

Name of Agency

Local Autonomy Agency

1 Position to be assumed

- a Title of Position : Chief of Local Civil Service Sec.,  
and concurrently Chief of Liaison  
Sec., Liaison and Administration  
Div.
- b Class : 2nd Class
- c Grade : 12 Grade
- d Duties and Responsibilities :

1. Matters relating to general control over  
the affairs concerning the planning and drawing  
up of the system of local public service and  
the technical advice concerning the allowances  
and others of the personnel of local public bodies  
as the chief of the Local Public Service Section.
2. Matters relating to general control over  
the affairs concerning the liaison between national  
government and local public bodies and the liaison  
and cooperation among local public bodies as the  
chief of the Liaison Section.



2 Person to be appointed

a Name : FUJII Sadao

b Age : 36

c Present Position : Assistant-Chief of Local Autonomy Sec. of  
Secretariat of Prime Minister's Office  
Secretary of Prime Minister's Office  
2nd Class

d Personal History :

Date of Assuming and Leaving the Position	Title of Position	Office	Class
From Feb. 1939 To May 1941	Local Secretary Chief of Educational Affairs Sec. of Educational Div. Chief of Budget Sec. and Personnel Sec. of General Affairs Div.	Niigata Prefectu- ral Gov't	Higher Civil Service 6th Grade
From May 1941 To June 1943	Local Secretary Chief of Agricultural and Forestry Sec., Chief of Agricultural Affairs Sec. of Economical Div. Chief of Personnel Sec. of General Affairs Div. Chief of General Affairs Sec. of Economical Div.	Tokyo Prefectu- ral Gov't	5th Grade
From July 1943 To Jan. 1945	Secretary of Tokyo Metropolis Chief of 1st Personnel Unit, Personnel Sec., Governor's Secretariat	Tokyo Metropolis	ditto
From Jan 1945 To Aug. 1945	Secretary of Home Ministry Attached Police and Peace Bureau	Home Ministry	4th Grade
From Aug. 1945 To Oct. 1945	Attached to archive and Document Sec. Secretariat	ditto	ditto
From Oct. 1945 To Jan. 1946	Private Secretary of Home Minister	ditto	2nd Class



From Jan. 1946 To Dec. 1947	Secretary of Home Ministry Attached to Local Affairs Bureau	ditto	ditto
From Dec. 1947 To Dec. 31, 1947	Chief of Election Sec. Local Affairs Bureau	ditto	ditto
From Jan. 1948 To March 1948	Secretary of Prime Minister's Office Chief of Local Public Service Sec. of Secretariat	Domestic Affairs Office	ditto
From March 1948 Up to present	Secretary of Prime Minister's Office Assistant-Chief of Local Autonomy Sec. Secretariat	Prime Minister's Office	ditto

e Decision and Date of Central Screening Committee :

October 10, 1947 No. 27,448 Passed

I hereby certify that the above state is true and correct, and request the approval of the temporary appointment.

Head of the requesting Office

Title : *Director-General of Cabinet Secretariat*

Name and Seal :

Date May 28, 1949

*Kanesabichi Masuda*



Name of Agency      Local Autonomy Agency

1. Position to be assumed :

- a. Title of Position : Chief of the Finance Section of Finance Div.
- b. Class : 2nd
- c. Grade : 12 Grade
- d. Duties and Responsibilities :

Matters relating to general control over the affairs concerning the enforcement of the Local Tax Law and Local Distribution Tax Law. and the planning and drawing up of the financial system of the local public bodies as the chief of the Finance Section.



