

PHILIPPINE LAW JOURNAL

Vol. XVII

JULY, 1937

No. 1

IS THE POWER GIVEN TO THE PRESIDENT OF THE PHILIPPINES TO REORGANIZE THE GOVERNMENT VALID?

By NICANOR G. CALDITO *

INTRODUCTION.

The Filipino people in organizing their Government vested the legislative power of the Government in a body to be styled the "National Assembly" and did not confer any such power on any other person or body nor did the people authorize the legislative department to do so. It follows that the National Assembly alone can exercise the power of legislation, and only the National Assembly is responsible for the wise exercise of that power. Hence the National Assembly cannot transfer any of its powers or any of its responsibilities to any other person or body or department of the Government.

While it is settled that the power conferred upon the legislative department of the Government to make laws cannot be delegated by that department to any other body or authority, yet, in the actual process of legislation it is not easy to determine whether the legislative body has or has not really surrendered any of its powers or responsibilities to any other authority.

It is the purpose of the present paper to discuss the principle of non-delegation of legislative power, to ascertain the extent of and limitations upon the general rule against delegation of legislative power, and principally and primarily to determine whether the National Assembly has or has not unlawfully delegated its law-making power in enacting "Commonwealth Act No. 5."

BASIS OF THE RULE AGAINST DELEGATION

A. Separation of Powers.

The source of the inhibition against the delegation of legislative power is the provision of our Constitution which provides that "The legislative power shall be vested in a National Assembly." (Constitution, Sec. 1, Art. VI). Our Constitution con-

* LL.B., University of the Philippines.

tains no prohibition expressly forbidding the National Assembly to delegate its legislative power or prohibiting officers of one department of our Government from exercising functions properly pertaining to another department. Such an expressed prohibition is not necessary in the view courts and text-writers construe the principle of separation of powers.

The division and distribution of the governmental powers into Legislative, Executive, and Judicial, inhibits by implication the imposition upon any department of those powers which distinctly belong to one of the other departments.

The maxim, "delegatus non potest delegare," has been extensively applied in the United States and in some instances in the Philippines under the former form of government under the Jones Law. Some courts and text-writers have stated that independently of express constitutional prohibition, the inability of the legislative department to delegate its power of making laws would arise from the principle which applies to every delegation of power, the exercise of which requires rectitude, discretion and knowledge. (Alcorn v. Homer, 38 Miss. 652.)

B. History of the Distribution and Separation of Powers.

The general history and theory of the distribution and separation of the powers of government are discussed in an enlightening opinion in the State v. Bates (104 N. W. 709) where Justice Elliot said: "The theory of the distribution of governmental functions is certainly as old as Aristotle, and has been a controlling principle and accepted doctrine of political science since it was elaborated by Montesquieu in his Spirit of Laws. The belief in its importance was never stronger than during the latter part of the century when our National Constitution was formed and the Government established. But the founders were too intensely practical to be controlled by any political theory, and while they recognized the principle in constructing the framework of the government, they violated it in practice and so distributed the powers as to create a system of check and balances. The principle formulated by Montesquieu still lies at the base of most political organizations of the present day, but during the last century the tendency of political science has been to discard it in its extreme form because as said by Goodnow, 'It is impossible of accurate statement, and because it seems to be impossible to apply it with beneficial results in the formation of any concrete political organization.' The flaw in Montesquieu's reasoning and in that of his followers was in the as-

sumption that the expression of governmental power by different authorities were different powers."

The recent tendency of legislatures and courts is commented on by Justice Brown in *State v. Crosby* (99 N. W. 636). "While the executive, legislative and supreme judicial powers of the government ought to be forever separate and distinct, it is also true that the science of government is a practical one. Therefore, while each should firmly maintain the essential powers belonging to it, it cannot be forgotten that the three coordinate parts constitute one brotherhood, whose common trust requires a mutual toleration of the occupancy of what seems to be 'common because of vicinage' bordering on the domains of each."

It is of common knowledge that there is a multitude of governmental duties and functions which can never and cannot possibly be performed either by the legislative or by the executive department, and which are certainly not prescribed by our Constitution to the judicial department of our Government. The constitutional provision governing the principle of separation of powers has no application to acts of this character. It applies only to those powers which because of their nature, are assigned by the Constitution, itself, to one of the departments exclusively. The powers not thus assigned remain properly under the control of the legislative department. The mode of its exercise and the agency must necessarily be determined by law; that is by the legislative department of our Government.

WHEN DELEGATION PERMISSIBLE

A. *In General.*

It must be recognized at the outset that there is no complete separation of governmental functions into water-tight compartments. There is no absolute and unanimous formula for determining in all cases the powers which must be exercised by the legislative body itself and those which may be delegated by the legislative body to some subordinate or administrative agency. The demarcation line between those essentially legislative functions which must be exercised by the legislative department itself and those of an administrative nature or involving mere details which may be delegated to another body or officer is very vague and fluctuating and is often difficult to define or discuss. While it is of great importance in the creation or organization of our Government and from the point of institutional law and otherwise to divide the governmental powers into executive, leg-

islative, and judicial, yet, this division is not an exact classification. No such exact delimitation of governmental powers is possible.

