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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

29 December 1947.

MEMORANDUM FOR THE RECORD

SUBJECT: Japanese Labor Legislation Since 1 September 1945:
Channels of Authority and their Relation to Local Government

1. Introduction:

A principle objective of the Occupation in Japan is decentralization of national government control over the daily lives of Japanese citizens. From time immemorial the minutiae of life were regulated by a strong autocratic government operated, for the most part, by the Home Ministry through its police force. Therefore, a primary mission was to destroy Naimushō and to decentralize police power. That was accomplished by the passage, in the last Diet, of the Police Law and the law eliminating the Ministry of Home Affairs. While those events were taking place, however, and under the sponsorship of SCAP, the Labor Ministry has been established with sweeping authority and powers exercised down vertical lines of control. It has assumed a position which may eventually become a monster as great as Naimushō. Since it is manifest that labor is the only significant commodity which Japan has in abundance, the man or government who controls labor will, or could, control Japan.

2. Occupation Policies:

a. Before entering upon a description or an analysis of recent labor legislation, review is made of the significant policy statements of the President of the United States, the Supreme Commander, and the Far East Commission; it is upon these that much of the justification for recent legislation is based.

b. On 22 September 1945, in a general statement concerning the United States' policy for Japan, the following announcement was made by the White House:

> "Japanese people shall be encouraged to develop a desire for individual liberties and respect for fundamental human rights; particularly, the freedom of religion, assembly, speech, and the press. They shall also be encouraged to form democratic and representative organizations. ..... Encouragement shall also be given and favor shown to the development of organizations in labor, industry, and agriculture, organized on a democratic basis".

1945

This statement was shortly followed by a letter from the Supreme Commander, on 11 October 1947, to the Prime Minister of Japan:

> "I expect you to institute the following reforms in the social order of Japan as rapidly as they can be assimilated ..... the encouragement of unionization of labor, that it may be clothed with such dignity as will permit it an influential voice in safeguarding the working man from exploitation and abuse."

It was largely as a result of the above-quoted statements that the Japanese Diet, on 21 December 1945, passed the Trade Union Law, which will be described and analyzed subsequently.

c. On 9 April 1946 there was introduced into the General Assembly of the Far Eastern Commission, by the member from the United Kingdom, a recommendation that the Commission issue a policy statement relative to Japanese trade unionism. As a starting point for discussion, that member submitted the already-agreed-upon policy of the Allied Powers in Germany. That policy, particularly that aspect referring to the approved purposes of trade unionism, is noteworthy in its emphasis upon political rather than traditional and orthodox economic functions. Those functions are listed as follows:

(1) Assist Military Government in denazification and elimination of militarism;

(2) Promote education in democracy;

(3) Cooperate with Military Government in reconstruction of German economy;

(4) Eliminate monopolies and cartels;

(5) Negotiate with employers relative to wages, hours, and working conditions.

It is unique that, of the five purposes listed, the most usually recognized legitimate function is relegated to last place. In subsequent committee and general meeting discussions, a Far Eastern Commission trade union policy was finally developed and is known as FEC-045/5, dated 9 December 1946. It was unanimously adopted and was forwarded to SCAP. In the final policy, legitimate functions of trade unionism were emphasized, and although political functions were not eliminated, they were subordinated. Generally, FEC policy reiterates the policy of the President of the United States, announced on 22 September 1945, and that of the Supreme Commander on 11 October 1945.

d. Although not an official policy statement, the Final Report of the Advisory Committee on Labor in Japan, dated 29 July 1946, should be included

for consideration here. It represents a recommendation only to the Supreme Commander, but its discussion and recommendations have undoubtedly been of tremendous influence on the minds of those who have shaped labor legislation or who have passed upon it. The Report covers the entire field of labor legislation, and it recommends a comprehensive program which, with the passage of recent laws, has been carried out. The Report is divided into sections pertaining to labor relations and unions, general management policies, protective labor legislation, labor exchange system, and government labor administration. In the introduction to the Report three major points are emphasized:

(1) Legislation alone will not solve labor problems;

(2) Application of American standards and practices must always be adjusted to the Japanese situation;

(3) The labor program cannot be blue-printed in complete detail at one time. Final decision on many points must await future developments.

e. For the most part, the Report is in harmony with the objectives of democratization and improvement of the condition of Japanese labor. However, in one vital respect, the Report recommends adherence to a principle which is directly opposed to a primary aim of the Occupation; namely the establishment of a strong central labor administrative program. The Advisory Committee recommends the establishment of a separate Labor Ministry with power to operate within prefectural subdivisions and even within cities, towns and villages. In justification for such a degree of centralized power, the Committee expresses belief that only through vigorous central control can the revolutionary changes which it recommends be effectively carried out. No other agency would be competent to police the field and to assure compliance with protective legislation -- this in the face of the fact that under national laws the governor is a national official answerable to a competent minister in discharge of national responsibilities. It will be eminently manifest in subsequent pages that this recommendation was strongly influential; final legislation went beyond the recommendations of the Advisory Committee; in that, it extends central powers beyond those necessary for policing of protective regulations. Also, the legislation, contrary to the recommendations of the Advisory Committee seems not to have hesitated to apply American labor standards and practices carte blanche to the Japanese situation.

3. Description of Labor Legislation since 1 September 1945:

a. History of Labor in Japan:

(1) Until the defeat in 1945, there was no labor movement, worthy of the name, in the history of Japan. In 1936, trade unions were at their pre-war peak with a total membership of less than half a million. At that

time, 32 million laborers were employed, and of those, nine million were employed in industry, mining, and transport alone. The largest union was the Seamen's Union, founded in 1928, and in 1936, it accounted for 40% of the total organized labor. The reason for exceptional progress of the Seamen's Union is that Japan was signatory to several international Merchant Marine agreements; consequently Japanese seamen fared much better than working men in other fields. The rudimentary development of trade unionism was caused by a governmental system which operated in terms of the principle of national interest first; hence it was concerned, not with the welfare of individuals per se but rather with the welfare of the State. The history of trade unions is one of internal dispute and lack of unified objectives. Except for seamen, the right of collective bargaining was not recognized, and standard pay rates were unknown. During the war, unions merged childishly into patriotic organizations which were more concerned with glorification of the State and the winning of the war than with substantial gains for organized labor.

(2) Although constitutionally permitted, the executive, mainly through the exercize of controls already mentioned, denied unions the power to organize. Moreover, the economy itself was against unionism, for the supply of labor was excessive, and most work was done in very small shops. The textile industry, the largest in Japan, was filled with female labor recruited from rural areas by company agents and lodged in company dormitories. Most railway and heavy industrial undertakings were government enterprises, and trade unionism could not, in those circumstances, prosper. Even social traditions were against trade unionism, for docility in the face of authority and paternalism in industry posed insuperable barriers.

(3) Many laws were passed, including the Factory Act of 1911, the Public Employment Exchange Act of 1923, the Labor Disputes Conciliation Act of 1926, and the Health Insurance Act of 1937. However, these laws were concerned mainly with extended paternalism on the part of government and industry, and those provisions, which would favor the extension of trade unionism, were never adequately enforced.

b. Trade Union Law, 21 December 1945:

This law was enacted shortly after the beginning of the Occupation. It proclaims the right of labor to organize, encourages collective bargaining, defines standards of fairness in relationships between employers and workers, and finally, prescribes the organization of Labor Relations Committees, both at the prefectural and at the national levels. Those committees are charged with responsibility of mediation, conciliation, and arbitration of labor disputes. The law sets conditions under which Labor Relations Committees shall exercise their functions. Labor Relations Committees are appointed by "the administrative authority" with equal numbers of members representing labor, management, and the general public. The first two categories are appointed after nomination by the interests concerned, and the latter are appointed after agreement between labor and management. The arbitration

described in this law is compulsory only when, by previous trade agreement, both parties have agreed to arbitrate disputes. Actions in dispute, including strikes and lock-outs, are not banned.

c. Labor Disputes Adjustment Law, 10 June 1946:

This is an extension of those provisions of the Trade Union Law which relate to functions of Labor Relations Committees. It prescribes, in considerable detail, civil procedures which are mandatory in labor disputes. For example, it requires that, for public welfare enterprises such as public utilities, strike action may not be taken until 30 days after a proposal for arbitration has been made. Also, it is provided that officials in police, fire and prison functions, as well as administrative and judicial personnel in the government employ may not strike under any circumstances.

d. Labor Standard Law, 5 April 1947:

This designates general standards of wages, hours, and working conditions which are mandatory in practically all types of labor employment, including agriculture. It prescribes procedures for establishment of minimum wages and authorizes appointment of Central and Local Wage Boards. The law authorizes establishment of a direct-line, vertical organization from Labor Minister, through Labor Standard Bureau and its regional Branch Offices, to Labor Standard Offices and Inspection Stations. Labor Standard Committees are attached to Labor Standard Offices, and they are charged with investigation of important matters relative to enforcement and improvement of this law. The entire organization is under control of the Minister, and all members are national employees. Inspectors have judicial police powers as well as wide latitude in supervision and inspection of labor standards. Finally, the law provides for establishment of Appeal Boards for Workers' Accident Compensation. That Board receives appeals, relative to compensation, from decisions of administrative authorities who arbitrate disputes between employers and workers. Appeal to that Board is required before Court appeal is authorized.

e. Laborers' Accident Compensation Insurance Law, 5 April 1947:

This is a continuation of the Labor Standard Law, in that, an employer whose workers are insured is not liable under compensation provisions of the latter. Two types of membership in this plan are described, voluntary and compulsory. Under the provisions of this law, establishment is authorized of a Laborers' Accident Compensation Insurance Advisory Committee to operate at national level. As adviser to the Minister it deliberates on important matters relative to this law and it receives, for comment, the drafts of ordinances issued.

f. Establishment of the Labor Ministry, 28 August 1947:

As the title indicates, this law provides for establishment of an independent Labor Ministry. It authorizes a secretariat and five bureaus as follows: (1) Labor Administration, (2) Labor Standard, (3) Women's and Minors', (4) Employment Security, and (5) Labor Statistics and Research.

In addition, it provides for an Industrial Safety Laboratory, and a Seamen's Labor Coordinating Committee. As to the Seamen's Labor Coordinating Committee, it will be noted that merchant seamen are excluded from all Labor Ministry control and supervision because a full scale program for maritime personnel is exercised by the Transportation Ministry. An analysis of that aspect of labor legislation is outside the scope of this study. The wisdom of such separation should be reconsidered. The Advisory Committee commented favorably upon the transfer of merchant seamen's labor administration to the Labor Ministry.

g. Employment Security Law, 20 November 1947:

This law proposes to contribute to employment security and to national economy by the utilization of labor and the furnishing of workers to critical industries. Parallel organizations from the Labor Ministry and at the prefectural level are authorized. The Labor Ministry is granted power to establish Branch Offices of the Labor Ministry Bureau of Employment Security. At the same time, public employment security offices, under the management of prefectural governors, are authorized for the purposes of administering employment exchanges, vocational guidance and training, and unemployment insurance. However, even within the Employment Security Office system, a curious not to say evil overlap of power and responsibility is evident. For example, it is prescribed in Article 9 that all administrative officials in Employment Security Offices be included in a single system for the purpose of seniority, promotion, and re-assignment. In addition, the Labor Minister is charged with the responsibility of establishing qualifications, job specifications, and administrative procedures. Employment Security Advisory Committees appointed by the Labor Minister are authorized. Finally, this law contains the only reference to the functions, duties, and responsibilities of mayors of cities, towns and villages.

h. Unemployment Insurance Law, 21 November 1947:

The purpose of this law is to stabilize the livelihood of workers by assuring them continuance of income during periods of unemployment. Employment Security Offices are charged with the responsibility of receiving applications for insurance benefits, judging their legality, and authorizing payments. Provision is made for the appointment of Unemployment Insurance Referees and Unemployment Insurance Appeal Boards which receive appeals, in turn, from administrative decisions relative to the payment of insurance benefits. Under this law, the Labor Minister with the advice of the Unemployment Insurance Advisory Committee prescribes premium rates and conditions under which insurance benefits may be paid.

4. Distribution of Governmental Powers under Labor Legislation since 1 September 1945:

a. On the following page is a chart showing distribution of governmental powers derived from the laws described in paragraph 3. In connection there-

DISTRIBUTION OF GOVERNMENTAL POWERS

- Labor Minister
  - Secretariate
  - Labor Administration Bureau
    - Central Labor Relations Committee
  - Labor Standard Bureau
    - Branch Offices
      - Appeal Board of Workers' Accident Compensation
      - Labor Standard Offices
        - Inspection Stations
        - Local Wage Boards
        - Local Labor Standard Committees
    - Central Wage Board
    - Central Labor Standard Committee
    - Labor Accident Compensation Insurance Committee
  - Woman's and Minor's Bureau
  - Labor Statistics and Research Bureau
  - Employment Security Bureau
    - Branch Offices
    - Committee for Training Skilled Labor
    - Employment Security Advisory Committee
    - Unemployment Insurance Advisory Committee
    - Unemployment Insurance Appeal Board
      - Unemployment Insurance Referees
  - Industrial Safety Laboratory
  - Seamen's Labor Coordinating Committee

- Governor
  - Employment Security Office
    - Mayor
  - Labor Relations Committee
    - Arbitrator
    - Arbitration Committee
  - Local Employment Security Advisory Committee

with bureaus, boards, committees, and offices are placed in relation to the authority who is mainly concerned with their direct supervision or management. However, particular attention is invited to the Local Employment Security Advisory Committee whose triple underscoring indicates appointment of members by the Labor Minister. Further attention is called to similar triple underscoring of Employment Security Office which contains personnel in the single employment system established and controlled by the Minister. Actually, a twilight zone of personnel organization exists. According to ESS/L the intent was to have all personnel of Employment Security Offices, except governors who operate them, as national employees. However, in practice, these offices have been infiltrated to an undetermined extent by locally paid and appointed personnel to perform functions which are equally obscure.

b. Although relationships indicated on the chart are essentially true, provisions of laws under consideration involve many complex relationships which are not amenable to graphic presentation. In some details, individual provisions of law may even contradict relationships presented. Therefore, in order to accomplish the double purpose of achieving final and complete accuracy and of presenting in detail the powers vested in each of the individual bureaus, boards, offices, or committees described, there follows hereafter a complete listing of individual functions:

c. Labor Minister

(1) Prescribes condition for dissolution of a union which ceases to qualify as such under Article 2, Trade Union Law.

(2) Prescribes details re registration of Trade Unions.

(3) Gives final approval to minimum wages.

(4) Defines unhealthy labor conditions, health and safety standards, harmful products, kinds and degrees of workers' illness requiring absence from work, industries which require physical examination of workers, industries required to appoint Safety Supervisors, jobs not open to women and children, conditions of apprenticeship, conditions of line of duty re illness and injury, minimum health standards of dormitories.

(5) Prescribes number of personnel for labor standard organization.

(6) Directly responsible for adjustment of supply and demand of labor, direction and supervision of labor exchanges, placing applicants for jobs, providing vocational guidance and training, collection and dissemination of labor data. Collaborates with other individuals and agencies re Employment Security Offices and administration of unemployment insurance.

(7) Controls the single personnel system including seniority, promotion, and reassignment in employment security organization.

(8) Establishes program for training labor officials.

(9) Establishes inter-departmental committees.

(10) Supervises Branch Offices and prefectural governors re employment security.

