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THE LOCAL AUTONOMY PROGRAM FOR THE CITIES OF JAPAN

Paper No. 5.

Committees, Commissions and Boards As Independent Agencies in Local Government

The development and use of committees, commissions or boards as independent or nearly independent agencies in government, functioning for particular purposes, are relatively new in Japan. As organs of local government, they are absolutely new. Only during the immediate past years have these agencies been established in the local governments as functioning bodies responsible to the public. The fact that they have already demonstrated their values in the operation of city governments all over Japan is significant. Most definitely they can become of even greater service in all the local public entities. These new agencies will function at their best when: (1) the taxpayers and voters see that a particular function, whatever it may be, requires such a special method of execution as to have it separated from the regular city administrative offices and made directly responsible to them; (2) the members of the particular committee, commission or board understand that they are performing their legal functions in the public interest; (3) the mayor and staff, members of the assembly and the entire city administration comprehend thoroughly that the members of the agency have the responsibility in law to carry out the specified function. This fact definitely means that the mayors and other governmental officials do not have that responsibility and, therefore, that the agency's business is not their affair; and (4) the courts as judicial architects of government through careful decisions draw the agency in its proper perspective. Indeed, the judges in this entire matter of dealing with the agencies directly responsible to the public have a grave responsibility which they must discharge in certain precision.

Under the old and now abolished Shisei, or Law Concerning the Organization of Cities, the municipalities as a group were styled the autonomous system. However, most all Japanese realized that real autonomy did not

exist. The bureaucrats of Naimushō, or Ministry of Home Affairs, and others too, with a smug indifference knew that there were very few functions of government which the municipalities could carry out by themselves without the direct consent, supervision or interference of the governor as an official in the prefecture or Naimushō, or of other officials in Tōkyō of Naimushō itself. In the execution of the important affairs of the city, the mayor in deference to the governor always had to yield and make the best of it. Rare is the case in the entire history of the old "Local Autonomy System" that a city mayor could stand on his legal rights, face the governor or much less Naimushō, and say, "Under the Shisei, this affair is our city's affair. We do not want your supervision or interference! We here in the city can and will settle this matter ourselves."

Because of the very small sphere of municipal authority in which the mayor could act independently, he had little need to seek out the advice of people or to learn the opinions of representative groups of citizens. Indeed, with such a small amount of independence, the city's government of affairs was quite routine. Because routine in government allowed little or no variation in administration, the mayor by means of a relatively small series of sections, branches and units could execute and conduct the simple affairs. No function of city government was important enough to single out for special administration. The important functions were administered by the bureaucrats in Tōkyō. The city government had no need for other agencies as independent committees, commissions or boards. Moreover, what city services existed were few; funds to conduct these were never plentiful. The brunt for all city living was borne by the taxpayers who had so little to say. The condition in which city government and management, with but slight routine exception, were controlled so authoritatively by Naimushō or Ministry of Home Affairs, should and must be relegated to the past. The condition should not be dragged out again except as a bad example of what not to repeat. Today, municipal government has the unique opportunity to be resourceful and creative.

Reasons for Establishment

The creation and setting into operation of committees, commissions

or boards either completely or relatively independent of the regular departments of city government to administer a particular function, have been the result of some specific causes and conditions. The history of these bodies in the United States is replete with facts and causes for their establishment on the part of the citizens as taxpayers and voters, and that of the officials as legislators and administrators.

In Japan today the legal position of all local public bodies is markedly changed and different from that of a very few years past. The legal difference today automatically has placed some functions of government on new levels for operation and in new positions for administration. The specific result of these changes means that the structure or organization of municipal government can and ought to change. Not only are there these legal differences but also many social and economic differences, not to say variations. As the financial conditions of the local governments are bettered through a reorganized tax structure and the present evils remedied, more substantive benefits from these social and economic differences can be gained by the citizens.