Justice Story said: "But when we speak of a separation of those departments of government and maintain that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct and have no common link of connection or dependence of one upon the other in the slightest degree. The true meaning is that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the departments; and that such exercise of the whole would subvert the principle of a free constitution." (Story, Constitution, Par. 525.)

If the legislative body were strictly required to make provision for all the minutiae of regulation, it would in effect be deprived of the power to enact effective legislation on subjects over which it has undoubted power. The denial by a court of the power to delegate in such cases, on the pretext that the legislative body is abdicating its own powers and that the court is preserving the legislative body's prerogative for it is as grotesque and sardonic as to hold unconstitutional, as denying the workers the right of contract, statutes admittedly enacted for the protection and welfare of laborers.

B. Delegation of Power to Determine Facts or Conditions on which Operation of Law is Contingent.

It is not necessary for the National Assembly to ascertain the facts of, or to deal with each case. "It is not always essential that a legislative act should be completed statute which must in any event take effect as law at the time it leaves the hands of the legislative department. A statute may be conditional and its taking effect may be made to depend upon some subsequent event". (Cooley's Const. Limitations, Vol. I, p. 227.) Since legislation must often be adopted to complex conditions involving a host of details with which the National Assembly cannot deal directly, the constitutional prohibition against delegating legislative authority does not deny to the National Assembly the necessary resources of flexibility and practicality, enabling it to lay down policies and establish standards, while leaving to selected instrumentalities the making of subordinate rules within the prescribed limits and the determination of facts to which the

policy as declared by the legislative body shall apply. Without this power, legislative bodies would often be faced or confronted with the anomaly of possessing a power over a given subject, but being unable to exercise it. (Panama Ref. Co. v. Ryan, 293 U. S. 388; 79 L. ed. 446.)

Thus it was also held in a leading Pennsylvania case that the "true distinction is this; the legislature can not delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend, which cannot be known to the law-making power and must therefore be a subject of inquiry and determination outside of the halls of legislation." (Locke's Appeal, 13 Am. Rep. 716.)

It is well recognized that the legislature may make the operation or application of a statute contingent or dependent upon the existence or occurrence of certain facts or conditions, and may delegate to some other agency, such as an executive or administrative board or office, the power to determine the existence or absence of such facts or conditions, and to carry out the terms of the statute according to the facts or conditions which it finds. This is not a delegation of legislative function. (The *Amora v. U. S.*, 7 Cranch 382.)

If the regulation or action of the official or board authorized by the statute does not in effect determine what the law shall be or involve, the exercise of primary and independent discretion, but only determines within the prescribed limits some facts upon which the law by its own terms operates; such regulation or action is administrative and not legislative in nature.

Accordingly, a legislative body is permitted to pass a law which shall take effect upon the proclamation by the Chief Executive or upon the acceptance by the voters of a designated Community. The best example of the latter is the Philippine Independence Law which provides that it shall take effect only upon the acceptance by the Philippine Legislature or by a convention called by the legislature for that purpose. An act of acceptance is not an act of legislation. (Sinco, *Phil. Gov't. & Pol. Law*, 3rd ed., p. 224.)

C. *Delegation of Non-Legislative or Administrative Functions.*

It does not necessarily follow from the fact that the power surrendered was one which the law-making body itself might

rightly exercise, that it was a legislative function, or one which could not constitutionally be abdicated, since the law-making department of the government often exercises powers and functions of executive or administrative character. While the fundamental law-making power cannot be surrendered, there are many powers and functions, so far legislative, that they may be properly exercised by the legislature, which may, nevertheless, be surrendered to some officers or administrative body because they can be properly and efficiently exercised by those administrative officers or bodies. Mere administrative or executive functions may be delegated by the law-making department of the government although it might constitutionally exercise such functions. It may delegate authority to perform certain functions which are administrative in character and which cannot be well and efficiently performed by the legislative body itself. (Taylor v. Missouri, 216 U. S. 262.) The maxim against delegation of legislative power forbids the surrender of discretion as to what the law shall be, but there is no valid objection to a law which confers an authority or discretion as to its execution, to be exercised and performed under and in pursuance of the law itself.

In the language of the Ohio Supreme Court: "The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be and conferring authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (Cincinnati, W. & Z. R. Co. v. Clinton, 1 Ohio St. 77.)

Mere matters of detail within the policy and legal principles and standards established by the statute or ordinance are essentially ministerial rather than legislative. The working out in detail of the policy indicated and determined by the law may be left to the discretion of administrative officers or tribunals. Where the act sufficiently indicates the legislative purpose and merely leaves the administrative details to some agency, it is not subject to the objection that it delegates legislative powers. The method and manner of enforcing a law must necessarily be left to the reasonable discretion of administrative officers.