2 Person to be appointed

a Name : OKUNO Seisuke

b Age : 37

c Present Position : Chief of Planning Sec., Administrative  
Bureau of Local Finance Committee.  
Secretary of Prime Minister's Office  
2nd Class

d Personal History

Date of Assuming and Leaving the Position	Title of Position	Office	Class
From March 1939 To April 1941	Local Secretary Chief of Welfare Sec. of Education Div., Director of Governor's Secretariat, Chief of Personnel Sec. of General Affairs Div. and Chief of Occupation Sec. of General Affairs Div.	Yamanashi Prefectural Gov't	Higher Civil Service  <i>6th Grade</i>
From April 1941 To Dec. 1942	Local Secretary Chief of Budget Sec. Chief of Tax Affairs Sec. Chief of Promotion Sec. and Chief of Personnel Sec., General Affairs Div. and Chief of Secretariat Sec., Governor's Secretariat	Kagoshima Prefectural Gov't	ditto
From Jan. 1943 To August 1943	Local Police Inspector Chief of Special Higher Sec., Police Div.	ditto	5th Grade
From August 1943 To May 1947	Secretary of Home Ministry Attached to Local Affairs Bureau	Home Ministry	4th Grade
From May 1947 To Jan. 1948	Local Secretary Chief of Police Div. of Kochi Prefectural Gov't	Kochi Prefectural Gov't	2nd Class
From Jan. 1948 Up to present	Secretary of Prime Minister's Office Chief of Planning Sec. of Administrative Bureau of Local Finance Committee	Local Finance Committee	ditto



e Decision and Date of Central Screening Committee :

October 10, 1947 No. 30495 Passed

I hereby certify that the above state is true and correct and request the approval of the temporary appointment .

Head of the requesting office

Title : *Director-General of Cabinet Secretariat*

Name :

Date : *May 28, 1949*

*Kaeshichi Masuda*



e Decision and Date of Central Screening Committee :

October 10, 1947 No. 30495 Passed

I hereby certify that the above state is true and correct and request the approval of the temporary appointment .

Head of the requesting office

Title : *Director-General of Cabinet Secretariat*

Name :

Date : *May 28, 1949*

*Kaeshichi Masuda*



Name of Agency      Local Autonomy Agency

1    Position to be assumed :

a    Title of Position :    Chief of Administrative Sec., Finance Div.

b    Class :    2nd Class

c    Grade :

d    Duties and Responsibilities :

10

Matters relating to general control over the affairs concerning the enforcement of the Local Finance Law and the local public bonds and local funds as the chief of the Administrative Section.



2 Person to be appointed

a Name : SHIBATA Mamoru

b Age : 32

c Present Position : Secretary of Prime Minister's Office  
2nd Class

Attached to Planning Sec., Administrative  
Bureau of Local Finance Committee.

d Personal History :

Date of Assuming and Leaving the Position	Title of Position	Office	Class
From April 1941 To Jan. 1942	Clerk of Home Ministry Attached to Local Affairs Bureau	Home Ministry	Hanninkan
From Jan. 1942 To July 1942	Local Secretary Chief of Economical Control Sec., Economical Div.	Ibaragi Prefectural Gov't	Higher Civil Service 7th Grade
From July 1942 To July 1946	Enlisted in the Army		
From July 1946 To Dec. 1947	Secretary of Home Ministry Attached to Investigation Div. of Secretariat and Local Affairs Bureau	Home Ministry	2nd Class
From Jan. 1948 Up to present	Secretary of Prime Minister's Office Attached to Planning Sec., Administrative Bureau of Local Finance Committee	Local Finance Committee	ditto

e Decision and Date of Central Screening Committee :

October 19, 1947 No. 27450 Passed

I hereby certify that the above state is true and correct and  
request the approval of the temporary appointment.

Head of the requesting office



Head of the requesting office

Title : *Director-General of Cabinet Secretariat*

Name and Seal :

Date : *May 28*, 1949

*Kanesabichi Masuda*



Name and Agency : Local Autonomy Agency

1. Position to be assumed :

- a Title of position : Chief of Research Sec., Finance Div.
- b Class : 2nd Class
- c Grade
- d Duties and Responsibilities :

Matters relating to general control over the affairs concerning the research into the finance of local public bodies and the instruction of officials engaged in local taxation business as the chief of the Research Section.