(11) Establishes uniform reporting system for Employment Security Offices re operations and activities.

(12) Maintains labor market analysis and information service.

(13) Maintains occupational analysis and industrial service program.

(14) Establishes personnel program for entire Employment Security Organization.

(15) Takes over vocational training without recourse to mandamus if governor fails to act.

(16) Sets standards for vocational training.

(17) Suspends private employment exchanges, employer recruitment, and labor projects if he deems them in violation of law or against public interest.

(18) Cooperates with and advises employers.

(19) May initiate mandamus proceedings against governor.

(20) May delegate authority to administrative offices.

(21) Establishes conditions for private employment exchanges, employer recruitment, and labor projects.

(22) Establishes branch offices of Public Employment Security Bureau of Labor Ministry.

(23) Prescribes matters re government employees re Unemployment Insurance Law.

(24) Determines time and method of premium payments.

(25) Grants permission to voluntary members of unemployment insurance to quit plan.

(26) Sets conditions of reasonable job offers, resignation without good reason, and payment by government for change of domicile.

(27) Changes premium rates.

(28) Receives and responds to petitions re premiums.

(29) Prescribes additional matters re Labor Relations Committees, accident compensation, liaison agents, public employment, Security Advisory Committees, vocational guidance, and Unemployment Insurance Referees and Appeal Boards.

(30) Appoints members of Labor Ministry including Branch Offices, Central Labor Relations Committee, Central and Local Wage Boards, Committee for Training Skilled Workers, Central Labor Standard Committee, Accident Compensation Insurance Advisory Committee, Central Unemployment Insurance Advisory Committee, Unemployment Insurance Referees and Appeal Boards. In addition, he appoints 2nd Class Officials in Employment Security Offices.

what is decentralized about this?

d. Secretariate

(1) Handles confidential matters.

(2) Responsible for appointment, dismissal, and status of officials.

(3) Has custody of ministerial seals.

(4) Does general research and planning and coordination of administration within ministerial jurisdiction.

(5) Keeps official files.

(6) Handles budget, receipts, and expenditures.

(7) Has custody of official property.

e. Labor Administration Bureau

(1) Enforces Trade Union Law.

(2) Enforces Labor Relations Adjustment Law.

(3) Responsible for Public information and education.

f. Central Labor Relations Committee

(1) Arbitrates disputes when Local Labor Relations Committee plan is not accepted and when both parties request further arbitration.

(2) In case of Public Welfare Enterprises, arbitrates when petitioned by Public Officials, Local Labor Relations Committees, or either party.

(3) Performs additional matters prescribed by ordinance.

g. Labor Standard Bureau

(1) Enforces Labor Standard Law, except as it applies to women and children.

(2) Supervizes Accident Compensation and Accident Compensation Insurance.

(3) Attempts to improve labor efficiency.

(4) Responsible for welfare of laborers.

h. Labor Standards Bureau Branch Offices

(1) Supervizes whole labor standard structure down to lowest echelon of labor standard organization including Labor Standard Committees.

(2) Given blanket inspection and enforcement power.

(3) Exercises power of administrative authorities in condemning dangerous plants.

i. Central Wage Board

No specific functions mentioned.

j. Central Labor Standard Committee

No specific functions mentioned.

k. Labor Accident Compensation Insurance Committee

(1) Deliberates important matters re Accident Compensation Insurance Law.

(2) Receives and comments upon draft of ordinances issued under Accident Compensation Insurance Law.

l. Women's and Minors' Bureau

(1) Enforces Labor Standard Law as it applies to women and children.

(2) Handles problems of family and domestic members.

(3) Handles problems relating to members' families.

m. Labor Statistics and Research Bureau

(1) Statistics and publications re labor unions, labor disputes, and labor relations.

(2) Statistics and publications re working conditions, wages, cost of living, and employment conditions.

(3) Collection, compilation, analysis, and publications re foreign and domestic labor circumstances.

(4) Special studies and surveys re employment security of workers.

n. Employment Security Bureau

(1) Employment exchanges and vocational guidance and training.

(2) Development of counter-unemployment plans.

(3) Unemployment insurance and compensation.

(4) Additional matters prescribed by ordinance.

o. Employment Security Branch Offices

(1) Inspection and supervision of employment exchanges.

(2) Supervision of vocational guidance and training

(3) General Supervision of Employment Security Offices.

(4) Additional matters prescribed by ordinance.

p. Committee for Training Skilled Workers

(1) Recommendations re ordinance governing apprenticeship.

(2) Additional matters prescribed by ordinance.

q. Employment Security Advisory Committee

Specific functions prescribed by ordinance.

r. Unemployment Insurance Advisory Committee

(1) Is consulted re establishment of conditions re reasonable job offers, resignation without good reason, payment for change of domicile, and changes of premium rates.

(2) Deliberates on and must be consulted by Labor Minister on important matters.

s. Unemployment Insurance Appeal Board

(1) Receives appeals from referee's decisions.

(2) Must be consulted re petitions on premiums.

(3) May examine evidence and witnesses.

(4) Additional matters prescribed by Ordinance.

t. Unemployment Insurance Referee

(1) Receives appeals from decisions of administrative authorities.

(2) May make investigations, examine evidence, and question witnesses.

(3) Additional matters prescribed by ordinance.

u. Industrial Safety Laboratory

(1) Research and investigation of industrial accidents.

(2) Training of technicians for industrial safety.

(3) Prevention of industrial accidents.

v. Seamen's Labor Coordinating Committee

Necessary matters to be decided in consultation with Minister of Transport

w. Appeal Board for Accident Compensation

(1) Receives appeals from decisions of administrative authorities.

(2) Appeals must be made to this Board before appeal to Courts.

(3) Additional matters prescribed by ordinance.

x. Labor Standard Office

(1) Receives recommendations of Wage Board re Minimum Wage.

(2) Holds public hearings and receives recommendations of labor and management re minimum wages.

(3) Recommends minimum wage to Labor Minister.

(4) Grants permission for emergency ~~outline~~ OVERTIME in excess of statutory limits. May require compensatory time off.

(5) Grants permission for rest period to be given to employees at different times.

(6) Receives and approves new plant plans for dangerous industries.

(7) Condemns dangerous existing plant.

(8) Gives permission for after school employment of children

(9) Approves apprenticeship plans and may cancel approval.

(10) Approves non-payment of non-duty or handicap allowance in case of gross fault of worker.

(11) Arbitrates disagreements under compensation provisions of Labor Standard Law.

(12) Receives Rule of Employment.

(13) Orders amendment of such Rules of Employment as violate laws, ordinances, or regulations.

(14) Receives Rule of Dormitories.

y. Inspection Station

(1) Exercises wide powers of inspection and supervision of plants in matters pertaining to Labor Standard Law.

(2) Exercises judicial police powers in the areas of competence.

(3) Exercises power of Labor Standard Office in condemning dangerous plants.

z. Local Wage Board

Submits recommendations re minimum wages to Labor Standard Office.

aa. Labor Standard Committee

(1) Investigates matters pertaining to enforcement and improvement of Labor Standard Law.

(2) May recommend re above to Labor Standard Office.

ab. Governor

(1) Registers Unions.

(2) Administers decisions of Labor Relations Committee re dissolution of Unions.

(3) Orders alteration of Trade Union Statute in accord with Labor Relations Committee's decisions.

(4) Registers trade agreements.

(5) Extends provisions of trade agreements to remaining workers of that kind of that employer in that locality.

(6) In case of Public Welfare Enterprises failing in arbitration, may refer to Central Labor Relations Committee.

(7) Manages Employment Security Offices.

(8) Recommends appointment of 2nd Class Officials of Employment Security Office to Labor Minister.

(9) Recommends to Labor Minister members of Local Employment Security Committees.

(10) Appoints members of Local Labor Relations Committee. In addition, he appoints all but 2nd Class Officials in Employment Security Offices.

ac. Employment Security Offices.

(1) Administers employment exchanges.

(2) Administers unemployment insurance.

(3) Submits reports on demand to Employment Security Advisory Committee.

(4) Submits reports required by Labor Minister.

(5) Accepts applications for workers, if not contrary to law.

(6) If applications for workers are rejected, may give reasons.

(7) Accepts applications for jobs if not contrary to law.

(8) May give aptitude or achievement tests.

(9) Informs workers re employment conditions.

(10) Attempts to satisfy both employers and workers.

(11) Cooperates with schools re placement of graduates.

(12) Administers vocational guidance as prescribed by Labor Minister.

(13) Undertakes vocational training as labor market conditions require.

(14) May demand reports from employers, private employment exchanges, or labor projects.

(15) Receives applications for unemployment insurance benefits.

(16) Judges reasonableness of job offers, resignations without good reason, and government payment for change of domicile.

(17) May require reports re unemployment insurance from employers and workers, and may inspect plants.

(18) Additional matters prescribed by ordinance.

ad. Mayors

(1) Accepts and forwards applications for workers or jobs.

(2) Makes investigations re above if requested by Employment Security Office.

(3) Publicizes jobs.

ae. Labor Relations Committee

(1) Passes resolutions re dissolution of unions.

(2) Passes resolutions determining that Trade Union Statute violates law or regulation.

(3) Recommends to Court dissolution of unions which habitually break law or disturb peace.

(4) Compiles statistics and conducts investigations.

(5) Mediates, conciliates, and arbitrates.

(6) Recommends to administrative authorities.

(7) May inspect plants and may require witnesses, records, etc. of both employer and worker.

(8) Is notified by parties to disputes.

(9) Prepares lists of candidates for arbitrators.

(10) Chairman appoints arbitration committee from list.

(11) Arbitrates under conditions prescribed by Labor Disputes Adjustment Law.

(12) In case of public welfare enterprises, may initiate arbitration.

(13) May refer arbitration to Central Labor Relations Committee.

(14) Under prescribed conditions, may mediate.

(15) Mediation decisions have same effect as trade agreements.

(16) Chairman appoints Arbitration Committee chairman.

(17) Additional matters prescribed by ordinance.

af.

Arbitration

Attempts to arbitrate disputes between workers and employers.

ag.

Arbitration Committee

(1) Elects own chairman and establishes own procedures.

(2) Draws up arbitration plan and submits to parties. Also publishes plan.

ah.

Local Employment Security Advisory Committee

(1) Advises Administrative authorities re execution of Employment Security Law.

(2) Consults with governor.

(3) May call for reports from Employment Security Offices.

(4) Additional matters prescribed by ordinance.

5. Critique of Labor Legislation:

a. Direct Supervisory Channels from Labor Minister:

(1) From materials presented in paragraph 4, it is apparent that a highly centralized system of labor control has been established. The first two laws which were passed (Labor Union Law and Labor Disputes Adjustment Law), were laudable in purpose and unobjectionable in content. They contained the implementation of the White House announcement of 22 September 1945 and of the Supreme Commander's letter of 11 October 1945. However, as additional laws were enacted, an inordinate concentration of authority in the central government became apparent, until now, in its present growth, the Labor Ministry holds all real power.

(2) In the Labor Standards Law of April 1947, there was authorized a national labor standard inspection system. It is under direct control of the Labor Ministry, and within its field it possesses police authority. In June 1947, according to an announcement of the Welfare Ministry, some 346 labor offices were being set up; that is, better than one each for every prefecture and for every city in Japan. Yet, in a survey of 16 Military

Government teams, taken in September 1947, the majority of team commanders asserted that these offices performed functions which could be performed better by local (governors') labor offices. Therefore, it seems clear that Labor Standard Offices are performing and are intended to perform the function of retaining ultimate authority at the Ministry level. Such a conclusion becomes eminently clear when it is noted that the law fails to describe many important labor standards in detail (despite the fact that they are well known throughout the world) but rather places such definition in the hands of the Labor Minister, for it is provided that he will prescribe, by ordinance, unhealthy labor conditions, health and safety standards, harmful products, kinds and degrees of workers' illness requiring absence from work, industries which require physical examination of workers, industries required to appoint safety supervisors, jobs not open to women and children, conditions of apprenticeship, conditions of line of duty relative to illness and injury, and minimum health standards of dormitories.

(3) With enactment of the Employment Security Law in November 1947, gravitation of power to the Labor Ministry was almost complete. By Article 4 of that law, the central government is made directly responsible for adjustment of supply and demand of labor, direction and supervision of labor exchanges, placing applicants for jobs, providing vocational guidance and training, collection and dissemination of labor data, and collaboration with other individuals and agencies in matters pertaining to Employment Security Offices and administration of unemployment insurance. Moreover, under the provisions of Article 9, all personnel of the employment security organization, including Employment Security Offices (nominally under control of prefectural governors), are placed in a single personnel system for purposes of seniority, promotion, and reassignment. Surely, not even the veil of lip-service to local autonomy can obscure the vertical nature of authority and the pitiful impotence of anyone outside the chain of authority. Not only is direct authority sanctioned in law, but also, an additional national police system is allowed, for the Labor Minister is authorized to institute a uniform system of reporting, for all Employment Security Offices, in matters pertaining to their operations and activities, and he is permitted to establish Branch Offices of the Employment Security Bureau to inspect and supervise their functioning.

(4) Considering provisions of the two vital laws, none can deny that machinery for dictatorial control from the top exists in abundance. Considering the history of Japanese government institutions, as well as past administrative failure in connection with the Factory Act and subsequent enlightened labor legislation, it is axiomatic that Japanese officialdom will know just how to use the machinery. At present, events seem to indicate that labor is making rapid strides. As of September 1947, union membership was approaching 6 million. Labor is fighting for and often is receiving valuable concessions from management. However, these events have transpired by reason of SCAP pressure and a sympathetic Japanese Labor Minister. Therefore, none should be deluded about future possibilities, for the same machinery could produce diametrically opposed results if it

were operated by an unsympathetic Minister. Hence, the methods and system of controls which SCAP has used to forward rapidly its enlightened labor policy can be used in toto at a later time to destroy all gain.

(5) It is argued that centralized control is necessary to thwart recalcitrant governors and to insure a uniform advancement of labor. Such fear may be just, but it is certainly stupidly naive and short-sighted in terms of the practical goals of the Occupation! It would be unfortunate if some prefectures failed to make "proper progress", but how baneful it would be, if, after the Occupation is ended, an unsympathetic Prime Minister were to assume office. He would have to change no laws! He would merely appoint his own man to the post of Labor Minister! This evil exists forever and a day in any system in which all power and action are plunged from the top down.

(6) Even assuming a few governors to be unsympathetic to labor, there is, by the mandamus proceedings described not only in these laws but also in the important Local Autonomy Law, a means of carrying through the labor program. On the other hand, if the central government fails, there is no procedure whereby a governor can cite the Labor Minister for either non-application or misapplication of the law.

(7) In summary, then, it is believed that Branch Offices of both the Labor Standard Bureau and the Employment Security Bureau of the Labor Ministry should be abolished. Boards, Committees, and Offices presently established under Labor Standard Bureaus should be placed under Employment Security Offices under supervision of governors.

b. Authority of Labor Minister to Appoint Local Officials:

(1) Attention is next directed to those units assigned to governors but which are under appointment control of the Labor Minister. On the chart of Governmental Powers, those units are designated by triple underscoring. The most serious violation of decentralization is in connection with Employment Security Offices. It will be recalled that personnel in these offices are included in the single system of personnel administration which leads up to the Labor Minister. It is also pointed out here that the Labor Minister makes the actual appointment of 2nd class (top) officials.