Thus our Supreme Court upheld the constitutionality of section 1 of Act No. 1748 authorizing the Governor-General to enlarge, contract, or change the boundaries of any province or municipality, when in his judgment the public welfare requires, against the objection that the power given to the Governor-

General is a legislative power and therefore there is a delegation of legislative power. The Supreme Court in support of its decision said: "The delegation of the power referred to on the Governor-General does not involve an abdication of legislative functions on the part of the legislature with regard to the particular subject-matter with which it authorizes the Governor-General to deal. It is simply a transference of certain details with respect to provinces, municipalities, and townships, many of them newly created and all of them subject to a more or less rapid change both in development and centers of population, the proper regulation of which might require not only prompt action but action of such detailed character as not to permit the legislative body, such as to take it efficiently. We find no provision of the act applicable so far as it touches this case which is in violation of the act of congress of July 1, 1902." (Gov't. of P. I. v. Binangonan, 36 Phil. 547.)

It is, therefore, the nature of the power and of the subject, rather than the manner in which it may be exercised or dealt with by the administrative officers or body, which determines whether or not a particular delegation is valid and legal. The fact that the administrative body decides after investigation that the matter can be dealt with by simple and uniform rules or regulations, so that the legislative department itself could have dealt with the subject adequately, does not negative the right of the National Assembly to delegate the matter to the administrative body for inquiry and determination.

The question whether a delegation of legislative power violates the constitution does not depend upon whether the officer or body to whom the power is delegated has acted, or may be assumed to act, for what he believes to be the public good, since even the best motive is not a substitute for a constitutional authority. (Panama Ref. Co. v. Ryan, 293 U. S. 388; 79 L. ed. 446.)

D. Sufficiency of Standards or Policy Laid Down by the Legislative Department.

Clearly, the legislative department must declare the policy of particular law and fixed the same kind of legal principles which are to control and to govern in given cases. It must provide some standards for the guidance of the executive or administrative body or officer empowered to execute the law.

While the National Assembly may abdicate its power to find some fact or situation of which the operation of a law is conditioned, or to make and enforce regulations for the execution of a law, it cannot surrender its power to exercise the indispensable discretion to make, add to, take from or modify a law.

On the other hand, the policy of the law-making body and the standards to guide the administrative agency may be laid down in broad and general terms. If the law-making department of the government were required to specify minutely and in detail the course to be pursued by the administrative agency and the acts which it might perform in the executive of the law, there would be little or no advantage gained by surrendering even the administrative details. If the National Assembly were held to such strict requirements, it would in many instances be wholly impotent to provide workable legislation on a particular subject and admittedly within the scope of its regulating powers. To much effort to detail and particularize so as to dispense with the administrative or fact-finding assistance would cause great confusion in the laws, would result in laws deficient in both provision and execution. The efficient exercise of the legislative power" is not to be frittered away by overnice speculation upon the distribution of the powers of the government." (Panama Ref. Co. v. Ryan, cited above.)

In determining what the National Assembly may do in seeking any assistance from another department of the government the extent and character of that assistance must be fixed in accordance with common sense and the inherent necessities of the government co-ordination; and if the National Assembly lays down an intelligible principles to guide the executive or administrative agency, there is no unlawful delegation of legislative power. (Hampton Jr. & Co. v. U. S., 276 U. S. 394; 72 L. ed. 624).

E. Delegation of Power to Make Administrative Rules and Regulations.

The National Assembly may after declaring the policy and fixing the primary standard which must control, may confer upon the executive or administrative officers the power to fill up the details by prescribing administrative rules and regulations to promote the purpose and spirit of the legislation and to carry it into effect; and the action of the National Assembly

in giving such rules the force and effect of laws does not violate the constitutional inhibition against abdicating the law-making function. (Panama Ref. Co. v. Ryan, *supra*.)

“Such rules may be classified under two heads: (1) those issued by administrative superior and directed exclusively to his subordinates; and (2) those directed not only to the inferior officers but also primarily to private individuals fixing the manner by which the terms of a statute are to be complied with. The second class sometimes carry with them a penalty for their violation, but at other times are devoid of any such sanction.”