2. Person to be appointed

- a Name : OMURA Jōji
- b Age : 31
- c Present Position : Secretary of Prime Minister's office  
2nd Class  
Attached to Plann<sup>ing</sup> Sec., Administrative  
Bureau of Local Finance Committee



d Personal History

Date of Assuming and leaving the Position	Title of Position	Office	Class
From Apr. 4, 1941 To Apr. 15, 1941	Clerk of Home Ministry Attached to Public Works Bureau	Home Ministry	Hanninkan
From Apr. 1941 To Oct. 1945	Enlisted in Navy		
From Oct. 1945 To Dec. 1945	Secretary of Home Ministry Attached to Secretariat	ditte	Higher Civil Service 5th Grade
From Dec. 1945 To Jan. 1947	Local Police Inspector Chief of Police Affairs Section, Police Div.	Shizuoka Prefectural Gov't	2nd Class
From Jan. 1947 To July 1947	Secretary of Home Ministry Attached to Local Affairs Bureau	Home Ministry	ditte
From July 1947 To Aug. 1948	Secretary of Finance Ministry Attached to Budget Bureau	Finance Ministry	ditte
From Aug. 1948 Up to Present	Secretary of Prime Ministers Office Attached to Planning Section, Administrative Bureau of Local Finance Committee	Local Finance Committee	ditte

e Decision and Date of Central Screening Committee :

October 13, 1947 No. 33,719 Passed

I hereby certify that the above state is true and correct, and request the approval of the temporary appointment.

Head of the requesting office

Title : *Director General*  
Name and Seal : *Kanesuichi Inasuda*  
Date : May 28, 1949



Mr Hange

Member of the  
Local Autonomy Commission

Nakajima Moritoshi

Hayashiya Kamejirō

Yasui Seichirō

Kanbe Masao

Itō Noboru

Ishihara Eimei

Fujimoto Keiichi

Tanaka Jirō

Hara Hikoichi

Kogure Tōzaburō

Director of the  
Local Autonomy Agency

Kimura Kozaemon

Deputy Director of the  
Local Autonomy Agency

Tōyama Shinichirō

Chief of  
Liaison and Administration Division

Suzuki Shunichi

Chief of  
Finance Division

Ogita Tamotsu

*Handwritten notes and signatures at the bottom of the page, including a signature that appears to be "Ogita Tamotsu" and some illegible scribbles.*



Principal Different Points between  
the Fishing Port Law, and Port and Harbor Law as Viewed from an Angle  
affecting Local Autonomy

Matters at Variance	Fishing Port Law	Port and Harbor Law
<p>1. Designation of fishing ports.</p>	<p>The Minister of Agriculture and Forestry shall, upon consultation with the Fishing Port Council and upon hearing the opinion of the governor of To, Do, Fu and prefectures concerned, carry out the designation of fishing ports (Article 5). The Minister of Agriculture and Forestry may after the contents of the designation concerned or cancel it (Article 5 paragraph 2).</p>	<p>Major ports and ports of refuge will be designated in a Cabinet Order (Article 2 paragraph 7). With respect to the port area, local public entities shall obtain an approval of the Minister of Transportation or the governor of To, Do, Fu or prefecture (Article 4 paragraph 4). In case of demarcating a waterfront area, the approval of the Minister of Transportation must be obtained (Article 38).</p>
	<p>The Fishing Port Council shall be established as a research and deliberation organ to function under the supervision of the Minister of Agriculture and Forestry (Article 7).</p>	<p>No such an organ shall be established. However, with regard to specific matters, the Minister of Transportation shall consult the Transportation Council (Article 60).</p>