(2) A nice problem is developed. Are the personnel of Employment Security Offices national or local employees? It has already been pointed out that ESS/L conceived that all personnel, except governors, were to be included in the national Civil Service. Also, ESS/L frankly admitted that insertion of governors into the program at all was a compromise under pressure from GS. It is further candidly agreed by ESS/L that the resultant personnel system is confused, for Employment Security Offices actually have both local and national employees. Under cover of the twilight zone, governors have made an undetermined number of local appointments, and those personnel are performing equally unknown functions. In short, local employees have infiltrated the "single personnel system". Under the circumstances, such a

result could have been predicted. The confusion must be eliminated. Either the central government should be given direct authority, or the single personnel system should be abandoned. In the former case, correct organization would call for removal of Employment Security Offices from the management and supervision of governors. In that event, the veil would be torn asunder, but at least there would be a clarification of authority and responsibility. In addition, no need would remain for Employment Security Bureau's Branch Offices, and considerable cost would be eliminated. However, as already pointed out, all delusions of local authority would disappear. Probably SCAP would not permit it. Certainly, Japanese officials will not urge it, for such deception has political value.

(3) A better solution would be to eliminate central control entirely and to place the real power in the hands of prefectural governors. Such a solution would fit in well with the present thinking of Civil Service Division, Government Section. Prefectural civil services would assume direction of personnel policy and administration in the many local governmental units. Such an alternative would equally clarify authority and responsibility, for prefectural governors would be left in undisputed control, except of course, as they were limited by national law.

c. Powers of Boards and Committees:

(1) In reviewing the detailed duties of the various boards and committees, one is struck by the lack of essential power they possess. Their competence is limited to investigation and recommendation to administrative authorities in whom final determination resides.

(2) It would be going too far to recommend that either they be given power or that they be disbanded, for even with their limited functions, they perform uniformly desirable services. Their organization, especially the establishment of individual bodies for study within each major field, assures removal from daily administrative pressures, detachment from confusing side issues, and development of valuable specialized knowledge within respective areas. Conscientiously performing their functions, such committees may explode many a bone of contention before a dispute occurs, and many a dispute before either a Court of a strike or a lock-out action. They all provide a round table at which economic contestants can settle mutually many of their differences, or at least blow off steam which might, if contained and added to by however small increments, later be the cause of disasterous erruptions.

(3) Despite these excellent present characteristics, it is believed that many of the Committees and Boards should be given some of the final authorities presently vested in the Labor Minister and in Prefectural Governors. As suggestions of precisely what is in mind, but not as a final list of recommendations, the following amendments to Board and Committee powers are advanced:

)a) Central Wage Board, by 2/3 majority, should be given authority to fix minimum wages, and the power of the Labor Minister should

be limited to publication of decisions made.

(b) Central Labor Standard Committee by majority vote should be given authority to veto any ordinance or individual section of an ordinance issued under provisions of the Labor Standard Law.

(c) Labor Accident Compensation Insurance Committee should be given authority to veto any ordinance issued under provisions of the Labor Accident Compensation Insurance Law.

(d) Committee for training Skilled Workers seems to be unique. One finds it difficult to understand why a special committee is required for the sole purpose of making recommendations on apprenticeship matters. It would be better to detail such matters in law. However, if it seems more appropriate to issue an ordinance, review and approval thereof should rest with the Labor Standard Committee, insofar as it pertains to wages, hours, and working conditions, and with the Employment Security Advisory Committee, insofar as it applies to general employment and economic conditions.

(e) Employment Security Advisory Committee should be given veto power over ordinances issued under the Employment Security Law.

(f) Unemployment Insurance Advisory Committee should have veto authority over all ordinances issued under the Unemployment Insurance Law. In addition, it should ratify all changes in premium rates.

(g) Seamen's Labor Coordinating Committee presents the difficulty pointed out in the early part of this study. Suffice it, then, to repeat here that the entire problem of Seaman Labor deserves further study. One hint may, however, be dropped in passing; namely, a brief appraisal of legislation in connection with merchant sailors indicates another vertical organization with concentration of power in the Minister of Transportation.

(h) Local Wage Boards should be given entire responsibility for investigation of wage conditions, study of opinions of labor and management, conduct of public hearings, and preparation of recommendations of minimum wages. Governor's prerogative may extend to a veto, but Wage Boards should be able to overide with a 2/3 majority.

(i) Local Labor Standard Committee should be given several authorities:

1. Recommendation of Local Labor Standard Laws to prefectural assemblies.

2. Ratification of all regulations concerning labor standards issued by prefectural governors pursuant either to local by-laws or to ministerial ordinances. In this connection, if a regulation issued pursuant to a ministerial ordinance is not ratified, and if, as a result thereof, a governor received a statement of charges from the Labor Minister, a new regulation implementing only those points raised in the statement of charges may

be issued without ratification by the Local Labor Standard Committee.

3. Reception and adjudication of appeals in matters concerning Labor Standards from decisions of administrative authorities. This should be a required step before bringing a dispute to Court.

(j) With regard to Local Labor Relations Committees, the law should stand as it is. It will be recalled that these committees were provided for in the first two laws we have considered and that no objections to them have been raised.

(k) Local Security Advisory Committees should be given the same powers in matters pertaining to employment security as were recommended for Local Labor Standard Committee in its field of competence.

(l) No change in power is recommended with regard to duties of Appeal Boards for Workers Accident Compensation.

(4) In all of the foregoing recommendations, if one considers that each of the Boards and Committees is an appointive body, further changes in the law are necessary to insure that obstructionists to policies of the Labor Minister or of prefectural governors may not be summarily removed and replaced with men who will fall in line. The law specifies neither terms of appointment nor conditions for removal. Therefore, such appointments should be made for specific periods of time, and conditions for removal should be stated in detail. Under present legislation, such protection for Board and Committee members is unnecessary, for they exercise no ultimate authority, but if the above proposals were to be enacted, their incumbency would require independence from displeased officials.

(5) The manner of nomination of Committee and Board members by labor and management respectively may prove troublesome, especially if those units achieve an independent and a powerful status. However, inasmuch as central committees would exercize power of veto over ordinances which prescribe methods of nomination, thematter may be adequately and democratically handled without detailed enactment of law. Nevertheless, development of undemocratic tendencies should be watched, and if they appear, they should be prevented by detailed legislation.

(6) In considering assignment of the above mentioned authorities to Committees and Boards, especially powers of veto over administrative directives, one might object that such assignment removes discretionary power from elected representatives of the people, and hence, places authority at a step further removed from popular control. That argument does not apply, of course, in connection with Central Boards and Committees, for the Labor Minister is appointed by the Prime Minister. It is not necessary that the Labor Minister be a member of the Diet, but even if he were, his election is oriented at a different level and has no essential relation to his performance as a Minister of State. Actually, then, in the case of Central Boards and Committees, assuming democratic nomination of members from labor and management, they are closer to the people than is the Minister himself.

Legislation (Laws, Misc.)
File

CIVIL SERVICE DIVISION
Government Section

29 November 1949

MEMORANDUM FOR: Foster B. Roser
Acting Deputy Chief, Civil Service Division

SUBJECT: Bills Regarding Impeachment of N.P.A. Commissioners

1. As you know, Parliamentary and Political Division referred to the Civil Service Division two bills regarding impeachment of commissioners of N.P.A. One bill would be enacted into law; the other would become a Diet regulation not a law.

2. Both Mr. Okabe and Dr. Asai were unable to give us direct advice on the bills, both attending Diet hearings. A preliminary discussion was therefore held with Mr. Tsurumi of the N.P.A. Law Bureau. At our request, he then in turn got in touch with Mr. Okabe and Dr. Asai to ascertain their opinions. Conclusions reported through Mr. Tsurumi are as follows:

a. Both bills are regarded as desirable in their present form.

b. The adoption by the Diet of only regulations would be inadequate. Actual legislation is necessary. According to present practice, regulations of the Diet are established internal affairs only and do not affect outside organizations unless expressly authorized by law. Furthermore, regulations as prescribed by Article 58 of the Constitution are enacted by each house separately rather than by joint action by both houses. There are, however, some regulations transacted by joint action but these have been authorized by law.

c. The only impeachment procedures now in effect in Japan are prescribed by law rather than regulations. These apply to impeachment of judges.

d. If procedures as contemplated by the bill are enacted into law, the results would be greater prestige for the N.P.A. commissioners than would be true if only regulations were enacted. A separate law rather than amendment to National Public Service Law apparently would have a similar advantage from the standpoint of prestige.

e. Enactment of a separate law is held to be compatible with present Japanese practices even in the case of matters treated by the National Public Service Law. Examples are the Law Administering New Pay, the Classification Bill, the Accident Compensation, etc.

3. The content of the proposed law and regulation appear to be entirely satisfactory to the undersigned. One point which was unclear in the English translation is the question of how the Diet's decision regarding indictment is to be reached. It has been verified through Mr. Tsurumi's interpretation, that the Japanese text clearly makes it necessary for each house to vote on the indictment. A majority vote of the members present will be required.

4. Inasmuch as the Diet session ends tomorrow, clearance of the bills was recommended in their present form rather than to stir up a controversy over the advisability or otherwise of amending the National Public Service Law instead of enacting separate regulation.

Gordon W. Peterson
Chief, Organization Branch
Civil Service Division

Legislation
Laws, Misc.

CIVIL SERVICE DIVISION
Government Section

23 May 1949

MEMORANDUM FOR: Mr. MacDonald Salter, Chief, Classification and Compensation Branch

SUBJECT : Bill for Partial Amendments to the Provisional Special Instances of the Pension Law

Attached is a copy of the Bill for Partial Amendments to the Provisional Special Instances of the Pension Law which has been submitted by the Legislative Bureau of the House of Representatives to the Parliamentary and Political Division, Government Section, on 20 May and referred to this office at 1155 hours on 21 May.

We were warned by Captain Guida that Civil Service Division must have its reply in to the Parliamentary and Political Division as early as possible on Monday, 23 May. He stated that it was his understanding that ESS intended to object rather seriously to this proposed amendment.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM:jb
Attachment
cc. Mr. Peterson

Legislation, Laws Misc.

CIVIL SERVICE DIVISION
Government Section

19 May 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Foodstuff Distribution Kodan

At 0845 hours on Thursday, 19 May, Mr. Warren, Labor Division, ESS, called me at the suggestion of Mr. Robert Amis relative to the proposed law on Foodstuff Distribution Kodan. It seems that on either Monday or Tuesday (16 or 17 May), representatives of the Ministry of Labor called on Mr. Warren to object to Article 14 of the Foodstuff Distribution Kodan Law. Their objections were: (a) that this places an organization which had been relatively independent, i.e. outside of government organization, under the restrictions of the laws governing government employees; (b) that while placing these employees under government restrictions, it did not give them the same protection as was given to government employees under the equity processes of the NPS Law; and (c) that it took the supervision of the labor question in this kodan out from under the Ministry of Labor and placed it under the Ministry of Agriculture and Forestry.

Mr. Warren stated that he immediately discussed the matter with Mr. Hepler, Chief of the Labor Division, who advised him that he knew nothing about the law and suggested that he immediately take steps to correct the situation. Mr. Warren was also informed by representatives of the Ministry of Labor that the Government Section had given its approval to the proposed law as written, and it was his understanding that the Civil Service Division had either written or suggested the writing and inclusion of what became Article 14. He had also been advised that the law had already been passed by the Diet.

I explained the steps that had already been taken to Mr. Warren as follows:

1. The proposed law had been brought to our attention through regular channels, and we had objected to Article 14 on the basis that while it was restrictive on the employees of the kodan it gave them no protection relative to administrative abuses and provided no means for appeals nor for hearings by disinterested boards.

2. Mr. Hoover had immediately discussed the matter with Mr. Hepler over the telephone and the two gentlemen were in agreement as to the fact that certain changes were necessary to protect the rights of the employees.

3. The Civil Service Division had suggested that the employees be placed under the purview of the National Public Service Law with certain exceptions to be delineated by rules of the NPA, i.e. exemption from examinations, exemption from certification of eligibles, exemption from the restrictive clause relative to return to private employment, as examples.

4. We had stated our objection to this proposed law in writing to the Political and Parliamentary Division.

5. Mr. Hoover discussed this suggested change of plans with Mr. Hepler a second time over the telephone on Tuesday, 17 May, approximately around noon.

6. I personally had discussed the matter with the National Personnel Authority, and they were in agreement on the method of handling the case by placing the employees of the kodan under the National Public Service Law, but would write a rule covering the above suggested exemptions thus giving the employees protection and the right of appeal for hearings before the Equity Bureau of the National Personnel Authority while placing certain restrictions on such employees to avoid sabotage of the government's program and endangering the food supply line of the nation.

7. I explained that under the present rulings neither this Division nor the Government Section gave what, in the past, has been known as approval or disapproval of proposed bills, but rather passed such bills voicing our objections, if any.

8. This Division was not aware of the change of the supervision of employees from the Labor Ministry to the Ministry of Agriculture and Forestry and I surmised that if this had happened the decision was probably a policy decision based on the weight placed on the subject matter rather than upon the fact of how the employees were to be handled. I assumed that this might have been made necessary because the handling of food under the present shortages in Japan was so essential to the welfare of the nation, but I stressed the fact that the Civil Service Division had had no part in this decision and actually had no interest in it one way or another.

9. We had been advised that the proposed law with the notations of our objections were referred back to the Cabinet and through them had been referred to the Diet where we had been advised that it had been placed before the House of Representatives at approximately 1230 hours on 18 May and that I assumed it had been referred immediately to the Agriculture and Forestry Committee of the House of Representatives.

The above information seemed to ease Mr. Warren's mind considerably, and he stated that under the circumstances he felt that the Labor Division could stand shoulder to shoulder with the Civil Service Division in

recommending that the employees of the kodan be placed under the National Public Service Law with the assurance of the exemptions from such law as indicated. He was also relieved to know that the bill had not as yet passed the Diet and that the Labor Division and the Ministry of Labor still had an opportunity to discuss the matter with the interested committees. He seemed to be unaware of the policy decision in which divisions and sections in SCAP could not tell the Diet that certain actions could not be taken.

Mr. Warren stated that he had not checked with Mr. Hepler since his original conversation and, therefore, was unaware that conversations had been conducted between Mr. Hepler and Mr. Hoover, which rather indicates that possibly Mr. Hepler had not passed this information on down the line. He said that he would get in touch with Mr. Hepler immediately so that he would be brought up to date on such conversations and Mr. Hepler's thinking. I did not advise Mr. Warren nor even indicate that we had suggested through Dr. Asai that the chairmen of the Personnel Committees of both Houses discuss the proposed bill with Mr. Hoover. I felt that this was the trump card and that we might just as well keep it under cover at the moment.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM:jb

Legislative, Laws Files

CIVIL SERVICE DIVISION
Government Section

19 May 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Foodstuff Distribution Kodan

At 1430 hours on Thursday, 19 May, Mr. Kajawara, President of the Food Distribution Kodan, and Mr. Watanabe, Goroku, Director of Kodan and Chief, General Affairs Bureau, called to discuss the proposed Food Distribution Kodan Law. Mr. Kajawara wished to state the reason why they had written Article 14 in the proposed law and to request the opinion of the Civil Service Division on this Article and of the proposed law in general.