“The first class of administrative rules does not establish or create legal rights in favor of private persons which may be enforced through court proceeding. In refusing to give a remedy to a private party who invoked the power of the court to enforce his alleged rights under one such regulation, the Philippine Supreme Court, speaking through Mr. Justice Moreland, explained the nature and effect of this class of ordinances in this wise. ‘It creates no relation except between the official who issues it and the official who receives it. Such orders, whether executive or departmental, have for their object simply the efficient and economical administration of the affairs of the department to which or in which they are issued in accordance with the law governing the subject-matter. They are administrative in their nature and do not pass beyond the limits of department to which they are directed or in which they are published and, therefore, create no rights in third persons. They are based on, and are the product of, a relationship in which power is their source and obedience their object. Disobedience to or deviation from such an order can be punished only by the power which issued it; and if that power fails to administer the corrective, then the disobedience goes unpunished. In the relationship no third person or official may intervene, not even the courts. Such orders may be very temporary, they being subject to instant revocation or modification by the power which published them. Their very nature, as determined by the relationship which produced them, demonstrates clearly the impossibility of any other person enforcing them except the one who created them. An attempt on the part of the courts to enforce such orders would result not only in confusion but, substantially, in departmental anarchy also. The enforcement of such an order, and the punishment which follows disobedience there-

of, being at the will of the superior who issued it, instant conflict between him and the courts would be the necessary result of an effort on the part of the courts to enforce it. If courts can enforce, they can punish for disobedience; and what that punishment shall be and what form it will take, whether fine or imprisonment, or both, rest exclusively with them. The intervention of the courts would thus produce this situation. The official who issued the order and upon whom alone and exclusively rests the responsibility for the due, orderly, and efficient administration of his department is permitted to determine whether the order has been fulfilled or violated, or if there is disobedience or violence, how or when it shall be punished. Indeed, he might be deprived of a number of his subordinates by reason of jail sentences imposed by the courts for refusal to comply with their orders, and for reasons which the official issued the order might not think sufficient to justify any punishment at all. The most serious results would almost necessarily follow if the courts should undertake to compel the execution of the orders or the rules and regulations of any department of the government except, perhaps, that in which the courts are supreme. Moreover, if the court should enter that field of activity, there would be great difficulty in finding a stopping place. If they may enforce the orders of the Governor-General directed to the Bureau of Customs and Internal Revenue, why not proceed and enforce all other executive orders and regulations in branches of the Government? Certainly the courts should confine themselves to the enforcement of legal and equitable rights, leaving the administrative affairs of the government to administrative officials." (*Olsen & Co. v. Herstein*, 32 Phil. 520.)

"With respect to the second class of administrative ordinances, courts declare that they should be issued in strict conformity with the requirements of the statute. Should they seek to regulate matters lying outside of the scope of the authority granted by the law, they would have no binding effect on private persons. Thus in the case of *Olsen v. Aldanese* (43 Phil. 259), the Philippine Supreme Court held that the power conferred by law to the Collector of Internal Revenue to establish rules for the classification, marking and packing of tobacco, as well as for the fixing of the type of tobacco which may be exported to the United States may not be extended so as to include the authority to discriminate against cigars manufactured out of

tobacco grown in certain provinces." (Sinco, Phil. Gov't. and Pol. Law, 3rd ed. pp. 231-233.)

The binding effect of such administrative rules and regulations is derived from the sanction of the law-making body itself. But that law-making body cannot authorize such officers to make rules and regulations contrary to existing statutes, or to repeal or abrogate such statute.

However, the legislative department of the government cannot delegate to an administrative board the authority to fix the penalty of a violation of orders or regulations which the legislative department authorized the board to make. The penalty must be fixed by the legislative department itself. (Howard v. State, 242 S. W. 818.)

F. Delegation to Local Governments.

Since time immemorial the practice of any central government was to vest in subordinate governmental branches or units such as municipal corporations, some portion of the police power for the local self-government of such branch or unit. It is also settled that abdication by the law-making department of the government to a municipal corporation of the power to legislate, subject of course, to the paramount law, concerning local affair, does not contravene the inhibition against the surrender of the legislative function. (New Orleans Waterworks Co. v. New Orleans, 164 U. S. 471).

It is a fundamental principle of republican form of government that local affairs shall be managed by local authorities who are in a better position to see the needs of local units, and general affairs by the central authority, and hence while the rule is also fundamental that the power to make laws cannot be delegated, the creation of municipalities exercising local self-government has never been held to trench upon that rule. Such surrender of power is not regarded as a transfer of general legislative power, but rather as a grant of authority to prescribe local regulations in accordance with the immemorial practice, subject of course to the interposition of the central government in cases of necessity. (Stoutenburgh v. Hennick, 129 U. S. 147; 32 L. ed. 637.)

It cannot also be forgotten that the delegation by the legislative body of the power to legislate on particular local matters to a municipal corporation does not divest the central

legislative body of the government of its sovereign right to exercise the power for itself or to take it away from the municipality at its pleasure.

G. Permissible Delegation under the Constitution.

The National Assembly is permitted by the Constitution to delegate to the President certain vital powers to be exercised under state of emergency. One of these powers may be found in section 14, clause 2 of article VI which reads as follows:

(2) "The National Assembly may by law authorize the President, subject to such limitations and restrictions as it may impose, to fix within specified limits tariff rates, import or export quotas, and tonnage and wharfage dues." The other one is found in section 16 of article VI which also reads as follows:

Section 16. "In times of war or other national emergency, the National Assembly may by law authorize the President, for limited period and subject to such restriction as it may prescribe, to promulgate rules and regulations to carry out a declared national policy."