<p>3. Determination of the Fishing Ports Planning.</p>	<p>The Minister of Agriculture and Forestry shall, upon bearing the opinion of the Fishing Port Council and in adoption thereof, determine the Fishing Ports Planning and lay it before the Cabinet for decision. In case where the Fishing Ports Planning has been decided by the Cabinet, the Cabinet shall submit it to the Diet for approval (Article 17).</p>	<p>The State does not systematically make any plan. With regard to the planning of an individual port, it shall be determined by the Port Management Body concerned (Article 12 and 34).</p>
<p>4. The executor of fishing port repair and construction works.</p>	<p>Fishing port repair and construction works shall be executed by the State, local public entities or fisheries cooperative association which have fishing ports within their area (Article 18).</p>	<p>The interested local public entities shall, by mutual agreement through consultation, determine anyone of the following as the executor of port repair and construction works:</p> <ul style="list-style-type: none"> <li>a. Port Authority (Article 4 and 12).</li> <li>b. A local public entity designated by mutual agreement through consultation among the interested local public entities.</li> <li>c. A local public entity (coopera-</li> </ul>



		<p>tive association) under the provision of Article 284 of the Local Autonomy Law (Article 33 and 34).</p> <p>If the agreement has not been reached regarding the establishment of the Port Authority, the interested local public entities may apply for mediation thereupon to the Minister of Frans portation or the governor of To, Do, Fu or prefecture (Article 4 paragraphs 7 to 10).</p> <p>With regard to a major port, the Minister of Frans portation may advise the interested local public entities to establish a Port Management Body (Article 51).</p>
<p>5. Permission for operation.</p>	<p>In case when any person other than the State intends to operate any fishing port repair and construction works, he shall first establish his fishing port repair and construction plan according to the Fishing Ports Planning as determined by the Ministed of Agriculture and Forestry and then obtain the authorization of the Minister of Agriculture and Forestry (Article 19).</p>	<p>A Port "anagement Body shall freely operate port repair and construction works (Article 12).</p>



		<p>tive association) under the provision of Article 284 of the Local Autonomy Law (Article 33 and 34).</p> <p>If the agreement has not been reached regarding the establishment of the Port Authority, the interested local public entities may apply for mediation thereupon to the Minister of Transportation or the governor of To, Do, Fu or prefecture (Article 4 paragraphs 7 to 10).</p> <p>With regard to a major port, the Minister of Transportation may advise the interested local public entities to establish a Port Management Body (Article 51).</p>
<p>5. Permission for operation.</p>	<p>In case when any person other than the State intends to operate any fishing port repair and construction works, he shall first establish his fishing port repair and construction plan according to the Fishing Ports Planning as determined by the Ministry of Agriculture and Forestry and then obtain the authorization of the Minister of Agriculture and Forestry (Article 19).</p>	<p>A Port Management Body shall freely operate port repair and construction works (Article 12).</p>



<p>6. Shares of expenses in case where any port repair and construction works is executed by the State.</p>	<p>In case where any port repair and construction works is executed by the State, the State may, according to the standard as determined by Cabinet Order, cause the fishing port management body to bear a part of the expenses (Article 20 paragraph 1).</p>	<p>With regard to only a major port, the Minister of Frans portation shall cause the local public entity to bear 50% of the expenses when the work is executed in consultation with the Port Management Body (Article 52).</p>
<p>7. Supervising powers of the competent Minister over the executor of port repair and construction works in respect to the issuance of permission, approval, instruction, etc.</p>	<p>It is necessary to obtain the permission or approval of the Minister of Agriculture and Forestry when transfer of rights relative to the permission for the execution of the port repair and construction works is made or other persons are entrusted with the execution of works (Article 21).</p> <p>The executor of port repair and construction works other than the State must obtain the permission of the Minister of Agriculture and Forestry when he alters his port repair and construction plan, abandon his works or suspend the execution thereof (Article 22).</p>	<p>The Minister of Frans portation may request the Port Management Body of only a major port to file with him a plan for development of the port, and may request change thereof when he considers that it is remarkably improper (Article 48).</p>