Specific reasons for the establishment of these independent or relatively independent bodies in local government can best be tabulated here in the following four:

First, a nation whose society is basically rural and agricultural undergoes real social and economic changes when it either gradually or quickly turns a substantial portion of its population into an industrial course. During the past 30 years this situation took place in Japan. If the turnover is forced and rapid, many new and varied demands by society upon government for more aid and services are in evidence. Many aspects of this, too, can be seen in Japan. In addition to these factors, the past war years have brought socio-economic changes of their own into Japan; these changes have also generated strong pressure on government for additional aid and services. In terms of a nation's life, what has taken place so suddenly and with what result? The volume and variety of demands and needs of the new groups and the changing society as a whole upon government are so overwhelmingly out of proportion to its or-

ganizational and structural ability to comply that change in government's organization must be made. The old organization, the old procedures are outmoded and wholly ineffectual. To attempt to maintain the old organization or the old procedure is not only political folly but also governmental blundering. In Japan the Diet acted promptly. Sensible changes in governmental structure and procedure have been achieved. The usual bureaucratic red.tape ran out. Moreover the Diet in altering governmental organization of the local government proceeded correctly by enacting laws which established substantive rather than administrative achievements.

Second, the citizens and officials may desire to take one function of government because of its great importance and separate it for special treatment from the other functions of government. Why would they do this? The answer for many cases has been a political one. The playing of bad politics anywhere in government completely distorts good administration and action which otherwise left alone would produce a just or rightful result for the public. If all functions of government are administered through the same offices, quick discernment can be most difficult as from which office the bad politics is generating. For the sake of politics, therefore, a function of government may be singled out by a law so drafted and enacted that a particular agency will be established to administer it under a given set of standards and regulations. Thus it will differ from the regular administrative offices. The erection of this type of a legal fort makes political tinkering difficult to cover up. In most cases it lets the public see precisely where the responsibility lies. In other words the function and the body to operate it are in such a governmental position that the public has little trouble in knowing and seeing that the committeeman or commissioners carry out the law as commanded. This is exactly what is needed. The good jeweler places his pearls on a piece of dark lavender or black velvet so that the customer's eyes can concentrate on the precious gem with no distraction. In similar manner the assembly through special enactment draws the public's eyes to the particular governmental affair and agency.

Third, a particular service of government may demand segregation and a specially created agency of government to execute the duties connected therewith because of its highly technical operation as well as its great and extensive need by the public. The taxpayers and legislators in each state of the United States have felt that such great services which have to be developed with water and transportation, and especially with electricity and gas for light or power, could best be administered for the public good by a particular instrumentality. Public utility commissions are the standard special agencies for those four services in the United States in federal, state and municipal governments. It must be stated here, too, that in the United States the private citizen as an individual and the large or small corporation own and operate virtually all of the great enterprises in water, transportation, electricity and gas which serve the public; the individual and the corporation in their privately operated and owned business are <u>regulated</u> by the state for the public interest and benefit. The governmental regulatory body which tells the various business enterprises how to sell their products and at what prices or rates is the public utility commission or board. Many advantages accrue to the government through such special agencies; financial savings and better use of personnel have resulted.

Fourth, for some functions of government more than all others combined, the individual citizen has a direct and continuing interest. It is so immediate, so continuing and so much a part of his or her daily life that an agency created specially to handle it is the only answer for proper solution. This is because the function must be administered close to the people for it is sensitive to their needs. An independent agency is far more flexible from the point of view of simple administration or management than were it left as just another part of the regular governmental offices. The agency is established with specific powers to administer one function; it can act and make decisions quickly, far more quickly than were it forced to be dependent upon other offices.

departments or bureaus for concurrences and ratifications for actions and decisions. For this one reason alone thousands of municipalities have singled out the functions of police and education for special treatment.

All four of these reasons have been causes for the Diet to create independent or relatively independent committees, commissions and boards from the regular administration not only for the national government but also for the local governments. The Election Administration Committee in the Chihojichiho, the Public Safety Commission in the Police Law and Local Board of Education in the Board of Education Law were created as a result of the first, second and fourth reasons.

Definition and Character

In the foregoing pages the importance to the taxpayers of the committee, commission or board as an essential agency of government has been made clear. As an agency charged to carry out a particular duty or set of duties under the law, although it is independent or relatively independent of the city's regular offices, bureaus, departments or divisions, it nevertheless must be remembered that the agency is a definite element of the city's government. Under no circumstances is the agency separated from the whole of the municipality. Some definitions should be given and some characterizations explained.