He stated that they were slightly confused because they had been advised that the Government Section had "approved" the proposed law without making any statements concerning its operation or its substance. He was therefore seeking guidance from the Civil Service Division since he was particularly anxious that the proposed law function properly, assure that the distribution of food throughout the nation would not be disrupted, and that the employees would be properly protected. I explained that the Government Section had not "approved" the proposed law, but had merely "passed" the law without either approval or disapproval and had stated our objections to certain phases of the law. I explained to him that we had done this on the basis of giving the courtesy of discussion and decision to the Diet where the comments of the Cabinet, the officials of the Food Distribution Kodan, the Ministry of Agriculture and Forestry, and the Ministry of Labor would be weighed equally with comments by Diet members.

While he appreciated this approach, he stated that he still wished the views and guidance of this Division with particular reference to Article 14. I then explained our stand and the suggestions that we had to offer relative to removing the kodan from the special service and placing it in the regular service while simultaneously suggesting that the NPA issue a rule under Article 13 of the First Supplementary Provisions of the NPS Law to grant certain exceptions to this particular kodan which would give both the government and the employee full coverage and protection and at the same time protect the distribution of food throughout the country.

He was enthusiastic about the proposed plan and felt that it would be much wiser to have the kodan under the National Public Service Law with the exceptions mentioned, plus the additional one of granting an exception to Article 101 which places a restriction on concurrent appointments. He then asked what steps he should take to secure an immediate

change in the proposed law to meet our suggestions. I suggested that he immediately discuss the matter with the chairmen of the Agriculture and Forestry Committee and the Personnel Committee in both Houses recommending, in his name as President of the Kodan, that such alterations in the bill be made in committee. He said that he would do this immediately before the close of business today and would also discuss the matter with the Minister of Agriculture and Forestry and the Minister of Labor. He also asked permission to seriously urge the chairmen of both committees in both Houses to call upon Mr. Hoover for a full discussion of the changes which he was going to propose.

I assured him that Mr. Hoover would be very happy to meet with the chairmen of these committees as well as any members they wished to bring along, at the convenience of the chairmen. He said that he felt the chairmen would be particularly interested in the date included in Item 14 of Article 2 of the NPS Law and he seriously urged that Mr. Hoover take a flat stand that the Civil Service Division would not give approval to a further extension of this date beyond July 1, 1949. He said that he felt sure that if Mr. Hoover took this stand that it would facilitate the inclusion of changes in the present law since nothing would be gained in objecting to the changes as the kodan would go under the regular service after that date anyway. He recognized that the National Personnel Authority had full authority under the Law to remove the kodan from the special service, but he felt politically that it would be wise not to extend the date under any circumstances.

Mr. Kajawara indicated that he would report back to this office immediately following his conversations with the various chairmen of the committees of the Diet.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM:jb

Legis - Loans MISC file

CIVIL SERVICE DIVISION
Government Section

26 April 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : The Proposed Law for Partial Amendment to the Public Procurator's Office Law and the Proposed Law for Judicial Examination

On Monday, 25 April, Mr. Shirven and I discussed the two proposed bills with our objections with Judge Oppler, Arthur McCormick, and Howard Meyers of the Legal Section. I specified the general things with which we agreed in the bill and the general points of disagreement while Mr. Shirven discussed the specifics of disagreement.

As might be expected, Judge Oppler was emphatic in his resistance to anything which would disturb or endanger the total independence of the entire judiciary system including both judges and procurators by permitting the encroachment of any form of bureaucratic control.

Mr. Shirven made a very able case for our stand in the matter; however, the Judge is adamant on the point of not permitting the National Personnel Authority or any other organization outside the judicial system to have a voice in the examination, selection, appointment, or discipline of any individual connected in any way, shape or form with the judiciary group.

The Judge finally offered to effect a compromise to the effect that a clause would be inserted stating that the Attorney General's Office in conducting the examinations for the procurators (and judges and lawyers) would consult the National Personnel Authority relative to the construction of the examination and the techniques. Mr. Shirven countered with a request that the word "consult" be removed and that it be stated emphatically that the Attorney General's Office would be required to seek such advice and direction from the National Personnel Authority. All three gentlemen from the Legal Section objected to making the provision as restricting as a requirement would indicate.

Mr. Meyers stated that if the Civil Service Division and the Government Section agreed that the apprentice system with its apprentice examination was good and should be continued and since such apprentice examinations were given by the Attorney General's Office, he felt that this started a circle of legal examining processes under the supervision of the Attorney General's Office and, therefore, could not be broken into later by injecting the National Personnel Authority into the examination process covering only one-third of the group of apprentices involved.

As established by the Court Organization Law and the Public Procurator's Office Law, the present system establishes an initial and secondary examination system. The initial examination covers those individuals who are graduates of law schools and other student groups. Upon the passage of this initial examination, they spend two years as apprentices under the auspices of the Supreme Court. At the end of the two-year apprentice period, they then present themselves for the second examination after the passage of which they decide whether they are to become lawyers in civil practice, judges or procurators. It is at this secondary point that we wish to inject the National Personnel Authority who under the National Public Service Law would have authority to examine and prepare certificates only on the public procurators.

Judge Oppler called our attention to the fact that the present Court Organization Law and Public Procurator's Office Law were prepared under the guidance and with many personal suggestions from Brigadier General Whitney and Colonel Kades. He also called our attention to a fact of which I was not aware, that the original National Public Service Law included public procurators as an example of exception under Article 13 of the first Supplementary Provisions and that such exception was placed on the public procurators at General Whitney's personal suggestion.

The conference ended with the agreement by Judge Oppler and Mr. Shirven that the Amendment to the Public Procurator's Office Law and the Law for Judicial Examination would be submitted with a rewrite of Article 32-2 of the Amendment to the Public Procurator's Office Law withdrawing the statement that this would be considered an exception under the National Public Service Law in accordance with Article 13 of the Supplementary Provisions of that Law. This would permit the Attorney General's Office to proceed with the necessary examinations while the Legal Section, the Civil Service Division, the Attorney General's Office, and the Supreme Court conferred to settle the basic point as to whether the public procurators should be under the National Public Service Law, and how that should be resolved in the Law.

I should like to add a personal comment. While I thoroughly believe that the public procurators should be under the National Public Service Law and should be examined and certified by the National Personnel Authority, and while I argued strongly for this point during the days of the Mission, I am afraid that this is another case where we have appeared too late on the scene to properly handle the matter to conform to good public administration. There are several factors which I think are pertinent and must be considered.

1. SCAP is definitely committed to the divorcement of judicial procedures, operation and organization, from any vestige of control or influence by the administrative part of the National Government.

2. General Whitney and Colonel Kades were both specifically interested in the protection of the judicial system including the courts, the Attorney General's Office, and the governmental legal system, mainly because they are both excellent lawyers themselves and, therefore, know that field more intimately.

3. The Japanese legal and judicial groups have good cause to be afraid of control by the administrative part of the National Government from many years of hard experience prior to our advent on the scene.

4. The Japanese legal and judicial groups have been further strengthened and consolidated in their opposition to any indication of administrative control by the GHQ Advisory Group which was originally the Legal Division of the Government Section and is now a part of the Legal Section.

5. A full expression was given to this backing of the Japanese legal and judicial groups by the old Legal Division of Government Section encouraged by the Chief and the Deputy Chief of the Government Section by writing specific laws declaring and bulwarking the independence of the legal and judicial system in Japan.

These factors were all fait accompli before the passage of the National Public Service Law and even before the establishment of the Civil Service Division; therefore, I am of the opinion that while I don't particularly like it, I think this is the point where discretion is the better part of valor and that we should probably give gracefully to permit the elimination of the procurators from the supervision of the National Personnel Authority. In this "giving" I should like to save as much face for the NPA and the Civil Service Division as is possible, and, therefore, I should like to suggest that consideration be given to permit the National Personnel Authority to issue a rule specifically establishing the procurators as an official exception under the authority of Article 13 of the first Supplementary Provisions of the National Public Service Law. This exception will have to be specific as to just what parts of the National Public Service Law will not apply to the procurators.

In making this suggestion I realize full well that we are establishing a delicately balanced precedent since without a doubt other special interest groups will attempt to utilize this as justification for their exemption. Notable in this group, of course, will be the educators; however, I am afraid this is inevitable and that unless we wish to wage a full scale all-out fight with the Legal Section, we are going to have to take this action, and I don't believe that it is wise to attempt to alienate the Legal Section at this particular time.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM:jb

Legislation - Laws - Misc.

CIVIL SERVICE DIVISION
Government Section

21 April 1949

Don't think Will you Talk this over with Judge Oppler 4/27/49

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Law for the Judicial Examination (Proposed)

file WPM 4/25/49

Mr. Shirven and I have discussed the proposed law, and we are in accord that the passage of the law would create a rather serious confusion in the administration of examination processes to the procurators.

This discussion called to our attention the fact that several of the laws already on the books have created a confused condition surrounding the examination, appointment, and discipline of procurators under the National Public Service Law while exempting the judges from similar restrictions.

I am sure that we both realize that disapproval or objection to the proposed law will possibly precipitate a head-on clash with Judge Oppler and his group in the Legal Section; however, I feel that this matter must be clarified and we might as well do it now as later. It certainly should be done before a further confusing wedge is driven into the whole situation.

Both Mr. Shirven and I believe the situation can be clarified and handled rather simply, particularly at this time when the NPA is not ready to go into full operation on its examination and certification program; however, the difficulty is going to be in convincing Judge Oppler and the Japanese judiciary group that no harm will be occasioned to the independence of the entire judiciary.

I fully realize the well grounded fear which exists in the minds of the Japanese judiciary because of past abuses which they have suffered from the Japanese bureaucracy; however, in releasing them from past adverse restrictions the pendulum should not be allowed to swing too far in the other direction to where equal damage is caused to good public personnel administration.

Note: Shirven & MacCoy to discuss this bill with Judge Oppler 4/25/49 WPM

W. Pierce MacCoy

WPM:jb

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

Legis - Laws, Misc.

CIVIL SERVICE DIVISION
Government Section

21 April 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : The Science Council of Japan Law

Reference is made to your note of April 20 concerning the brief which was presented to you by Mr. Hani, recommending that the members of the Science Council of Japan be excluded, even as in the "special service", from the National Public Service Law.

You will recall that this is the law which I discussed, while it was in its formative stage, with Brigadier O'Brien. At that time, I pointed out two distinct classes of problems to the Brigadier: (1) The actual members of the Science Council will be scientists of note, to be elected by the scientists themselves to serve without remuneration as members of the Science Council to further all sciences in Japan. This pattern has its counterpart in every country in the world, I believe. (2) The clerical staff of the Council will be regular government employees and will carry on the normal administrative and staff functions for the Council.

Group 2 would be recruited in the normal manner as all other government employees in the regular service and would receive their pay directly from the National Government in the same manner as all other National Government employees. It was agreed that these individuals should be included in the regular service, and the Brigadier was impressed with the fact that the Council would have the advantage of securing well-qualified people through an examination and recruiting process at minimum effort on the part of the Council.

I can concur in Mr. Hani's perturbation at the suggestion that the Council members might be in any way affected by the action of the National Public Service Law, particularly in view of the fact that the law covering this point is so vague.

The law is very poorly worded, and I fail to find any specific statement, at least in English translation, which clearly defines how the members of the Council shall be selected and elected, or any clearly defined statement as to exactly who shall be eligible to have a vote in the election of the Council members. Article 17 which, I assume, purports to indicate those individuals who have the right of vote to elect Council members is far from clear. This may be merely a poor translation and it may be that the law in Japanese is more explicit than is its English translation. I sincerely hope so.

I disagree with the interpretation which has apparently been given by the NPA that the Council members should be considered to be in the special service under Item 9, Paragraph 3, Article 2 of the National Public Service Law. This item states, "positions, the occupancy of which requires an election or an appointment to which requires a resolution or consent of one or both Houses of the Diet". Certainly, the intent of this item was that the individuals so designated would be those of a general election by the populace of Japan. If you apply any other interpretation to the phrase "which requires an election" you establish a precedent for all kinds of foolish interpretations which would eventually tangle the National Public Service Law in serious litigation as to its coverage or non-coverage and could make the NPA and the National Public Service Law appear ludicrous in the eyes of the public.

I never think that it is wise to attempt to distort or burden an interpretation of a law merely to meet a peculiar situation, because you establish unforeseen precedents which arise to plague you at a later date. It is much better to follow the original intention and where there is ample justification as there is in this case, request an amendment to the National Public Service Law to include another group specifically under Article 2 in assigning that group in the special service.

There is another way to avoid this issue; however, I am not sure how far this method has been used in Japan or how familiar they may be with its operation. That would be to establish the Council as an autonomous group with the money supplied by the National Government as a grant-in-aid. If the matter is handled in this way, the law could specifically state that the money once transferred to the Council would lose its National identity and, therefore, the Council in spending the money would not be required to follow the dictates of the National Public Service Law, and thus would not be subject to Articles 63-70 inclusive. It, of course, has one disadvantage and that is that the government does not have the power to audit an agency's accounts under such a grant-in-aid program under normal conditions. However, I see no bar to placing in such a law the right of audit by the National Government if they so desire.

Under such a grant-in-aid program, the Council would then not even secure its clerical and administrative help through the National Personnel Authority but would be responsible for selecting and employing its own clerical and administrative assistance at its own discretion.

In view of the past history of Japan, I can well understand Mr. Hani's distress at any suggestion of an idea that the National Government might be placing itself in a position to control the thinking or the operation of the Council or of any of its members and, therefore, I would be extremely sympathetic toward any idea either he or they might have to assure its future independence.

A group of scientists under the stifling control of any bureaucratic or militaristic regime ceases to be a free-thinking science group and becomes merely a disgusting group of simpleton puppets. Heaven forbid that we should ever be responsible for paving the way for the establishment of any such group in the future of this nation.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM:jb

Leg. Laws Misc

CIVIL SERVICE DIVISION
Government Section

21 April 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Law for the Judicial Examination (Proposed)

Mr. Shirven and I have discussed the proposed law, and we are in accord that the passage of the law would create a rather serious confusion in the administration of examination processes to the procurators.

This discussion called to our attention the fact that several of the laws already on the books have created a confused condition surrounding the examination, appointment, and discipline of procurators under the National Public Service Law while exempting the judges from similar restrictions.

I am sure that we both realize that disapproval or objection to the proposed law will possibly precipitate a head-on clash with Judge Oppler and his group in the Legal Section; however, I feel that this matter must be clarified and we might as well do it now as later. It certainly should be done before a further confusing wedge is driven into the whole situation.

Both Mr. Shirven and I believe the situation can be clarified and handled rather simply, particularly at this time when the NPA is not ready to go into full operation on its examination and certification program; however, the difficulty is going to be in convincing Judge Oppler and the Japanese judiciary group that no harm will be occasioned to the independence of the entire judiciary.

I fully realize the well grounded fear which exists in the minds of the Japanese judiciary because of past abuses which they have suffered from the Japanese bureaucracy; however, in releasing them from past adverse restrictions the pendulum should not be allowed to swing too far in the other direction to where equal damage is caused to good public personnel administration.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM:jb

CIVIL SERVICE DIVISION
Government Section

25 January 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Laws Requiring Amendment to Improve Separation Benefit Program

In response to your memorandum of 20 January 1949 we find only two laws which require amendment in order to permit the establishment of a satisfactory separation benefit program in which uniform treatment can be accorded all employees and officials.