	<p>The Minister of Agriculture and Forestry may give to any executor of port repair and construction works other than the State necessary instructions or orders to alter his plan or to suspend the execution thereof, or cancellation of the permission for the execution of works (Article 23).</p>	
<p>B1 Designation of fishing port management body.</p>	<p>For the purpose of carrying out maintenance, preservation and management of fishing ports and proper administration thereof, the Minister of Agriculture and Forestry designates the local public entity or the fisheries cooperative association having the fishing port concerned within its area as its fishing port management body.</p> <p>Any local public entity or fisheries cooperative association so designated shall not refuse such designation unless any justifiable reason exists therefore (Article 25).</p>	<p>The interested local public entities shall, by mutual agreement through consultation, determine anyone of the following as the Port Management Body:</p> <p>a. Port Authority (Articles 4 and 12).</p> <p>b. A local public entity designated by mutual agreement through consultation among the interested local public entities.</p> <p>c. A local public entity (cooperative association) under the provision of Article 284 of the Local Autonomy Law (Articles 33 and 34).</p> <p>If the agreement has not been reached regarding the establishment of the Port Authority, the interested local public entities may apply for mediation</p>



		<p>thereupon to the Minister of Transportation or the governor of To, Do, Fu or prefecture (Article 4 paragraphs 7 to 10).</p> <p>With regard to a major port, the Minister of Transportation may advise the interested local public entities to establish a Port Management Body (Article 51).</p>
<p>9. Establishment of Fishing Port Management Committee.</p>	<p>For the purpose of carrying out deliberation on important matters relating to maintenance and management of fishing ports, fishing port management bodies shall set up a Fishing Port Management Committee.</p> <p>In case of fishing port management committees in Type 3 fishing port and Type 4 fishing port, one member of the committee shall be a person who has been recommended by the Minister of Agriculture and Forestry (Article 28).</p>	<p>A Port Authority shall have a Board of Directors (Article 14).</p> <p>The local public entity as a Port Management Body may have a Commission (Article 35).</p>
<p>10. Supervising powers of the competent Minister over the maintenance and</p>	<p>In case where any fishing port management body establishes or alters its fishing port management plan or a</p>	<p>Only in case where any person intends to transfer, mortgage, or lease out any port facilities, the expenses</p>



management of fishing ports.

regulations for fishing port management for the purpose of carrying out the maintenance and management of its fishing port, it must obtain the approval of the minister of Agriculture and Forestry (Article 26 and 34).

In case where any owner or occupant of the fishing port facilities changes the shape and character or the place of the facilities, transfers, ceases, removes or disposes of such facilities, he must obtain the permission of the Minister of Agriculture and Forestry (Article 37).

Any person who intends to operate in a fishing port area, construction of structures, taking away soil and sand and other actions, must obtain the permission of the Minister of Agriculture and Forestry (Article 39).

Any person (excluding the State and fishing port management body) who intends to make his fishing port facilities available

for which have been shared or subsidized by the State, he must obtain the approval of the Minister of Transportation (Article 46).

Only in case a Port Management Body interferes in the business operation of private enterprises or gives them discriminative treatment, the Minister of Transportation may order the Port Management Body to stop or change such an action (Article 47).

The Minister of Transportation may give necessary instruction to Port Management Bodies to provide for uniformity of reports on vessel's entrance and departure (Article 50).