Before either the definitions or characterizations can be made meaningful,however, some important governmental facts must be understood. Under the Japanese Constitution separation of the three branches of government is made; there is the executive branch which is the cabinet, the legislative branch which is the Diet and the judicial branch which is the court system. This separation of powers in Japan is similar to that in the United States found in the Federal Constitution and the constitutions in each of the 48 states. Although the separation of powers exists in England, it is not so sharply drawn.

It is clear, too, that for nearly all affairs nearly all the time, each of the branches must as a whole be kept and exercised separately

from the others; thus the competent official of one cannot perform more than the whole of his own; he or she does not perform either of the others. Specifically, the cebinet would not be a court pronouncing judgments or it would not be an assembly enacting legislation; the Diet would not be a court pronouncing judgments or it would not be an executive administering laws; the court would be neither the executive nor the legislature. Moreover, end of just as great importance, are the facts that (1) the legislative authority with its creative powers of enacting laws could not delegate all or even a substantial portion of its powers to an agency which it might establish, (2) the legislative authority cannot create a punitive body pronouncing final judgments and imposing sentences of punishments without appeal, or (3) the legislative authority cannot establish an independent administrative agency such as could usurp or encroach substantially upon the executive's powers. It is obvious also that because an agency cannot be created to perform any single function of the given three in any substantial manner, no agency could be created to perform all of these functions in any substantial manner. Thus, it is important to remember continuously the principle that no one person, no one political party, clique or groups or no one authority or office of government can be allowed to exercise the <u>whole</u> of more than <u>one</u> of the powers; <u>never</u> should the <u>whole</u> of two or of the three powers come under one and the same authority. Reflection must be made continuously upon this great principle.

Defined then, a committee, a commission or board is a tribunal of limited jurisdiction because the particular powers are enumerated in the law or by-law establishing it. As an official or representative body it is organized outside the regular administrative offices to perform a public trust and to execute official or representative functions. Further, it is established to have the management of a public office responsible to the public directly for the exercise of governmental and administrative functions.

Having defined what the agency is in a general positive statement we can define what it is not in a general negative statement. By creation, the committee, commission or board cannot be a court or judicial body in Japan because by the Constitution it could not have the power that would allow it to regulate its own proceedings completely or enforce its own decision with finality. Also because of the Constitution, on the basis of whole or complete powers for each branch of government, the agency cannot be a legislative body enacting laws at will. Neither can it be the executive authority exercising final administrative action for the same reason.

In each case of establishment, the agency's powers are similar to those of the central government's powers. They approximate the central government's powers; they never are, however, the same in degree. Specifically, the agency cannot go beyond its statutory powers. The agency is responsible in court for its judgments. This means that it can sue and be sued. The agency furnishes a method, machine or vehicle of government to accomplish an object for the public. It certainly furnishes management for a service of a given area or district. Within the law creating it, the agency can set standards and general rules for the conduct of affairs of the citizen which reach a public interest. Being created for the public interest, the agency can never take the legal character of a private individual. Therefore, it must never attempt to act like a private individual. Nor should its members represent it as a private individual. Its members duly qualified and duly sitting, either by total membership or legal quorum, are a legal collective public body. Therefore, they should function as a public body.

<u>The Legal Functions</u>

The basic function of the committee, commission or board can be entirely different in each case. This fact is general. The laws are enacted purposefully in this manner.

For the correct terminology when giving a functional title to these special agencies, the word <u>quasi</u> must be used; it means similar to, not quite the same, approximating the power or character of something. Specifically, the agency is <u>quasi</u>-judicial, <u>quasi</u>-legislative, or <u>quasi</u>-administrative in character.

First, an agency can be quasi-judicial. This legal fact means that it is a body which can make certain decisions on issues or facts brought before it which are binding upon the people concerned. It issues orders which must be obeyed unless an appeal from the decision is taken to a court and there altered. Thus the quasi-judicial body acts like a court yet it is not a court as it has no final judicial authority.