1. The Pension Law (Law No. 48 of 1943).

If it is deemed wise to reduce the lump sum separation benefit payable to persons with less than seventeen years of service to an amount which approximates the official's contributions plus interest plus an adjustment to inflate his contributions to present day values, then Article LXVII must be amended. Approximately 317% more than the above amount is now being granted.

2. The National Public Service Mutual Aid Association Law (Law No. 69 of 1948).

If it is deemed wise to reduce the lump sum separation benefit payable to persons with less than twenty years of service to an amount which approximates the employee's contributions plus interest plus an adjustment to inflate his contributions to present day values, then Article LXXXXI and Annexed Table No. 1 must be amended. Twelve per cent to thirty-eight per cent more than the above amount is now being granted. Moreover, the benefit is now based on the period of employment rather than the period of membership in the Association, the latter being the period during which contributions were made.

3. The Law Concerning Compensation Granted to Public Servant under the Labor Standard Law and the other Laws (Law No. 167 of 1947).

This Law simply provides that government compensation should be raised to that of the Labor Standard Law (Law No. 49 of 1947) and the Unemployment Insurance Law (Law No. 146 of 1947). Such laws do not seem to restrict the government's revision of separation allowances unduly.

4. In addition to laws there are, of course, Cabinet decisions, orders, regulations and notifications which must be revised or abolished in order to accomplish our objective.

W. PIERCE MacCOY
Deputy Chief

GWP:jb

Legislative memo.

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

24 January 1949

MEMORANDUM FOR : Mr. Gordon Peterson
Organization Specialist

SUBJECT : Proposed Draft of a National Public Service Accident Compensation Law.

Attached is an action check-sheet with an attached comparison of laws and bills on the subject of workmens' compensation.

It will be appreciated if you will review this material and let me have your advise and/or comments in a memorandum with a recommendation as to a proposed reply to this check-sheet.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM/hm
Attachment

Leg. Lnn misc

General Headquarters
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Civil Service Division

29 December 1948

MEMORANDUM FOR: Dr. J. W. Williams
Chief, Parliamentary & Political Division

SUBJECT : Bills Proposed for the Ministry of Finance Covering Proposed Adjustments in Salary for Judges, Procurators and those of the Special Services.

1. Just prior to the closing days of the Diet, the Ministry of Finance presented three bills proposing pay adjustments for the judges, procurators and those of the special services. These bills were referred to this division by Captain Guida. At that time the Civil Service Division made certain objections to these three bills and returned them to your office with notations to this effect. It is our understanding that these bills were returned to the Ministry of Finance by Captain Guida who at the same time advised them of the objections which the Civil Service Division had raised.

2. At approximately 1630 hours on 22 December, the supposedly corrected bills were again referred to your division and were in turn referred to the Civil Service Division. Mr. Watanabe of the Ministry of Finance called Mr. MacCoy at 1700 on the same day and requested immediate clearance of these bills. Mr. MacCoy advised Mr. Watanabe that while he was completely in sympathy with the Ministry of Finance in attempting to submit the bills prior to the closing date of the Diet, it was impossible at that late hour to secure clearance on the 22nd, but that they would be considered the first thing in the morning, the 23rd. He called Mr. Watanabe's attention to the fact that this was at least the second time the Ministry of Finance had attempted to submit similar bills on the last day of a Diet meeting and that these bills were far too important to be reviewed in such a hurried fashion.

3. On the morning of 23 December, the bills were reviewed by members of the staff of the CSD and found to be still deficient in some of the items to which the CSD had previously objected upon the former submission of these bills. Notations to this effect were made and the bills were prepared for return to the Parliamentary and Political Division.

4. The Civil Service Division was advised of the dissolution of the House of Representatives on 23 December. Therefore, it was impossible to have the bills corrected by the Ministry of Finance in sufficient time for clearance and submission to the Diet.

5. Civil Service Division wishes to go on record as voicing serious objection to this last minute method of presentation of important bills by the Ministry of Finance or any other Ministry and recommends that the matter be seriously and sharply called to the attention of the Minister of Finance.

WPM:hm

BLAINE HOOVER
Chief
Civil Service Division

Laramie

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

28 December 1948

MEMORANDUM FOR FILE

SUBJECT : Proposed Drafts of the Bill for the Partial Amendment to the Law Concerning Compensation, etc. of Judges, and Public Procurators.

1. The attached copies of the proposed revised drafts were presented directly to the Civil Service Division by a member of the Ministry of Finance at 1400 on 21 December 1948.

2. It is to be noted that these copies were not forwarded to the Civil Service Division through the Parliamentary and Political Division and therefore could not be considered official copies for review by the Civil Service Division.

3. The Parliamentary and Political Division and the Ministry of Finance were both advised that no action would be taken upon these proposed drafts, nor would any action be taken by this Division on any draft of the proposed bill submitted other than through proper channels.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM/hm
Attachment

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

23 December 1948

MEMORANDUM FOR: Dr. J. W. Williams, Chief
Parliamentary and Political Division

SUBJECT : Bill to Amend the Law for the Partial Amendment, etc. to the Law Concerning the Compensation, etc. of Judges

This proposed Bill is passed without comment.

BLAINE HOOVER
Chief, Civil Service Division

JJB:jb

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

23 December 1948

MEMORANDUM FOR: Dr. J. W. Williams, Chief
Parliamentary and Political Division

SUBJECT : Bill to Amend the Law for the Partial Amendment, etc. to the Law Concerning the Salary and Others for the Public Procurators

1. It is recommended that the proposed Bill include a provision in this Law similar to the paragraph in Article 1 of the New Pay Bill for General Government Workers which will provide that no provisions of this Law shall be construed as repealing, amending, or superseding the provisions of the National Public Service Law.

2. It is also recommended that there be a provision placed in this Law which will point out that with respect to the salaries provided under Article 9 of this Law for Public Procurators and Assistant Public Procurators, these salary rates shall supersede any salary rates provided under Article 19 of the New Pay Law. Otherwise, the provisions of the New Pay Law should apply to public procurators and assistant public procurators. The New Pay Law and the proposed Law for the Salary of Judges includes a provision eliminating the necessity for the use of sen calculations. This should also be included in this Law.

BLAINE HOOVER
Chief, Civil Service Division

JBB:jb

Legis Mins
Files
WRR
12/17/48

CIVIL SERVICE DIVISION
Government Section

9 December 1948

MEMORANDUM FOR: The Record

SUBJECT : Draft of the Law for Establishment of the Advisory Council on Social Security dated December 2, 1948

1. No reference is made in the proposed law to compensation of personnel or to the application of the NPS Law or the jurisdiction of the National Personnel Authority.

2. The Council and its secretariat are staffed in part by government officials and government clerks. The participation of these government employees may be a violation of paragraph 1 of Article 101 NPSL in that they would be concurrently holding two positions in the employ of the government.

3. Personnel of the Advisory Council and its secretariat would, with the exception of Diet members, fall in the regular government service. Therefore, appointments of persons not heretofore in the regular service must be approved by NPA under the NPS Law. Unless they are appointed members of the regular service or are members of the special service they may not be paid in any way for their services by the government (see paragraph 6 of Article 2 NPSL).

4. Article 7 of the proposed law reads: "Government offices shall produce such data and information as the Advisory Council may request". This power of the Advisory Council is a potential danger to the official security of NPA's plans and records. However, there is no penal provision to compel compliance.

5. Apart from matters pertaining to the NPS Law and the National Personnel Authority, the establishment of such an Advisory Council independent of the Labor Ministry, Welfare Ministry and Finance Ministry, all of which have a close concern with the problems of social security, would

Mr Hoover passed proposed law without objection WRR

appear merely to add to the administrative complexity surrounding this function in the Japanese Government. It would appear to offer a better long-run solution if the social security function were clearly assigned to one or another of the ministries which is already concerned with some major aspects of these problems.

6. Recommend addition of the attached provision.

TE.

THOMAS ELIOT,
Personnel Specialist.

TE:mvb

The appointment by the Prime Minister of members and temporary members of the Advisory Council from the last two (2) groups designated in Paragraph 1 of Article 5 and men of learning and experience as Secretaries to the Advisory Council under Paragraph 2 of Article 10, shall be subject in all respects to the National Public Service Law (Law Number 120 of 1947 and Law Number 222 of 1948).

Government officials and clerks who are assigned duties in addition to the duties of their positions in the regular government service, under Articles 5, 10, and 11 of this law shall not be paid compensation of any kind for such additional duties unless provided in the pay plan specified in Article 63 of the National Public Service Law (Law Number 120 of 1947 and Law Number 222 of 1948).

ATTACHMENT

Laws misc.

General Headquarters
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section
Civil Service Division

9 December 1948

MEMORANDUM FOR POLITICAL AND PARLIAMENTARY DIVISION

SUBJECT: National Public Service Accident Compensation Law

The proposed National Public Service Accident Compensation Law, which has been brought up for consideration in a complicated situation, involves many irregularities of schedule which before they can be straightened out require investigation over a considerable period of time. The National Personnel Authority which has just been constituted has not had an opportunity to conduct such studies. In this situation we are passing the proposed law without objection in order to avoid any injustice to employees of government, provided:

First, that we safeguard the ultimate jurisdiction of the National Personnel Authority as provided in Article 93 to 95, inclusive, of the National Public Service Law by specifiying that this law is subject to later recommendation by the National Personnel Authority as follows: (In place of proposed Article 2)

> "2. The compensation system established herein by this Law represents compensation system to be established <u>prior to the system to be adopted</u> in accordance with the provisions of Articles 93 - 95 of the National Public Service Law (Law Numbered 120, 1947) and shall be administered by the National Public Service Accident Compensation Board established in the Prime Minister's Office in accordance with this Law."
> (Underlined material is new.)

Second, that it be definitely provided that absence benefits shall not exceed those granted as a matter of general national policy in the Labor Standard Law.

BH:mta

BLAINE HOOVER
Chief
Civil Service Division

GOVERNMENT SECTION
Civil Service Division

Mapella
I think you should have seen your
This file Mrs

8 December 1948

MEMORANDUM FOR: Dr. Justin Williams, Chief
Parliamentary and Political Division

SUBJECT : Bill Concerning the Government Housing for National Public Service Personnel

The provisions of Paragraph 2, Article 1, should include an additional statement with respect to the housing policy and its relationship to the National Public Service Law. It is suggested that the following be added at the end of the first sentence of Paragraph 2, Article 1: "and housing provisions for government personnel shall be recognized as related to compensation and shall be the proper subject of recommendation by the National Personnel Authority under the provisions of Article 28 of the National Public Service Law (120 of 1947 as amended by Law 222 of 1948)."

Reference is made to Article 4, Paragraph 1, Items 3 and 4. It would seem that the officials referred to in these items should be listed as "Director General or Deputy Director General" of the Economic Stabilization Board, and "Director General or Deputy Director General" of the National Personnel Authority.

It is noted that in Article 10, official residence is provided for the President of the National Personnel Authority. Attention is drawn to the provisions of Article 10 of the National Public Service Law as amended by Law 222 of 1948 which states that a commissioner shall be compensated on the same basis as a Minister of State. To comply with this provision of law, it would seem necessary that the housing law provide in Article 10, Item 6, "Commissioners" of the National Personnel Authority instead of "President" of the National Personnel Authority.

With the exceptions as noted above to Articles 1, 4, and 10, this office will pass the bill without objection.

BLAINE HOOVER, CHIEF
Civil Service Division

MS:jb

CIVIL SERVICE DIVISION
Government Section

7 December 1948

File
WPR
12/17/48

MEMORANDUM FOR: The Record

SUBJECT : Ceiling Control

1. Mr. Nakagawa of the Administrative Management Agency submitted this morning the draft of a bill "establishing ceiling control over the "fixed number of positions" for all employees in the government. This bill is being sponsored by the Administrative Management Agency and has been discussed thoroughly by all ministries. It will go before the Cabinet today and it is expected, will be submitted to the Diet tomorrow.

2. The bill does not go as far as was originally intended, namely, establishing ceiling controls over current employment and not over current authorized employment. The effective date of the bill will be January 1, 1949. In the interim period the Administrative Management Agency will make every effort to discourage any expansion by cabinet order of the fixed number of positions.

3. Two points were discussed which had not been included in the bill:

a. A statement of purpose should be contained in Article 1 which would set forth the principle that this bill was to stop the expansion of agencies and to encourage their reduction in staff size,

b. No provision is made for requiring elementary periodic reporting on the actual employment by agencies. Such reporting should be required by law once a month.

4. A proper statement of purpose in this law may be used advantageously in the development of a promotional program which will exert to a certain extent ceiling control and the establishment of fairly rigid controls with respect to temporary employment.

MACDONALD SALTER,
Chief, Classification-Compensation Branch.

MS:mvb
cc: MacCoy
Peterson
Marsh
Capt Diamantes

12/7/48

Draft

Law Concerning the Provisional Measures for the Establishment and Increase of the Fixed Number of Personnel in Administrative Organs.

(Definitions)

Article 1. Administrative organs mentioned in this Law mean the Prime Minister's Office, the Attorney-General's Office, the various Ministries, and the independent organizations attached thereto (including the Special Procurement Board).

Article 1-2. Personnel mentioned in this law means first, second and third class officials, persons receiving the treatment as officials (including persons with status equivalent to officials), junior clerks (KOIN), auxiliary workers (YOIN) and craft workers (KOOIN) who are regularly employed by the Government.

(Establishment and Increase of the Fixed Number of Personnel)

Article 2. On and after January 1, 1949, no establishment or increase of the fixed number of personnel in administrative organs shall be made except by law.

(Measures concerning Personnel Whose Number is not Fixed by Law or Order)

Article 3. Among the personnel in administrative organs, in regard to those of whom the number is not fixed by law or order (or, in case it is authorized by law to fix the number by ordinances or other special orders, by such ordinance or order), their number shall be fixed within the limits of the budgetary appropriations, by Prime Minister's Office ordinances, Attorney General's Office ordinance or ministerial ordinances, not later than December 31, 1948.

Supplementary Provision

The present law shall be enforced as from the date of its promulgation and shall remain in force up to the day preceding the date of enforcement of the National Administrative Organization Law (Law No. 120, of 1948.)

file

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

2 December 1948

MEMORANDUM FOR: Dr. J. W. Williams
Chief, Parliamentary and Political Division

SUBJECT: Bill Amending the Diet Personnel Law

Civil Service Division recommends disapproval of the proposed bill amending the Diet Personnel Law on the grounds that Article 11 of the New Supplementary Provisions to the bill amending the National Public Service Law, makes such an amendment to the Diet Personnel Law unnecessary.

The article referred to places all employees of the Diet under the purview of the National Personnel Authority, its rules and regulations until the close of business December 31, 1951. We assume this amendment to the National Public Service Law will supersede the Diet Personnel Law, plus specifically placing such personnel under the authority of the National Personnel Authority. Accordingly, there would not appear to be reason for the proposed amendment or similar action at this time unless it is necessary, in the opinion of the legal authorities, to pass a law rescinding existent Diet personnel law to reinforce the provision of the National Public Service Law above cited. We have asked the National Personnel Authority for a legal opinion on this point.