Any person who intends to perform construction works or to take away soil and sand within the port area, must obtain the permission of the chief of the Port Management Body (Article 37).



	to the use of other persons or collect the rent thereof, must obtain the approval of the Minister of Agriculture and Forestry (Article 38).	
11. Supervising powers of the competent Minister over collection of compensation for utilization.	<p>Any fishing port management body collects from its utilizers compensation for its utilization, use, etc, in accordance with the regulations for fishing port management (Article 35).</p> <p>(The regulations for fishing port management shall not take effect unless the approval of the Minister of Agriculture and Forestry is obtained therefore.)</p>	<p>The rates for charges for the use of port facilities are fixed by the Port Management Body (Article 12, paragraph 13 and Article 44).</p> <p>The Minister of Transportation may, if he recognizes justifiable the request made by any interested person to revise the rates, order the Port Management Body to change the rates (Article 44).</p>
12. Powers of the competent Minister to carry out survey or inspection of port areas, or inspection of books and documents.	<p>In case where the Minister of Agriculture and Forestry deems it necessary to do so for the purpose of defining or altering fishing port areas, he may request persons interested in fishing ports or organizations formed by such persons to submit necessary reports or data, or may enter another persons' land or waters and carry out survey or inspection.</p>	<p>With regard to only a major port, the Minister of Transportation may request the Port Management Body to file with him a plan for development of the port, or may request change thereof (Article 48).</p> <p>The Port Management Body of a major port shall</p>



The Minister of Agriculture and Forestry may, when deemed necessary, request operators of the fishing port repair and construction works or fishing port management bodies to submit necessary reports or data, or may cause the officials concerned of the central government to enter then operation places or other places and to ask questions or inspect their books, documents or other objects (Article 41).

submit to the Minister of Transportation annual reports on its business incomes and expenditures and other port matters (Article 49).



Source: The Law Times,  
Issue No. 4, for 1948.  
By: TANAKA, Jiro

A  
LWC

The Nature and Effect of Local Legislation

I

The Problem

One of the distinguishing features of the recent Local Autonomy Law is the extremely high penalty provided for violations of local legislative acts (Jorei). In the past this kind of punitive power has scarcely been considered in connection with local legislation. Its introduction now is all the more surprising in view of the strict limitations placed by the Constitution upon ordinance power. It is an aspect of the Local Autonomy Law which must be carefully considered.

II

Nature and Effect of "Jorei"

A. Under the system of municipal government which existed until 1929, prefectures had no inherent legislative authority. Dr. Minobe supported an opposition theory that the creation of a local autonomous body would inevitably carry with it legislative power, but this was not generally accepted. The argument was settled by the enactment in 1929 of the prefectural system under which a limited authority for legislation was given to prefectural governments. This in turn was changed by the new Constitution, Article 94, of which provided "Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law."

B. The effects of the new Constitution and the Local Autonomy Law can be summarized as follows:

1. A local autonomous body may legislate as long as not contrary to law.
2. A local autonomous body is required to enact legislation relating to the conduct of its administrative duties, except as otherwise specially provided by law.
3. Except as otherwise specially provided by law, prefectures may legislate in regard to the administrative duties of municipalities.
4. Municipal legislation, if contrary to prefectural legislation, is void.
5. The penalties for violation of legislation of a local autonomous body may, unless otherwise provided by law, be fixed at imprison-



Source: The Law Times,  
Issue No. 4, for 1948.  
By: TANAKA, Jiro

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5. The penalties for violation of legislation of a local autonomous body may, unless otherwise provided by law, be fixed at imprison-



ment up to two years, or fine of 100,000 yen.

Are the provisions of the new Constitution and the Local Autonomy Law really that needed to authorize local legislation? TANAKA Jiro thinks not. In his opinion, the fact of creation of a local autonomous body carries with it a grant of legislative authority. He concedes however, that the problem is one of determining the scope of such legislative authority. This is not a new question, for in the past many decisions have concerned such matters as the pensions to be paid to local officials and the exemptions from attachments and executions of such pensions and emoluments. The mere fact that a national law base may exist for such city legislation does not mean that the legislation itself must have the dignity of national law.