Second, an agency can be a quasi-legislative body. This legal fact means that it is a body empowered to pass rules and regulations which are binding upon people. But these rules and regulations must always be only those which implement the organic act which establishes the body. They can never be outside the act, that is new rules, or any series of regulations which the commissioners think that they would like to pass. Here again the quasi-legislative body acts like a legislature but it is not one as it cannot enact laws at will.

Third, an agency can be quasi-administrative. This legal fact means that the body performs executive and administrative functions. In doing so the body, like the regular departments or bureaus, is in a channel of authority. The agency can be making executive decisions for administrative action of a high or relatively high level. But even so, the legal possibility is always open to the real executive authority (1) to over-rule the administrative action or (2) to give a final signature.

Fourth, in some cases depending upon the functional authority, it would seem that the agency has all of these quasi powers although actually only one quasi power predominates.

Fifth, fully apart from the type of agency given above, is the body established by law or by-law with the special function to give advice to some governmental office. The certain affairs on which the advice is given are enumerated in the law in either general or specific manner. Obviously, the agency's advice is merely an opinion. The agency's advice is never an order or a decision of the legally forceful character affecting people as are those of the quasi-type body given above. Moreover, the office to which the advice is given can accept

or reject it. The office is not legally bound to take the agency's opinions, although, of course, in governmental practice the office does take the advice.

In addition and of importance is the fact that these advisory bodies are nearly always composed of highly qualified persons who because of training and experience can give technical, professional and sound opinions.

The legislative authority is duly bound to specify in the law the jurisdiction of the agency. The assembly should pass an act defining clearly and specifying what the committee, commission or board is to do. The law should specify what the powers of the agency are. Most important is the extent of the agency's power of discretion. Such important legal matters should never be left vague, mystical or mixed up.

Committees, Commissions and Boards in the Local Communities

In Japan the authority which establishes these agencies is contained in the laws or the local government by-laws. For the proper operation and functioning of these agencies, not only do the laws and by-laws apply but also the Cabinet Orders, the ministerial regulations and the announced rules made by the agencies themselves.

In Japan classification of these agencies should be made as to whether they are established out of a provision of law or through a by-law originated and passed solely under organic authority of a local government.

The Diet has provided that a committee, commission or board will be created in the local governments by outright requirement in the law or by a grant of authority which the local public bodies can exercise at will, through enactment of local by-laws. Examples of the agencies established by requirement of the laws are:

1. The Election Administration Committee established by the Chihojichiho.
2. The Public Safety Commission established by the Police Law.
3. The Local Board of Education established by the Board of Education Law.

4. The Agricultural Land Commission established by the Agricultural Land Adjustment Law.

5. The Agricultural Adjustment Committee established by the Food Maintenance Temporary Measures Law.

6. Committee for the Prevention of Infectious Diseases under the Law for the Prevention of Infectious Diseases, Law No. 36, as of 1897, amended 1905 and 1949. Article 15.

Two examples of agencies provided for in laws by grant of authority which the local government can establish through an implementing by-law as they desire, are:

1. The Inspection Committee as granted in the Chihojichiho.

2. The Prefectural Agricultural Improvement Committee as granted in the Law Concerning Improvement and Promotion of Agriculture.

Examples of committees, commissions or boards established only by enactment of a local by-law could be given from most any city in Japan whether large or small. The following are advisory in function appointed by the mayor:

1. In Morioka, the Committee on Tax Payment, the Committee on Sanitation, and the Committee on Distribution.

2. In Osaka, the Committee on Public Works and the Committee on the Operational Management of the Port Area.

3. In Kobe, the Committee on Property Evaluation and the Committee for Coordination of Municipal Enterprises.

In Japan today from the standpoint of membership two types of agencies have been developed, the bi-partisan body; for example, the Election Administration Committee, which is composed of members from two political parties; and the non-partisan body; for example, the Inspection Committee, in which membership is not determined by political affiliation of the members but by the expert knowledge or experience of the members.

Of the two types of agencies, the non-partisan type perhaps, should be developed more because a given program can be accomplished with less difficulty when members are not bound by party policies and alignments.