BLAINE HOOVER
Chief
Civil Service Division

BH:mta
Attachment

ROUGH DRAFT
BH/hm 20 November 1948

MEMORANDUM FOR : Dr. J. W. Williams
Chief, Parliamentary and Political Division

SUBJECT : Check Sheet, GS to Legal Section

The Civil Service Division recognizes the existence of the following situation:

1. The probable passage at an early date of the National Public Service Law. One of the objectives of this law is the reformation of the old bureaucracy which is heavily represented in the educational system.

2. The non-existence of a civil service system at the local level, a condition which cannot be corrected for several months. This area also presents problems associated with the reform of the old bureaucracy.

3. That there exists a need for personnel administration in the educational system.

4. That fundamentally, the Civil Service Division is perfectly willing to consider separate personnel administration for the educational system when the urgent aspects to the problem of bureaucratic reform have been solved.

5. With the idea of providing a flexible emergency measure to prevent extension of a vacuum in personnel administration in the educational system prior to the passage of the National Public Service Law and a local public service law, both or either, the Civil Service Division was willing to accept many suggestions of CI&E as presented in their Bill # ____, subject to the provision that the law would be subject to whatever civil service laws were enacted. This represented a maximum effort to assist CI&E in the conduct of its affairs without relinquishing controls at least temporarily essential to the clean-up of the feudal bureaucracy and its system.

6. Check sheet from Legal Section dated 16 November eliminates this type of solution and makes it necessary for Civil Service Division to record its objections to the bill as a permanent and enduring piece of legislation. We regard this development as regrettable and restrictive of our efforts to cooperate with CI&E in the subject matter but in order to avoid serious default in the bureaucratic reform, are obliged to record our objections as follows:

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

26 November 1948

MEMORANDUM FOR : Mr. Gordon Peterson

SUBJECT : Draft Law Concerning the Continuance of the Legal Status of Labor Union as Juridical Person, etc. Consequent Upon the Partial Amendment of the National Public Service Law.

1. Mr. Hoover has considered the proposed law and your memorandum. However, he concurs with General Whitney that this Law should not be submitted at this session of the Diet.

2. It is the contention of General Whitney, in which Mr. Hoover concurs, that the paragraph in the National Public Service Law covering the subject is sufficient to handle the matter in question and neither can s@e where the proposed Law, attached, either adds anything to the subject matter or clarifies the issue any greater than is done by the National Public Service Law itself.

3. You may so advise the Japanese who submitted this proposed amendment to you.

W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM/hm
Attachment

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

23 November 1948

MEMORANDUM FOR : Dr. J. W. Williams
Chief, Parliamentary and Political Division

SUBJECT : Bill to Amend the Bill for Partial Amendment to the National Public Service Law.

1. This will confirm Mr. MacCoy's telephone conversation with you of 22 November on the subject bill.

2. Civil Service Division concurs in the proposed addition of Item 13 to Article 2; the proposed revision of paragraph 4 of Article 3; the proposed revision of paragraph 2 of Article 63; the proposed revision of Article 67; the proposed revision of Article 95 and the proposed revision of Paragraph 4 of Article 108.

3. This division recommends the proposed revisions in Item 2, Paragraph 1 of Article 8; Paragraphs 2, 3 and 4 of Article 9 by altering to read: "the Diet or the Cabinet" rather than the suggested revision of "either House or the Cabinet."

BLAINE HOOVER
Chief
Civil Service Division

WPM/hm

NPS law

House of Representatives

Nov. 20, 1948

Bill to amend the Bill for
Partial Amendment to the National
Public Service Law

The bill for Partial Amendment to the National Public Service Law shall be amended as follows:

The following one item shall be inserted next to Item 12, paragraph 3, Article 2 of the Bill:

"Item 13 The Chief Librarian of the National Diet Library, the Secretary Generals of each House, and the Directors of the Legislative Bureaus of each House."

In Paragraph 4, Article 3 of the Bill.

"The Administrative sphere" shall read "the sphere".

Item 2, Paragraph 1, Article 8 of the Law shall read as "2. When his removal from office is affirmed on public impeachment proceedings based on charges filed by either House or the Cabinet."

In Paragraphs 2 and 3, Article 9 of the Law, "the Prime Minister" shall read as "either House or the Cabinet" and "the Prime Minister" in the Paragraph 4 of the same Article shall read as "the House or Cabinet which caused the impeachment".

In Paragraph 2, Article 63 of the Law "the Prime Minister" shall read as "the Diet and the Cabinet".

In Article 67 of the Law "the Prime Minister" shall read as "the Diet and the Cabinet".

In Article 95, "the Cabinet" shall read as "the Diet and Cabinet".

In Paragraph 4, Article 108 of the Law "the Prime Minister" shall read as "the Diet and the Cabinet".

Laws, misc

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

15 November 1948

MEMORANDUM FOR : Dr. J. W. Williams
Chief, Parliamentary and Political Division

SUBJECT : Bill of the People's Finance Corporation Law.

1. The Civil Service Division recommends disapproval of the proposed Bill of the People's Finance Corporation Law.

2. It is basically unsound to permit government pensions to be used as collateral for loans. Pensions are provided for government servants at the partial expense of the tax-payers in an attempt to secure dignified living conditions for an individual after his term of government employment, or as in Japan, during periods of unemployment. After establishing such a system, it is economically unsound and indefensible to permit the individual to mortgage his future security, meager though it may be, for a present day expenditure regardless of the emergency involved. Loans for present day emergencies are often necessary but these should always be provided for in a manner other than to jeopardize a pension system. By tradition and for the reasons given, pension systems are always protected against their inadvertant and unwise use as collateral for loans.

BLAINE HOOVER
Chief
Civil Service Division

WPM/hm

Attachment

Government Section
Civil Service Division

15 November 1948

File
WPM
11/15/48

MEMORANDUM FOR MR. W. PIERCE MacCOY

SUBJECT: Bill of the People's Finance Corporation Law

1. On November 12, 1948, a representative of the Finance Ministry, Mr. Isoda, delivered a revised copy of the bill of the People's Finance Corporation Law. He reported that due to opposition of Public Health and Welfare, the Finance Corporation would be restricted to the granting of loans on government employee pensions only. It has been the practice to grant such loans during the past ten years.

2. The first draft of the bill was reviewed in detail by the undersigned. Many corrections would be proposed if there is any likelihood of passage of such a bill. In lieu of making such detailed recommendations, it is proposed that Civil Service Division object to the creation of People's Finance Corporation and go on record as opposing a grant of any loans using as security the pension rights of former national government employees.

3. Mr. Isoda indicated that the objective of the law is to enable retired persons to secure loans in emergencies at reasonable rates in order to avoid the present blackmarket lending at exorbitant figures. He indicated that the loans are typically repaid by withholding the full amounts of quarterly pension payments until the complete obligation of the employee has been lifted. He agreed that in the final analysis the individual's financial emergency would merely be postponed; and further explained that despite this fact the passage of this bill has become a political issue and urged that we approve the creation of this corporation, if only for a few months, in order to satisfy the political objectives involved.

GWP:mta

GORDON W. PETERSON

10/22/48.

MWR-

This is a shabby piece of business. I recommend that it be sent to Shula with the suggestion that a redraft be required to conform to the pattern developed for Ministry organization bills - clearly prescribing responsibilities, functions, organization.

1. Lacking specific exception, it appears to me that these people will come under N.P.S. Law.

? Reorganization, I can't decision any, but from Lee I'd say the "People's Demand Council" is an unnecessary bureaucratic device to dissipate responsibility and delay action as usual.

2 If this thing is a corporation then it should be such with the Govt. running the show subject to the policies of the Board.

3 Terms are too short issued totally.

(B)

A

Operational Power

References

Articles 11
15
17 - (2)
36
37
38
39

Cabinet

Finance Minister

cabinet order

ministerial order

cabinet order

ministerial order

Peoples Finance Council

1. Initiates plans for methods of doing business.
2. Recommends on anything
3. Approves or disapproves outside work by Gov. or other Corporation personnel

Governor

Vice Governor

Dir | Dir | Dir | Dir | Dir | Dir | Dir | Dir | Dir

Staff

Auditor

Auditor

?

PEOPLES FINANCE CORPORATION

B

Appointment Power

References:
articles 12
14
17 - (4, 5, 6)
(16) inference only

Cabinet

Finance Minister

Currency Issue Investigation Council

People's Finance Council

Governor

Auditor

Auditor

Vice governor.

Dir Dir Dir Dir Dir Dir Dir Dir Dir

I II III IV

Staff

I. probable

II, III, IV Improbable. (art 14)

FINANCE CORP

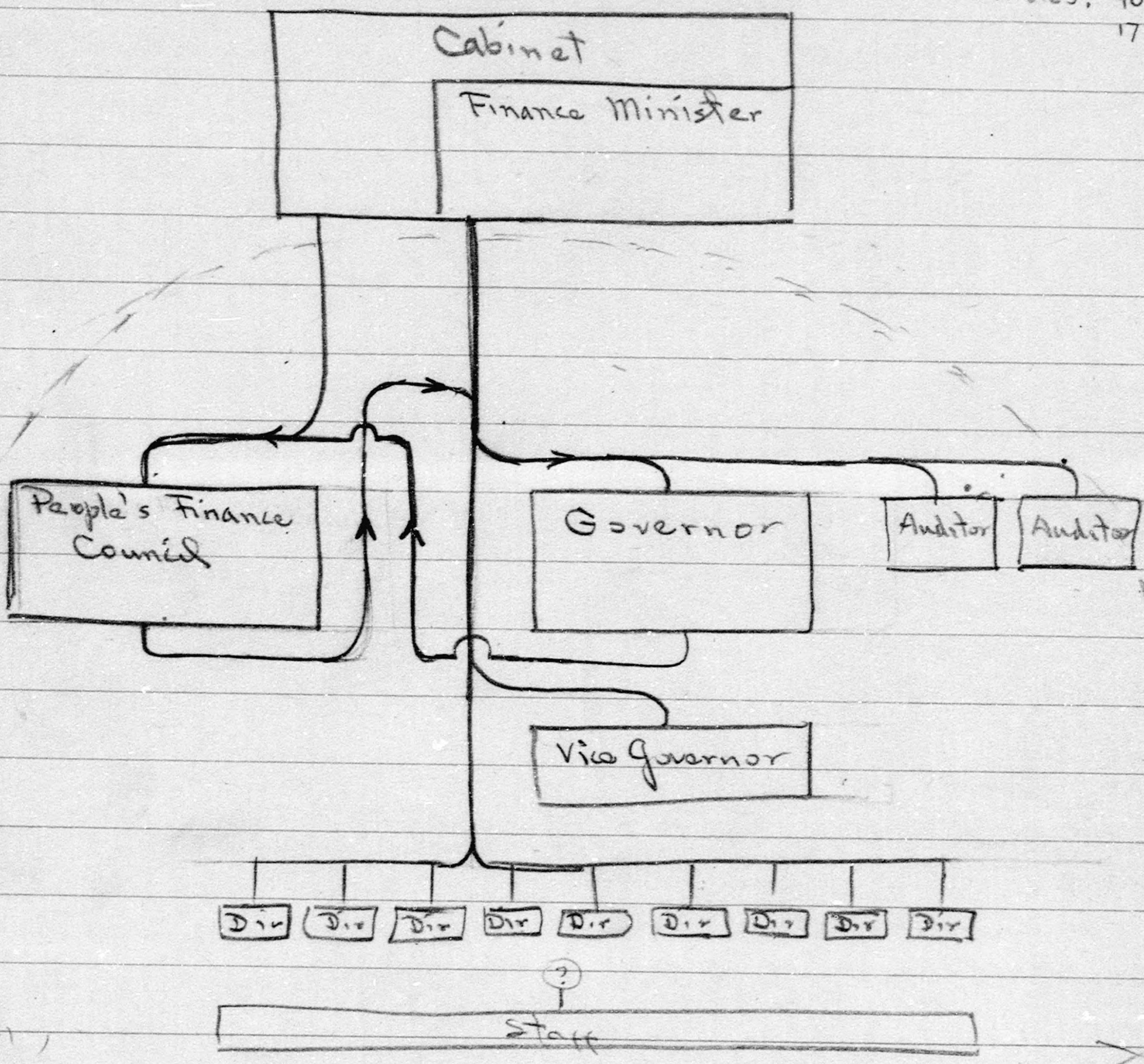
C

Removal Power

(See also page D)

References

Articles: 40
17 (8)



1. Members of People's Finance Council removed by Cabinet & Governor

2. Governor, Vice Governor, Directors and Auditors removed by Finance Minister and People's Finance Council - (see next page)

FINANCE CORPOR

D

Appointment Power vs. Removal Power.

Removal power same as appt'mt power except as follows:

1. Cabinet does not participate in removal of anyone but the People's Finance council.

2. Members of the People's Finance Council are removable upon recommendation of Governor (who is appointed & removable upon recommendation of the Council).

3. The Currency-Issue Investigation Council has no voice in removal of member of People's Finance Committee.

CIVIL SERVICE DIVISION
Government Section

September 2, 1948

MEMORANDUM FOR: W. Pierce MacCoy, Deputy Chief, Civil Service Division

SUBJECT : The Bill of the Peoples' Finance Corporation Law

WPM 9/8/48

1. It is recommended that in Article 5, Item 5, the phrase be changed to "Titles and duties of the highest officers" in order to avoid excessive conflicts between the Articles of Incorporation and the Classification Plan of the Authority.

2. It is recommended that the word "temporarily" be inserted in Article 11, paragraph 2, line 2, before the word "performed".

3. It is recommended that the word "temporarily" be inserted in Article 11, paragraph 3, line 2, before the word "performed".

4. The law contains references to powers of appointment (Articles 12, 14 and 17), powers of removal (Articles 40 and 17) and power of approving employment of corporation personnel in other occupations. (Art 15) In no case is the applicability of the National Public Service Law mentioned. It is recommended that an article or paragraph be added to assure such applicability.

5. The designation of appointing powers may conflict with the intent of Article 55 of the National Public Service Law as amended. To assist in the review of this question, several rough charts are submitted herewith to illustrate the proposed location of appointing power.

6. In passing, attention is called to Article 44 in which the appointment of an Establishment Committee is prescribed. Question is raised here whether there is any agreed method of designation when a temporary committee of officials would be appointed without reference to employment as prescribed by the National Public Service Law.

GWP

GORDON W. PETERSON
Examination Specialist

GWP:vr
Att:

CIVIL SERVICE DIVISION
Government Section

File
WBr
11/10/48

November 8, 1948

MEMORANDUM FOR: Mr. W. Pierce MacCoy, Acting Chief, Civil Service Division

SUBJECT : Amendments to National Government Organization Law

1. Mr. Hauge held a meeting this date in his office regarding the above subject. Present, in addition to himself, were Captain Diamantes and the writer from Government Section, and Mr. Cnogi, Deputy Director, Administration Management Agency, a Mr. Sato and their interpreter.

2. The purpose of the meeting was to clear proposed amendments to the law. Article No. 17 is to be amended to delete the phrase "which position shall be in the special government service" as it applies to the positions of vice-ministers. Additionally, the effective date of the law is being extended to April 1, 1949 in lieu of January 1, 1949, inasmuch as it is impossible to secure enactment of additional legislation needed to implement this new law.