The distinction between a legal delegation (horitsu mojin) and a power given by national law (kokka ho no juken) must be clearly understood. The normal delegation authorizes the enactment of ordinances whose purpose is implementation and whose authority therefore is that of national law. On the other hand, the authorization for the enactment of local legislation is but an attribute of local autonomy, and does not necessarily give such legislation the status of national law. Even if the term "delegation" is loosely used, it still is, in the strict sense of the word, only the delegation of an authority to establish local law independently. Such law, when enacted, is in no sense of the word national law. It is local law which has been authorized by national law. It is possible of course, that national law will both allow true local legislation, and also permit legislation over and beyond the need of true local autonomy. Thus, there can be two types of local legislation authorized by national law:

- (a) True local legislation
- (b) Legislation outside scope of interest of locality and therefore, true national law.

The delegation of an autonomous legislative power is not, therefore, of the power to establish national law. What is created is local law alone. Although in a certain sense, both local law and ordinances have their genesis in a statute, the nature is fundamentally different. An ordinance, like the statute itself, is direct national law and the distinction between statute and ordinance is simply one of the division of powers within the national government. The contrast to this local legislation differs in respect to area of enforcement and the statutory base upon which it rests.

### III

#### The Nature and Effect of Municipal Legislation in the Revised Local Autonomy Act.



1. There are a number of conspicuously different features in the new Local Government Law regarding local legislation. These can be divided into those provisions which pertain to the enactment of local legislation and those which deal with the force and effect of legislation.

a. Matters pertaining to the establishment of local legislation:

- (1) Local autonomous bodies are given legislative powers both in respect to inherent local matters and matters delegated by the National Government. In fact, the enactment of local legislation (jorei) is actually required to implement national law (Art. 14).
- (2) Another unique feature is that prefectures may enact legislation pertaining to the conduct of affairs of towns, cities and villages. Heretofore this supervisory power did not exist in Japanese law.
- (3) The third unusual element is that of the heavy punitive power which is afforded local agencies in their legislation.

b. The effect of local legislation:

In the past conflict between local legislation and ordinances of the National Government was possible. This has been eliminated however, by the provision of the Local Autonomy Law. Now it is clear that local legislation may violate neither ordinances nor statutes of the National Government. A further provision renders the ordinance of a municipality invalid if it conflicts an act of legislation by the prefectural authorities.

2. Finally Dr. Tanaka considers the punitive powers given to local governments. Under the Meiji Constitution broad powers were given to the government by the statute entitled "Matters Concerning Penalties for the Violations of Ordinances." This was in direct conflict with the letter and spirit of the new Constitution, Article 73 of which provided, "The Cabinet, in addition to other general administrative functions, shall perform the following functions:

\* \* \* \*

Enact Cabinet Orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such Cabinet Orders unless authorized by such law."

Therefore an extremely strict policy now exists in regard to penal provisions in ordinances.

Yet contrast this with the enormous delegation of penal authority which is given to local autonomous bodies. Is this not contrary to the



spirit if not the letter of the new Constitution? Dr. Tanaka feels that these powers perhaps can be justified in that the letter of the Constitution does not forbid such delegation, and in any event the final enforcement of these penal provisions is left to national courts.

3. It can be taken for granted that the penal powers now given to local agencies are constitutional. But is this policy wise? There is no doubt of the need for some penal authority, but considering the conditions which actually exist in Japan at the present time, the present scope is subject to grave doubts. The following points should be considered:

a. This type of penal authority has a direct and immediate effect on the public. Penal authority should be used sparingly, and there is no assurance that prefectural and city legislative bodies are, at this time, properly conscious of the grave responsibilities which attach to the imposition of heavy penalties.

b. A proper application of laws requires publicity. Although Article 16 of the Local Autonomy Act provides that local legislation will be publicized, great latitude is afforded the municipality. There is danger that enactments will not be made known to the people who will be governed by them.

c. Finally, even though this wide authority could conceivably be delegated to prefectures, it certainly ought not to be extended to towns, cities and villages. It constitutes an unwise and dangerous delegation of authority.

Extracted by:



THOMAS L. BLAKEMORE  
Legislation & Justice Div.