These are some of the novel provisions of our Constitution which could not be found in the Federal Constitution of the United States. Under special circumstances the government can without delay and difficulty adopt such measures necessary to avert certain emergencies similar to the National Recovery Act and other emergency laws of the United States without any serious danger that they might be declared unconstitutional by the Supreme Court as undue and unlawful abdication of legislative prerogatives or powers. The Constitutional Convention which formed the Constitution might have been apprised by the difficulty encountered by the Federal Government of the United States in dealing adequately and averting national emergencies detrimental to economic recovery of the United States; so that the Constitutional Convention had the foresight and wisdom in inserting the quoted provisions in our Constitution.

IS THERE ANY UNLAWFUL DELEGATION IN COMMONWEALTH
ACT No. 5?

Now, we come to the solution of the principal and main problem. The preceding discussion of permissible delegation of legislative power as the basis, is there any invalid abdication

or surrender of any legislative power to the President in Commonwealth Act No. 5? It is necessary to state the law in its entirety.

A. *The Law In Its Entirety.*

COMMONWEALTH ACT NO. 5

“An Act Giving the President for a Limited Period Authority to Effect Urgent Reforms and Changes in the Different Executive Departments, Bureaus and Offices of the Government for Purposes of Economy and Efficiency, Creating a Government Survey Board and Appropriating the Necessary Funds therefore, and for Other Purposes:

“Be it enacted by the National Assembly of the Philippines;

“SECTION 1. There is hereby created a Government Survey Board composed of three members to be appointed by the President, with the consent of the Commission on Appointments of the National Assembly, from persons who are not in the Government service. The President shall designate as Secretary of this Board, who shall at the same time be executive officer thereof, an official of the Government. This Board will make a factual survey of all the departments of the public service and submit recommendations to the President concerning reforms in the present organization of the Government, the number and rank of officials and employees that each office shall have, a classification of positions which will determine the qualifications of the persons that will occupy them and the nature and extent of their duties and responsibilities, a standardization of salaries and wages, adequate plans for the proper housing of offices, a standard equipment for all offices and such other matters as may be presented to its consideration by the President. All Government officers and employees shall give the Board all the information, facilities, and assistance, which it may require to carry out its work.

“SECTION 2. The compensation of the members of the Board shall be fixed by the President. The Secretary and Executive officer of the Board shall select and appoint from among the officers and employees of the Government such officers or employees as may be needed by the Board with the consent of the respective Heads of the Departments. To carry out the purposes of this act, there is hereby appropriated, out of any funds in the Philippine Treasury not otherwise appropriated, the sum of

fifty thousand pesos, or so much thereof as may be necessary, to cover the expenses of the Board, including salaries, wages, and sundry expenses.

“SECTION 3. In order not to delay reforms in the Government organization that may appear to be urgent, the President is hereby authorized, the provision of existing laws to the contrary notwithstanding, to effect from time to time, for a period of not more than six months from the date of the approval of this act, by executive order, such reforms and changes in the different executive departments, bureaus, and offices as he may consider necessary, with power to transfer functions, appropriations, equipment or property, bureaus and offices or personnel from one department, bureau, or office to another; classify positions; standardize salaries; eliminate unnecessary personnel; reduce salaries; combine positions; and do whatever is necessary to effect economy and promote efficiency in the Government service. Any action taken by the President pursuant to this authority shall be reported to the National Assembly for approval at the next regular session thereof. Such action shall be valid and subsisting until the National Assembly should provide otherwise.

“SECTION 4. This act shall take effect upon its approval.

“Approved, Dec. 31, 1935.”

B. Purpose and Intent of the National Assembly.

The National Assembly in enacting this particular law giving the President extraordinary powers in effecting reforms in the government service intended to promote efficiency and economy in the administration of governmental affairs. An examination of the act shows that it embodies a legislative endeavor to remedy existing evils and defects in the present organization of the government, in the number and rank of officials and employees that each office shall have, in the classification of positions and qualifications of persons that will occupy those positions, and in other matters concerning government service.

It was presumed by the National Assembly that there is no proper coordination of the departments, bureaus and offices in the present organization of the government and there is no harmony in the workings of these bureaus and offices; that the present system of the classification of positions and selection of persons for the government service is inadequate and had brought about a practice which disregarded the elements of

skill and fitness of the public servants for the service and omitted considerations of meritorious, faithful and deserving service of the public servants. The National Assembly has given the President the power to remedy the obnoxious features of the present organization of the government and to cure some defects in the system of administration of governmental affairs which caused a deplorable inefficiency in the government service, thereby promoting good government.