3. Mr. Hauge pointed out that it is quite likely that the question of placing the vice-ministers in the regular service will come out before the Diet in connection with both the NPS law and the Organization law. He suggested that if this occurs, the government might well point out that an alternative course would be to create positions of Director-General or some such title in each ministry and place them in the regular service in lieu of the vice-ministers, who then could be placed in the special service. It was pointed out that this proposal had been made previously but was rejected by the government, and as a consequence, it was then proposed that the vice-ministers be placed in the regular service in order to provide for continuous stability in the direction of the affairs of the various ministries regardless of the changes in the Cabinet. The Japanese stated that if the occasion arose, they would present this point of view and would indicate that the alternative proposal was equally acceptable to the Government Section.

4. It is my understanding that the Civil Service Division would as soon see permanent executive officers in the various ministeries as to see vice-ministers placed in the regular service. I advised Mr. Hauge that the Civil Service Division concurs in the statement which he made to the Japanese.

5. The proposed amendments are attached.

JAMES R. HELL
Chief, Organization Branch

JRB:vr
Att:

Draft of the Law concerning the Partial Amendment of the National Government Organization Law

The National Government Organization Law (Law No. 120 of 1948) shall be partly amended as follows:

Article 17. Each Ministry shall have one Vice-Minister.

2. The Vice-Minister shall assist the Minister and regulate the ministerial affairs.

In Articles 23, 25, and 27, "January 1" shall be amended as "April 1".

Supplementary Provision

The present law shall come into force as from the day of its promulgation.

Reason

It is necessary to postpone the date on which the National Government Organization Law comes into force and to convert the positions of the Vice-Ministers of the various Ministries into regular Service fel-

Supplementary Provision

The present law shall come into force as from the day of its promulgation.

Reason

It is necessary to postpone the date on which the National Government Organization Law comes into force and to convert the positions of the Vice-Ministers of the various Ministries into regular Service following the amendment of the National Public Service Law. This is the reason for submitting this bill.

76-7682

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Government Section

20 October 1948

MEMORANDUM FOR : Dr. J. W. Williams
Chief, Parliamentary and Political Division

SUBJECT : Law for the Establishment of the National Language Research Institute.

1. In view of Article 12, the Civil Service Division technically concurs in the proposed law.

2. However, from an administration standpoint, this division feels that it is poor organization to establish this proposed research institute under the Ministry of Education. We suggest, rather, that it might be wise to assign this under the supervision of the Diet Central Library on the basis that the Diet, being the elected representatives of the people might have a much greater interest in improving language simplification and general clarification of both the words and characters identified for specific subjects and thereby give official blessing than would the Ministry of Education.

3. In the past this Ministry has given no indication of a progressive outlook on it's handling of the subject of a national language and by its very structure indicates that it would maintain this ultra-conservative viewpoint. It is felt that this matter should be presented in this light to the Japanese and that further serious consideration should be given to this point.

W. PIERCE MacCOY
Acting Chief
Civil Service Division

WPM/hm
Attachment

To be held until Govt Sec & Legal Sec. approve - ↑ in current session. Did per whitney 8 Nov '46

Draft Law concerning the Continuance of Trade Union which is a Juridical Person consequent upon the Partial Amendment of the National Public Service Law (Law No. 120 of 1947), etc.

File

UNR

Oct. 1948

Article 1. Any trade union which is a juridical person actually existing on the effective date of the Law for the Partial Amendment of the National Public Service Law (Law No. of 1948, to be hereinafter referred to as the Law) and having as its main constituents, personnel of the regular government service as defined in Article 2 of the National Public Service Law shall, if registered with the National Personnel Authority within 60 days from the effective date of the Law in accordance with the provision of Paragraph 1 of Article 4 of the Supplementary provisions of the Law, be deemed, as provided in Paragraph 7 of Article 98 of the National Public Service Law, as having been established on that date as a juridical person referred to in the same paragraph, and shall continue its existence as a juridical person as heretofore. However, this shall not apply to those trade unions which are in liquidation on the effective date of the Law.

Article 2. The trade unions referred to in the preceding Article (except those in liquidation on the effective date of the Law) shall, unless registered with the Authority within the period referred to in the same Article, be deemed as having been dissolved on the expiration of that period.

Article 3. The Trade Union Law (Law No. 51 of 1945) and orders issued thereunder shall, notwithstanding the provisions of Article 16 of the Supplementary Provisions of the National Public Service Law, continue to apply to the trade unions referred to in the preceding Article to the extent necessary

for the enforcement of this Law and to those referred to in Article 1 which are in liquidation on the effective date of the Law to the extent necessary for their liquidation.

Article 4. The treatment of the previous registration concerning a juridical person which continues its existence under the provision of Article 1 shall be provided by an ordinance of the Attorney General's Office.

Article 5. The provisions of the preceding four Articles shall apply correspondingly in respect to the continuance, etc. of any trade union which is a juridical person actually existing on the effective date of the Law concerning Temporary Measures to be taken in respect to the Local Public Service and having as its main constituents, personnel of the local public service. However, "the Law" shall be taken to read "the Law concerning Temporary Measures to be taken in respect to the Local Public Service"; "Paragraph 1 of Article 4 of the Supplementary Provisions of the Law" shall be taken to read "Paragraph 1 of Article 3 of the Supplementary Provisions of the Law concerning Temporary Measures to be taken in respect of the Local Public Service"; "the National Personnel Authority" shall be taken to read "the Prime Minister" in case of those trade unions organized or joined by personnel of the local public service of the metropolis, district, or urban or rural prefecture and "the governor of the metropolis, district, or urban or rural prefecture" in case of all other trade unions; "Paragraph 7 of Article 98 of the National Public Service Law" shall be taken to read "Paragraph 6 of Article 6 of the Law concerning Temporary Measures to be taken in respect of the Local Public Service"; and "Article 16 of the Supplementary Provisions of the National Public Service Law" shall be taken to read "Article 5 of the Supplementary Provisions of the Law concerning Temporary Measures to be

taken in respect to the Local Public Service", respectively.

Supplementary Provision

In this Law, the provisions of Article 1 through Article 4 inclusive shall come into force as from the effective date of the law and the provision of Article 5 as from the effective date of the Law concerning Temporary Measures to be taken in respect to the Local Public Service.

Sato (佐藤) 1/3 Oct 48 File

Bill for Partial Amendment of the Law concerning the Appointment, Removal, etc. of Government Officials before the Application of the Provisions of the National Public Service Law (Law 121 of 1947)

A part of the Law concerning the Appointment, Removal, etc of Government Officials before the Application of the Provisions of the National Public Service Law shall be amended as follows:-

In Paragraph 1, after the "public officer concerned," a comma (,) shall be deleted and "(with respect to the positions in the special government service, until a separate law is enacted and enforced)," shall be added; after "the National Public Service Law." at the end of the paragraph a period (.) shall be deleted and "(with respect to the positions in the special government service, by Cabinet Order)." shall be added; and "regulations of the National Personnel Commission" shall be revised to read "rules of the National Personnel Commission" (in English version only).

In Paragraph 2, "The regulations under the provisions of the proviso" shall be revised to read "The provision under the proviso" (in English version only).

Supplementary Provision

The present Law shall come into force as from the day of its promulgation.

Recommended by Sato as best procedure
Approved GHQ 20 Oct 1948.

Law concerning the Appointment, Removal, etc. of Government Officials before the Application of the Provisions of the National Public Service Law

With regard to the matters concerning the appointment, removal, promotion of class, suspension of office, reinstatement, disciplinary punishment and status of the government officials and other government personnel, those concerning their salaries, remunerations and other allowances, and those concerning their service, they shall follow the examples as provided for by the old law, before the application of the provisions of the National Public Service Law shall be made to the public office concerned (with respect to the positions in the special government service, until a separate law is enacted and enforced), if not otherwise provided for by law or by rules of the National Personnel Commission under Article 16 of the National Public Service Law (with respect to the positions in the special government service, by Cabinet Order).

The provision under the proviso of the preceding paragraph shall conform to the spirit of the National Public Service Law.

SCAP (GS) 12 Oct 46

September 25, 1948.

Law on Temporary Measures concerning Personnel in the Special Government Service.

With respect to the matters concerning the appointments, separations, class promotions, temporary retirements, reinstatements, disciplinary punishments, and status of personnel in the special government service as defined in Article 2 of the National Public Service Law (Law No. 120 of 1947), those concerning their salaries, allowances, and other compensation, and those concerning the performance on duty, the same shall follow the instances heretofore in force, unless otherwise provided by law or Cabinet Order issued under the advice of the National Personnel Authority.

Supplementary Provision:

The present Law shall come into force as from the day of its promulgation.

Withdrawn 13 Oct

Sato (Atty Gen) 12 Oct 48

September 25, 1948.

Law on Temporary Measures concerning Personnel

in the Special Government Service.

With respect to the matters concerning the appointments separations, class promotions, temporary retirements, reinstatements, disciplinary punishments, and status of personnel in the special government service as defined in Article 2 of the National Public Service Law (Law No. 120 of 1947), those concerning their salaries, allowances, and other compensation, and those concerning the performance on duty, the same shall follow the instances heretofore in force, unless otherwise provided by law or Cabinet Order issued under the advice of the National Personnel Authority.

Supplementary Provision:

The present Law shall come into force as from the day of its promulgation.

Withdrawn 13 Oct

Pamphlets
Leg-Admin
ATIS
ATIS
29 Dec 47

THE REFORM OF THE PENAL CODE

Press Conference of Civil Information and Education Section and Government Section. Statement made at 1100 hours on 5 December 1947.

The Japanese Penal Code, patterned on continental law, was certainly an amazingly modern and progressive instrument when enacted in 1890. One of its main merits was that it left much discretion to the courts and thus enabled them to do justice to the specific circumstances of the individual case. The great emphasis upon subjective guilt was another commendable feature of the Code. To be sure, with criminology concepts constantly changing, some provisions were criticized as no longer adequate to the needs of a modern society. However, on the whole, the unsatisfactory administration of criminal justice in Japan of the past was not to be blamed on the law, but on the methods employed in enforcing it.

On 14 October 1947, the Diet passed into law the Bill for the Partial Amendment to the Penal Code. This reform was necessary primarily to have the provisions of the Code comply with the new Constitution of Japan, but the occasion was used to bring about other revisions advocated by public opinion for a long time. While no such fundamental and sweeping changes are involved as in the case of the Civil Code and its Family Law, the Japanese Penal Law was bound to be essentially affected by the political and sociological revolution in which this nation finds itself at present.

In such a period the law makers cannot deliberate for years and years as in quiet and normal times. Perfectionists among the critics of the reform legislation must be reminded of the truth that sometimes not to act at all constitutes the greatest error. I am sure, however, that the revision of the Penal Code represents the best result that could be achieved in the circumstances. It certainly has eliminated from the law those elements which are irreconcilable with the ideas of a new era and has integrated a prominent part of these ideas. Let me point out the most important reforms.

The abolition of the whole Chapter called "Crimes Against the Imperial House" should be mentioned in the first place because of its eminent political significance. These provisions, Articles 73 through 76, known under the term "lese majesty" threatened with death any person who has committed a dangerous or injurious act against the person of the Emperor or any member of the

Imperial House. Even the attempt of such act was subject to death penalty if directed against the Emperor, his close relatives, and the heir apparent, while an attempted assault against other members of the Imperial House was punishable with penal servitude for life. Moreover heavy penalties up to five years were provided for in case of any disrespectful act against the Emperor and other members of the Imperial House. In doing away completely with this privileged protection before the law, the Diet has drawn the logical conclusion from the changed position of the Emperor and from the principle of equality of all citizens under the new Constitution. The Emperor has become the mere symbol of the state and of the unity of the people without governmental power, while the sovereignty is vested in the people. The Emperor, who himself discarded all mythical tales which in the past surrounded the origin and person of the ruler, is now one of the people. Therefore the legal protection granted him in his symbolic and ceremonial role ought to be no more and no less than the protection accorded the citizen. As the Supreme Commander expressed it on 9 October 1946, in commending the action of public procurators who had withdrawn the prosecution of news editors for lese majesty, "to hold the contrary would constitute a direct negation of one of the basic principles of democratic government. It would but serve to perpetuate the pattern of feudalism and autocracy and do violence to those basic freedoms acknowledged by Japan and to which the Emperor himself has given most hearty accord."

In this connection the fact may be recalled that the President of the United States, although vested with ample governmental powers, does not enjoy any specific protection from criminal offenses under the law and that in two instances of American history the assassin of a President was tried and sentenced for plain murder in accordance with the general law.

The abolition of "lese majesty" will certainly be hailed throughout the world as a cornerstone on Japan's way to a free society.

Another revision of the Criminal Code has its roots in a similar ideology as the abolition of lese majesty. Articles 90 and 91 provided for special protection of heads of state and envoys of a foreign power staying in Japan with regard to acts of violence or threats and insults. In deleting these special crimes, the Diet emphasized that the principle of equality before the law shall [illegible]clude not only privileges of Ja[illegible]nese citizens but

also of foreign nationals, however high their positions may be.

The Minister of Justice expressed the views of the Government on the international aspects of this revision in the House of Councillors. He referred to the inviolability under the international law of the head or envoy of a foreign country and raised the question whether the deletion of these special protective clauses might infringe upon the provision of the Constitution which reads: "Established law of nations shall be faithfully observed." In pointing out that the statutory punishment for assault, threat, and defamation against any person has been increased, he arrived at the conclusion that the general provisions of the Code offer adequate protection of these representatives of a foreign power in compliance with the principles of the international law. It might be added that the principle of inviolability concerns the exemption of these representatives from the jurisdiction of the state where they stay or where they are sent to and does not necessarily include their privileged protection against criminal offenses, provided that the general law of that state protects them sufficiently.

The same principle of equality required a revision of the law in the very different field of sexual morality. Article 183, which in case of adultery provided for punishment of a wife and the other party to the adultery, but did not provide for punishment of the husband. This provision represented discrimination against married women and was, therefore, contrary to the new Constitution.

Japan's legislators were, therefore, faced with the alternative; either to make adultery equally punishable for both sexes or to abolish it as a crime completely. As you know, this question was widely discussed among the people, in the press, and in public hearings of the Diet, quite a new experience in this country. The opinions were divided, as could be expected, in such a delicate matter of morals, when reasonable arguments can be advanced for either solution. The Diet finally decided in favor of complete abolition so that in the future criminal courts will no longer be concerned with adultery. It will, of course, be a ground for divorce and that, according to the new Civil Code, regardless of whether it has been committed by husband or wife.

The renunciation of war, as proclaimed in the Constitution of Japan, made necessary essential changes in the provisions concerning treason in time of war. Hitherto acts of destroying, damaging or delivering to the enemy war potential have been punishable with death, penal servitude for life or for a long period. The same was true of spying for the enemy and betraying military secrets to him. All these provisions have been deleted, and only conspiracy with a foreign power which has forced war upon Japan by aggression remains a grave crime. As the revised Articles 81 and 82 read now, every person who conspired with any foreign state and thereby caused this state to use force of arms against the state of Japan shall be condemned to death, and every person who, when a foreign state used force of arms against the state of Japan, has entered into the military servic3 of this state aiding with it or has benefited it militarily shall be condemned to death or punished with penal servitude for life or not less than two years. These provisions are not in conflict with the constitutional renunciation of war, but merely the exercise of the right of self-preservation against treasonable acts wholly consistent with the repudiation of the right of the belligerency of the state.

