and unambiguous provision which specifically confides and confers to the State chief executive the powers referred to, then it should be held, in justice to all wellknown and accepted rules of statutory construction, that the pardoning powers contemplated reach up to the remotest limits so as to include all offenses and violations even against the municipal ordinances. Certainly there can be no stronger term to employ for the purpose of conveying the desire of the United States Congress (if at all it meant to confide and confer to the Governor General of the Philippine Islands the pardoning power on offenses against municipal ordinances) than the one used in the very section of the Jones Law, viz., "*He is hereby vested with the exclusive power to grant pardons * * *.*" And no other inference after consulting the pertinent cases can be allowed by reason, giving the ordinary and legal meanings of the terms so employed, save that there is really an intention on the part of the Congress of the United States incorporated in those emphatic terms to confide and confine the whole pardoning power including the pardoning of offenses against municipal ordinances in the chief executive, the Governor General of the Philippines.

In this conclusion, it should be understood that it is admitted that "a mayor of a city may be vested with power to pardon one convicted of the violation of an ordinance" (See 46 Fed. Rep. 52) but such can be validly possible in the absence of a more authoritative legal provision which denies the investment of this limited pardoning power to the mayor. Such is the situation here in the Philippines. Had it not been for the constitutional provision which clearly and emphatically deprives the Philippine Legislature to validly confer the pardoning power in cases of violations against municipal ordinances of the City of Manila the provision in the City Charter,

like in many other charters, would have been legal, valid, and constitutional. There being a clear conflict between two provisions of very different categories, the one being the constitution of the land (the Organic Act, Jones Law), the other being merely a charter, it is very evident that the former must prevail over the latter. And this conclusion has not been arrived at, by any means, dogmatically but rather after studying, weighing, and considering the apparently doubtful words employed and the somewhat contradictory decisions of the various state supreme courts in the light of the corresponding constitutional provisions.

Hence, to reiterate my conclusion,—that the provision of section 8 (j) of the Charter of the City of Manila which reads, thus: "The mayor shall be the chief executive of the city, and shall have power to release any person imprisoned or confined in a reformatory or any institution and remit the sentence of such person, or any part thereof"—is diametrically and openly in conflict with the provision of section 21 of the Jones Law which runs, thus: "That the Supreme executive power shall be vested in an executive officer whose official title shall be "the Governor General of the Philippine Islands" * * * . He is hereby vested with the exclusive power to grant pardons and reprieves remit fines and forfeitures, and may veto any legislation, enacted as herein provided * * * " Therefore that provision in the Charter of the City of Manila is void and unconstitutional.