Under the very terms of the law under consideration, the President is given two ways to effect reforms, to wit: (1) under section 1 of the law the President may effect reforms recommended by the Government Survey Board and (2) under section 3 where the President may immediately effect reforms after the taking effect of the law, which appear to the President to be urgent and necessary, without consulting the Government Survey Board. It is a primary and general rule of statutory construction that the intent of the law maker is to be the law and such intent is to be found in the language he used. He is presumed to know the meaning of the words and rules of grammar. Courts will not follow the letter of the law when it leads away from the true intent and purpose of the law-maker. (Edward v. Morton, 46 S. W. 792.)

C. Powers of the Board and the President.

There is no doubt that the National Assembly cannot surrender the power to enact the law or to declare what the law shall be or to exercise an unrestricted discretion in applying a law; but the National Assembly may enact a law complete in itself, designed to accomplish a general public purpose and may expressly authorize designated officials within definite, valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.

While the National Assembly cannot enact a law in such a manner as to specify minutely and in detail the course to be pursued by the President in reorganizing the government and in effecting reforms concerning government service and in the administration of the governmental affairs, it must at least declare the policy and fix some kind of legal principles although in broad and general terms which are to control in effecting reforms in the present organization of the government. It

must provide some standards for the guidance of the executive or administrative body or officer empowered to effect reforms. (Panama Ref. Co. v. Ryan, 293 U. S. 386; 79 L. ed. 446.)

Accordingly, we look to the law whether the National Assembly has set up a standard for the President's action in effecting reforms through the recommendations of the Government Survey Board.

The provisions of section one of the law quoted above and under consideration are the most objectionable part of the law. The powers conferred to the Board and the President by this section are very broad and unlimited. The Board from its factual study may recommend and the President may approve a complete reorganization of the executive departments; thus the Board and the President may reduce or increase the existing executive departments of the Government. The National Assembly has abdicated its legislative discretion to determine what departments, bureaus and offices shall exist. Under the very broad terms of the law, the Board and the President may even revamp the organization of our local governments which is a matter left for the National Assembly to determine. The Board and the President can change the whole existing scheme of government by process of reorganization and reformation without any standard or limitation to control their action.

Section 12 (1) article VII of our Constitution provides as follows:

(1) "The executive departments of the present government of the Philippines shall continue as now authorized by law until the National Assembly shall provide otherwise."

Under the foregoing section of our Constitution the National Assembly is authorized to reorganize the executive departments of the Philippine Commonwealth and also of the Republic. The present executive departments shall continue in accordance with Act No. 4007 of the Philippine Legislature until the National Assembly shall provide otherwise. Thus the National Assembly is the only department of our Government that can reorganize the executive departments. It cannot delegate its legislative discretion to determine what departments shall exist; what bureaus and offices shall exist under each department. The Philippine Legislature which was the legislative department of the government under the Jones Law had reorganized and determined what departments shall exist and

had never delegated such power to the Governor-General; there is no reason why the National Assembly can now delegate such power to the President.

The people has located the authority to determine what are the executive departments of the Philippine Commonwealth in the National Assembly and therefore the National Assembly to whose sound discretion, wisdom and patriotism such power was entrusted cannot relieve itself of the responsibility for the wise exercise of such power by creating a Government Survey Board under the control of the President upon which such power and discretion shall be devolved, nor can it substitute the judgment, wisdom and patriotism and responsibility of the Board and the President for those of the National Assembly to which the Filipino people have seen fit to confide such important power. (Cooley's Constitutional Limitations, Vol. 1, p. 224.)

The President is not required to report to the National Assembly the acts done by him under the authority or power provided for in section 1 unlike the authority provided for in section 3 where the President is obligated to report to the National Assembly the urgent reforms he has effected. Relative words, phrases, and clauses of the law when no contrary intention appears, refers solely to the last antecedent. (County v. City, 31 N. W. 735) Therefore the clause providing that "any action taken by the President pursuant to this authority shall be reported to the National Assembly," refers only to the action taken by the President under the authority or power provided for in section 3 and not to the action taken by the President on the recommendations of the Board as provided for in section 1.

In determining what the National Assembly may do in seeking assistance from another branch of the Government on the subject of reorganizing the government and effecting reforms concerning the government service "the extent and character of the assistance must be fixed according to common sense and the inherent necessities of the government coordination," and if the legislative department lays down an intelligible principle and standard to guide the executive or administrative agency there is no unlawful delegation of legislative power. (Hampton Jr. & Co. v. U. S., 276 U. S. 394; 72 L. ed. 624.)