The idea of international cooperation and respect of other nations has motivated the abolition of the strange provision, according to which the Criminal Code applied to every alien who has committed certain specified crimes against a Japanese citizen. It is obvious that such extension of domestic law to acts committed in a foreign country was tied up with the mythical concept that Japanese, by virtue of their race and nationality, were in a superior category and that major crimes against them must be punished according to more stringent Japanese standards regardless of where in the world and by whom they had been committed. The deletion of Article 3, paragraph 2, will have the effect that from now on aliens who perpetrate crimes outside Japan will be tried only by the courts and under the law of the country where they have been committed.

Related to this revision is the amendment of Article 5 which provides that even though a final judgment has been rendered in a foreign country, the same act may be punished in Japan, and that if the sentence has been executed either in part or entirely abroad, execution of the punishment may be mitigated. This provision made it possible that an offender who had served his penalty in the foreign country could be tried and punished again

after his arrival in Japan. Since such device implied a certain disregard for the administration of justice in other states the Article has been amended by making mitigation or remittance of the punishment mandatory for the Japanese courts instead of leavint them to their discretion in case the verdict of the foreign court has been in part or entirely executed.

The constitutional safeguards concerning freedom of speech and expression necessitated an important revision of the Code, with respect to libel or defamation. Article 230 threatened every person who has injured the reputation of another person by publicly alleging facts with penal servitude or imprisonment not exceeding three years or with fine of not more than 500 yen, regardless of whether such facts were true or false. This complete exclusion of truth as defense definitely infringed upon the above fundamental right. It maximized the honor of a person even in cases where he did not deserve such protection and prevented good citizens from using plain language when it was necessary to expose crime or corruption in the public interest. On the other hand, false assertions about one's fellowmen may be extremely reprehensible and should be punished seriously. Thus, a solution had to be sought between the two conflicting objectives, namely the promotion of free speech and expression on the one hand, and the outlawing of calumny and blackmail in public and private life, on the other hand. To achieve this, the penalty for libel, according to Article 230, has been increased to penal servitude or imprisonment up to three years or fine not more than 1,000 yen. However, a far-reaching admission of truth as a defense has been introduced. According to a newly added Article 230 a, the allegation of facts injurious to the reputation of another person is not punishable, if it has been made in the public interest and primarily for the public benefit and if the alleged facts are established as true. This general exception is based on the principle that the public interest and benefit shall prevail over the consideration of private honor and reputation. Furthermore two types of true allegations are explicitly listed as illustrations of this principle. First, facts concerning a criminal act committed by a person who has not yet been prosecuted in relation to such act shall be deemed as having been alleged in the public interest. In other words, since the punishment of crimes is of vital concern to the people as a whole, nobody should be punished for helping the law in detecting offenders,

provided that his allegations are true. Second, the amendment provides that a true allegation of facts is not punishable if it refers to a public official or a candidate for elective public office. Here the new legislation establishes a legal assumption that the allegation has been made in the public interest and for the public benefit. The underlying idea is obvious. Any public official and anybody who wants to be elected to public office must expect to be exposed to public criticism not only with regard to his official career, but also to his private life, because the people desire their representatives to be persons of professional ability as well as personal integrity. Public opinion should therefore be encouraged to express itself freely.

I will discontinue the analysis of the revision for today and take it up again in two or three weeks. I have discussed the major parts of this reform, and you will agree with me that what has been achieved is a most gratifying progress in the modernization of the Criminal Code, which by its very nature affects more vitally than any other law the rights and the lives of the people. Inasmuch as the draft, deliberation, and enactment of this important piece of legislation were made under tremendous pressure of time, the Cabinet as well as the Diet deserves high credit for the final result.

GS, Approved by Mancum
Dr 15 Sept '47

Bill concerning the Appointment and Dismissal, etc. of Government Officials pending the Application of the Provisions of the National Public Service Law

In regard to the matters concerning the appointment and dismissal of Government Officials, their grading, temporary retirement, reinstatement, disciplinary punishment and others relating to their status, the matters concerning their basic pay, allowences, and others relating to their compensation, and those concerning their performance on duty, the provisions heretofore in force shall be followed until such a time as the provisions of the National Public Service Law become applicable to their respective positions. In the event, however, of provisions being otherwise made by law or rules of the National Personnel Authority under Article 16 of the National Publice Service Law, such provisions shall be followed.

The provision specified in the proviso of the preceding paragraph shall be consistent with the spirit of the National Public Service Law.

Supplementary Provisions

The present law shall come into forse from January 1, 1948.

"Rules of the National Personnel Authority under Article 16 of the National Publice Service Law" specified in paragraph 1 shall be taken to read "cabinet order" up to June 30, 1948, and such cabinet orders shall be enacted with the advice of the Temporary National Personnel Commission.

law #121
eff. 10/21/47

copy secured 11/17/47
for CSD
WPR

"Law Concerning the Appointment
and Dismissal of Govt. Employees
Until the Nat. Personnel Service Law
Goes into Effect"

Enacted 10/21/47 #121

Call Mr Annis X57-8894
Wages & Working Cond. Br.
Labor Div. - ESS

C/S - ~~F. C.~~ Novotny, Meiji 2635, Ex. 582
1 Sept. 1948 - LS to GS "Amendment of Laws"

9/7/48

Mr Hoover

The check sheets refer to where evidently prepared by P. & P. Div. and not C.S.D. Our files show that the one comments were made to Justin Williams in memo form.

Also item #3 is within the responsible field of P. & P. Div. and not this Div.

Might I suggest that a note be placed on the Buck slip to the effect that "Content noted and ref. to P. & P. Div. for reply since the point raised is within their field and not that of the C.S.D."

Approve?

WB

Buck Slip note from C.S.D. - "Referred to P & P Div. for reply in conformity to memoranda from C.S.D. now in possession of P & P Div., B.H. 9-8-48."

R

NPA Legislation

file

CIVIL SERVICE DIVISION
GOVERNMENT SECTION

30 August 1948

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT: Ministry establishment laws

1. As you know Captain Guida and I have requested that the new bills prescribing the Ministry establishments provide for a Bureau of Personnel. We have also requested that these bills make only general references to the manner in which personnel staffing and personnel management will be conducted in accordance with the appropriate laws.

2. On Friday, August 27, Mr. Maeda "ACTING" Assistant Chief of the Administrative Management Agency came to this office to further discuss these two matters. He informed Captain Guida and me that these matters had been discussed by the Vice Ministers as to the necessity for Bureaus of Personnel and as to the make up of these Ministry establishment bills.

3. We re-emphasized the necessity of the establishment bills being set up as requested. I also conveyed the essence of these conversations to the NPC and to Mr. Sato and requested that they express the above point of view if consulted regarding these bills.

JAMES R. BELL
Chief, Organization Branch

JRB:rr

FILE
REVISE NAT PUB SER LAW
7-29-48

CIVIL SERVICE DIVISION
Government Section

Mrs Hoover
NPS Law, as amended
in O.K. as this ES Law
noted GHM

28 July 1948

MEMORANDUM FOR: Mr. W. Pierce MacCoy

SUBJECT : Translation of Employment Security Law (Law #141-1947)

WRM 7/29/48

1. Dr. Asai, Chairman of the Temporary National Personnel Commission, has submitted his own translation of Articles 1, 5, and 9 of the Employment Security Law with the comment that "there are some rather wide differences between it and the English text in the same law . . .."

2. Article 1, as translated by Dr. Asai, is quite different from the language of the official translation although the meaning is essentially the same. This Article is not involved in amendments to the National Public Service Law.

3. Article 5, as translated by Dr. Asai, is only slightly different in wording from the official translation. Again the meaning is essentially the same and the article is not involved in the amendments of the National Public Service Law.

4. Paragraph 1 of Article 9, as translated by Dr. Asai, has essentially the same meaning as the official translation, although the wording is slightly different. This paragraph is one of those amended by Article 18, Supplementary Provisions of the National Public Service Law. The amendments as currently recommended are still suitable.

By the latest amendment to the NPS Law. WRM

5. Paragraph 2 of Article 9, as translated by Dr. Asai, contains several significant differences from the official translation. It is proposed, however, to delete the entire article. This is still appropriate. The two translations are as follows:

> The official translation: "All personnel responsible for the administration of this Law shall be in a single system for the purposes of calculating seniority and for promotion and reassignment of personnel."
>
> Dr. Asai's translation: "With respect to government officials and other personnel referred to in the preceding paragraph, the computation of their period of service, their assignments, compensation and other affairs of personnel shall be effected under a certain specific standard applicable through all employment security organs, and such personnel shall not be transferred to agencies other than employment security organs against their will."

6. Paragraph 3 of Article 9 contains the same meaning by each translation, although from Dr. Asai's version there is only one sentence, whereas the official translation contains three sentences, which are to become one sentence after amendment of the National Public Service Law. In-as-much as the proposed amendment presents a clear intent to make all three sentences, or phrases as the case may be, subject to the condition that they shall be in force only "prior to the application of the National Public Service Law." the amendment as already proposed is still appropriate.

7. It should be noted that Article 18, Supplementary Provisions of the National Public Service Law as to be amended, eliminates the power of the governor to make any appointments of third class officials and other personnel in the prefectural and local offices. On the other hand Article 7 of the Employment Security Law provides that:

> "The prefectural governor shall under the supervision of the Labor Minister acting through the Director of Employment Security Bureau, manage such affairs concerning the enforcement of this Law as control of the business of the Public Employment Security Office and the supervision of the chief and personnel thereof."

Mr. Ogita, Chief Secretary of the local finance committee, has indicated that all officials of the employment security office system, whether in the national, branch, prefecture, or local offices, are paid by the national government. It would seem therefor that the Governor has been acting as a national official while supervising national employees in the prefecture and local offices. It is possible, however, that the employees are regarded as prefecture and local employees but that the prefecture simply receives reimbursement from the national government for their services. If this matter has not already been fully explored it is recommended that the SCAP Agency involved in the supervision of the Employment Security Law be called upon for information and discussion. This is particularly true in view of the fact that the proposed amendment eliminates the designation of anyone as appointing authority over personnel of the employment security office system. Unless other legislation covers the point, someone should now be designated as appointing authority or ti will be necessary to amend the law again at a later date.

Art. #55, as amended, in NPS law is WPS

NPS law covers (5)

GORDON W. PETERSON

GWP:mvb

July 24, 1948

To:

Mr. Blaine Hoover,

Chief of Civil Service Division,

Government Section, GHQ. SCAP.

Herewith attached is a faithful English translation of certain Articles of the Employment Security Law which are connected with the proposed revision of the National Public Service Law. Perusal of this translation will go to show that there are some rather wide differences between it and the English text of he same law to which you have made referrence. Accordingly, I would like to bring this to your kind attention.

Sincerely yours,

Asai Kiyoshi

Chairman of the Temporary

National Personnel Commission

Mr. MacCoy: This memorandum is self explanatory. Please give this communication an appropriate reply.

B.V.
7/24/48

Employment Security Law

(Object of Law)

Article 1. The object of this Law is to ensure that public employment security offices and other organs for the security of employment serving the public interest provide, with the cooperation of pertinent administrative agencies or other pertinent bodies, an adequate supply of labor necessary for industry and other productive activities by giving opportunities to all persons to find jobs suited to their abilities, thereby ensuring the security of employment as well as contributing to the development of economy.

(Definition)

Article 5. The public employment exchange referred to in this Law shall mean the medium through which employment relations may be established between those calling for recruits and job seekers when so requested by both parties.

The vocational guidance referred to in this Law shall mean the giving of necessary training practices, directions, advice or other guidance to those who are in need of such special assistance to facilitate their choice of occupation and to increase their adaptability for the jobs they have chosen.

The vocational training referred to in this Law shall mean the furnishing of instructions in the necessary knowledge or skills to those about to enter into jobs which call for such specific knowledge or skills so as to facilitate their employment.

The labor recruitment referred to in this Law shall mean the canvassing or recruiting of workers by those intent upon employing them either directly or through the agency of others commissioned for the purpose.

The labor supply project referred to in this Law shall mean the business or activity of making available the use of workers to others according to a labor supply contract.

(Personnel)

Article 9. In order to make effctive the business conducted by public employment security offices and other organs for the security of employment, all government officials and other personnel responsible for the administration of this Law in national offices, in the metropolis, district, urban or rural prefecture or at public employment security offices, shall be those possessing such special qualifications or experience as are determined by the Labor Minister.

With respect to government officials and other personnel referred to in the preceding paragraph, the computation of their period of service, their assignments, compensation and other affairs of personnel shall be effected under a certain specific standard applicable through all employment security organs, and such personnel shall not be transferred to agencies other than employment security organs against their will.

The National officials and other personnel referred to in Paragraph 1 shall be appointed by the Labor Minister, second class officials in the metropolis, district, urban or rural prefecture and public employment security offices referred to in the same paragraph shall be appointed by the Labor Minister upon recommendation of the governor of the metropolis, district, urban or rural prefecture, while third class officials and other personnel in the metropolis, disrict, urban or rural prefecture and public employment security offices referred to in the

same paragraph shall be appointed by the governor of the metropolis, district, urban or rural prefecture.

(Prohibition of Labor Supply Project)

Article 44. No person, organization or agency, governmental or private, shall be allowed to conduct a labor supply project, except as provided in Article 45.

Employment Security Law

(Object of Law)

Article 1. The object of this Law is to ensure that public employment security offices and other organs for the security of employment serving the public interest provide, with the cooperation of pertinent administrative agencies or other pertinent bodies, an adequate supply of labor necessary for industry and other productive activities by giving opportunities to all persons to find jobs suited to their abilities, thereby ensuring the security of employment as well as contributing to the development of economy.

(Definition)

Article 5. The public employment exchange referred to in this Law shall mean the medium through which employment relations may be established between those calling for recruits and job seekers when so requested by both parties.

The vocational guidance referred to in this Law shall mean the giving of necessary training practices, directions, advice or other guidance to those who are in need of such special assistance to facilitate their choice of occupation and to increase their adaptability for the jobs they have chosen.

The vocational training referred to in this Law shall mean the furnishing of instructions in the necessary knowledge or skills to those about to enter into jobs which call for such specific knowledge or skills so as to facilitate their employment.

The labor recruitment referred to in this Law shall mean the canvassing or recruiting of workers by those intent upon employing them either directly or through the agency of others commissioned for the purpose.

The labor supply project referred to in this Law shall mean the business or activity of making available the use of workers to others according to a labor supply contract.

(Personnel)

Article 9. In order to make effective the business conducted by public employment security offices and other organs for the security of employment, all government officials and other personnel responsible for the administration of this Law in national offices, in the metropolis, district, urban or rural prefecture or at public employment security offices, shall be those possessing such special qualifications or experience as are determined by the Labor Minister.

With respect to government officials and other personnel referred to in the preceding paragraph, the computation of their period of service, their assignments, compensation and other affairs of personnel shall be effected under a certain specific standard applicable through all employment security organs, and such personnel shall not be transferred to agencies other than employment security organs against their will.

The National officials and other personnel referred to in Paragraph 1 shall be appointed by the Labor Minister, second class officials in the metropolis, district, urban or rural prefecture and public employment security offices referred to in the same paragraph shall be appointed by the Labor Minister upon recommendation of the governor of the metropolis, district, urban or rural prefecture, while third class officials and other personnel in the metropolis, district, urban or rural prefecture and public employment security offices referred to in the

same paragraph shall be appointed by the governor of the metropolis, district, urban or rural prefecture.

(Prohibition of Labor Supply Project)

Article 44. No person, organization or agency, governmental or private, shall be allowed to conduct a labor supply project, except as provided in Article 45.