Everything concerning government service is left to the discretion of the Board and the President. Thus it was held by the Philippine Supreme Court that there was delegation of leg-

islative power in "authorizing the Governor-General to fix the price of rice or corn when for any cause there is an extraordinary rise in price," (Act No. 2868) because "by the very terms of the law, the promulgation of temporary rules and emergency measures is left to the discretion of the Governor-General; the legislature does not undertake to specify or define what conditions or for what reasons the Governor-General shall issue the proclamation, and says that it may be issued 'for any cause' and leaves the question as to what is 'any cause' to the discretion of the Governor-General." (U. S. v. Ang Tang Ho, 43 Phil. 1)

By delegating these powers to the Board, the National Assembly has abdicated its legislative power over the subject concerning the government service and the administration of the governmental affairs. It has made the Government Survey Board a petit legislative body with the power to legislate over the subject of organization of the government, administration of governmental affairs, and over all matters concerning the government service with the President exercising his veto over the acts of the Board. In other words, the National Assembly has given the Government Survey Board and the President the power to make, to add, take from, or modify the provisions of the Revised Administrative Code concerning the organization of the executive departments, bureaus and offices, the duties and responsibilities of the governmental officers. A law can only be made or repealed or modified by the legislative department of the government.

D. Powers Delegated are not Administrative in Nature.

"The true test and distinction whether a power is strictly legislative or whether it is administrative and merely relates to execution of the statute law, is between the delegation of the power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion, to be exercised under and in pursuance of the law. The first cannot be done. To the latter no valid objections can be made." (State v. Burdge, 70 N. W. 347.)

As I have said the Board and the President have the power to determine what are the executive departments of the government, what are the bureaus and offices under each department. Such power is legislative in nature as provided by section 12 of article VII of our Constitution. Under the very terms of sec-

tion 1 especially under the phrase “* * * such other matters as may be presented to its (Board) consideration by the President,” the Board and the President may abolish some offices, or consolidate two or more offices to effect economy in the government service, or create new offices to promote greater efficiency in the Government service. The only limitation imposed by the National Assembly upon the action of the Board and the President is to effect “efficiency and economy” in the administration of governmental affairs. The Board and the President possess the power to prescribe the qualifications of those to occupy the public offices and to classify the positions, to determine the nature of the duties and responsibilities of those who will occupy them.

Public offices are public agencies. They are created for the benefit of the public. Public offices omitted from specific constitutional regulations are subjected to the discretion of the legislative body which represents the sovereign power and can make such rules as it deems wholesome and proper for the maintenance of good government. When the Constitution does not provide the qualifications, it is the province and the right of the legislative department to declare upon what terms and subject to what conditions the right to hold an office shall be conferred.

The power to create public offices and the right to prescribe the terms and conditions upon which they may be held by the citizens rests with the people in their Sovereign Capacity and when this is not done by the people directly, it devolves upon the legislative department, being their agency in representative government to prescribe appropriate regulations for such purpose. The classification of the whole civil service is purely a legislative function and if the legislative department provided for a complete classification and specified what offices are within the classification, it may delegate to some administrative body or officer the power to arrange all existing offices under the classification established. Such power delegated is merely administrative function. (State v. Frear, 131 N. W. 832.)

The Board and the President may not only consolidate any two or more public offices for the purpose of economy but they have also the power to fix and determine the nature of the consolidated offices and to a certain extent to fix the length of the term for which the holder thereof shall be appointed. By the exercise of these powers, the Board and the President can

change the whole scheme of the government. (Dexhermer v. City of Orange, 36 A. 706).

Only the legislative department of the government can establish a public office other than a constitutional office as an instrumentality of the Government. Whether the creation or abolition or consolidation of offices is necessary or expedient, the determination of the duties, powers and beginnings, duration, and qualifications of those who will occupy them are all questions for the legislative department of the government to determine and be responsible to the people for their correct determination. (State v. Butler, 21 L. R. A. (NS), 744.)

The National Assembly has surrendered to the Government Survey Board and the President its law-making power and is therefore in disregard of that article of our Constitution which declares that the legislative power shall be vested in a National Assembly.

The power to establish or to provide for a standardization of salaries and wages, adequate plans for the proper housing of offices and for a standard equipment for all offices is administrative in nature and may be delegated by the National Assembly to any administrative agency. Thus in an Alabama case involving an order of the State Board of Education fixing the salary of the State Superintendent of Education the court said: "It is within the power of the Legislature to delegate to an administrative agency, the State or divisional, having special knowledge of the nature and quantum of the service, the fixing of the amount of the salaries or compensation, although salaries are usually fixed by express enactment." (McElderly v. Abercrombie, 104 So. 671).

E. Powers of the President to Effect Urgent Reforms.

Section 3 of the law under consideration provides or contains the authority under which the President may effect urgent reforms without consulting the Government Survey Board. This section practically confers powers similar if not the same powers conferred to the Board and the President under section 1. The purpose and intent of the National Assembly was to adopt urgent reforms in the government service which appear to the President to be necessary to promote efficiency and economy in the Government. The exercise of the powers under this section of the law by the President is limited for six months. The National Assembly contemplated that the necessary and

urgent reforms in the government service cannot be presented to the Board for study, thus it deemed it wise for the President to adopt those reforms but subject to the approval of the National Assembly at its next regular session; thus the National Assembly itself adopts those reforms if it approves the acts of the President. The National Assembly delegated to the President the power to determine what are those reforms and it imposed upon the President to adopt them immediately and to report them to it so that they could also be ratified by the National Assembly itself. Although there is a delegation of legislative function to determine what are necessary reforms, the delegation provided under this section of the law does not violate the constitutional provision vesting the legislative function because the National Assembly has the ultimate power to pass upon what reforms are necessary in the government service when it required the President to report to the National Assembly any action taken by him under this authority; the National Assembly only made the President a fact-finding agency to determine the urgent and necessary reforms in the government service because of the change of the government from autonomous government under the Jones Law to Philippine Commonwealth under the Tydings-McDuffie Law.

F. Is the Delegation to the Board and the President Permissible under the Constitution.

Our Constitution in section 16, article VI provides as follows:

“In times of war or other national emergency, the National Assembly may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy.”

This provision of the Constitution contemplates the passage of emergency statutes similar to the National Recovery Act of the United States. If there is a grave national crisis with which the National Assembly is confronted as war, revolution or a wide spread famine and which could not be adequately averted by the National Assembly itself, the National Assembly may only declare the national policy and may authorize the President to carry out that declared national policy by promulgation of rules and regulations. Even under this provision the National Assembly cannot delegate any unlimited power to the

President to carry out the declared national policy. It has the obligation to provide some kind of limitation controlling the President's action and any power delegated can only be exercised for a limited period. The letter of this provision does not justify a very ample interpretation of the provision. It is true that it is the National Assembly which will decide in the first instance when a national emergency exists, but an ample interpretation is not justified as to allow the National Assembly under the label of an emergency measure to be facile in delegating its legislative powers to the President even in normal times.

The National Assembly in enacting the particular law under consideration did not contemplate any emergency confronting the National Assembly as that contemplated by the Constitution, which affects the whole Philippines. The necessity of reforms in the government service is not a grave national crisis because such necessity may appear from time to time as the administration sees it necessary to remedy some defects in the organization of the departments, bureaus, and offices even after they have been reorganized. (Reorganization Law, Act 4007). The Government Survey Board is a permanent agency to see after those necessary reforms concerning government service. Therefore Commonwealth Act No. 5 is not an emergency statute under the section of the Constitution quoted above. The situation brought about by the change of our government from autonomous form to Commonwealth Government is not that emergency contemplated by the Constitution.

Although it appeared to the National Assembly in enacting the particular statute that there is a necessity to reorganize the government departments, bureaus, and offices and to effect reforms in the government, the power to enact a law of necessity includes the right to determine the considerations upon which in any given case, the law is to come into operation and the legislative department cannot delegate to any other administrative body the power to determine those conditions without any standard set up by the legislative department. (Board of Election Comm'srs. v. Davis, 59 So. 811.)

Extraordinary conditions other than those contemplated by the provision of the Constitution quoted above do not create or enlarge constitutional authority and cannot justify governmental action outside the sphere of constitutional authority. (Schechter v. U. S., 295 U. S. 494; 79 L. ed. 1570.)

CONCLUSION

Having seen the extent of and limitations upon the general rule against delegation of legislative powers, the writer has arrived at the following conclusions:

1. It is a fundamental principle inherent in our constitutional separation of the Government into three departments and the constitutional assignment of the law-making function exclusively to the National Assembly, that the National Assembly cannot surrender or abdicate its power to make laws or delegate this power to any other department or body except in those instances mentioned in the foregoing discussion.

2. The National Assembly in enacting Commonwealth Act No. 5 has delegated to the Government Survey Board and the President its legislative power and discretion to reorganize the Government or to effect whatever necessary reforms in the government service. The delegation of the power contemplated in this Act does not come within the permissible delegation mentioned in the foregoing discussion for the reason that the National Assembly has not set any standard or legal principle to guide and control the action of the President. The powers conferred are neither mere administrative nor non-legislative functions so as to permit the National Assembly to delegate them to the President without violating the rule against delegation of legislative power. The act is not an emergency statute as that contemplated by section 16, article VI of our Constitution whereby the National Assembly is permitted to delegate its power to a limited extent.

3. The law under consideration is partly unconstitutional and partly constitutional. Section 1 is the unconstitutional portion, for it is clearly an unlawful delegation of legislative power, in violation of the provision of our Constitution vesting the legislative power in the National Assembly. Section 3 of the law is constitutional for the reason that the National Assembly has the ultimate power to determine what urgent reforms are.

In requiring the President to report to the National Assembly the action of the President taken under this section of the law, the National Assembly has made the President only a fact-finding agency to determine what are urgent reforms and to report those reforms to the National Assembly for approval. Under section 1 the President is not required to report to the National Assembly his action on the recommendations of the Government Survey Board.