Generally the members of non-partisan bodies are prompted by opinions based on their own or acquired knowledge and experience. Bi-partisan agencies afford too great an opportunity for political party influence to determine the course of public affairs. Frequently, because of politically minded members, deadlocks result, squabbles can be current, and hence at times, little can be accomplished by the body. However, bi-partisan agencies do not always "go bad."

In the local governments of Japan today, methods vary as to manner in which members are selected for the different agencies. Some committee members are elected by all the voters from the citizens in general, for example: Local Board of Education. Some may be elected by a select group of electors from a select group of citizens, for example: Agricultural Land Commission or Local Agricultural Adjustment Committee and Committee for Land Readjustment. Some may be appointed by the mayor with the consent of the assembly, for example: the Public Safety Commission, the Inspection Commission, the Welfare Commissioner Nomination Conference. Some may be appointed by the mayor alone, for example: the Human Excrement Disposal Committee, and the Construction Planning Committee. Some may be appointed by the mayor with the advice of an organization outside the city government such as the Agricultural Cooperative Association of similar group, as for example: the City Election Commission on Agricultural Land Commissioners provided in Imperial Ordinance No. 38 of 25 January 1946 as the Ordinance Concerning the Operation of the Agricultural Land Adjustment Law. Some may be appointed by the assembly alone, for example: the Election Administration Committee. The number of the members on these agencies today range from three to one hundred, depending on the kind or purpose of the committee.

As has been mentioned, the law or by-law creating a particular agency determines its functions and its composition, whether bi-partisan or non-partisan. The law or by-law usually provides also for the number of members to serve on the committee. The issue in government of determining the practical or manageable number of members who are to compose the agency is an important matter. The membership must not be so large

as to make the committee unwieldy. Decisions are hard to arrive at in governmental bodies of unwieldy membership. Moreover, when any agency is large, it is common practice for members to feel that their own presence at the sessions or work outside is not necessary because there are so many other members to participate in the activities. In this way many members avoid their responsibility; some in a selfish manner, others unwittingly. Membership of a committee should be just large enough to make each member feel that he or she shares an equal responsibility with every other member of the agency in making the decisions. In the United States the common totals for the number of members of nearly all important public commissions or boards are 3, 5, 7 and 9; by far the greater number of independent agencies is composed of but 5 members.

In Japan a member may or may not have to devote his full time to the work of the local government agency. For a great many agencies no fixed or definite period of time can be clocked out beforehand to be devoted to the work of the committee. These facts are found in the United States also. The amount of time he or she spends in committee work depends entirely on the function, its relative importance and the amount of work required by it. Police commissions meet regularly all year long; boards of education meet regularly during the school year; election administration committees meet infrequently and advisory bodies meet infrequently.

Committees, commissions or boards, have regulations and rules of procedure by which they administer their function and conduct their sessions. In Japan quite detailed rules of procedure are provided for by the Diet or local government organizing the agency, that is, the law, cabinet order, ministerial rule or local by-law will enumerate most all the essentials. The training and fondness of the Japanese bureaucracy in Tokyo to supervise, to control and to regulate anything and everything that they can lay clutching hands upon, has led them to prescribe for themselves to execute matters and affairs which are fundamental to the established agency. Only the fewest fundamentals belong in the organic law or local government by-law.

Discretion in exercised powers and flexibility of management demand that rules of procedure be adopted and promulgated by the agency itself under its own authority; thus the agency itself can cope with moderating or altered situations. Stated in another manner, such an agency has the inherent authority or power to formulate its own rules to administer the function for which it is created.

Universal practice demands that the regulation and rules of procedure should contain all of the details necessary for the agency to function properly. Among the more important items these should provide for:

1. The selection of a chairman and a vice chairman from among the members.
2. The proper notice of calling a meeting.
3. The establishment and schedule of regular meetings.
4. The authority to call special sessions.
5. The keeping of minutes.
6. The percentage of members to constitute a quorum.
7. The method or methods of voting.
8. The disciplinary action against members.
9. Organization of the secretariat and personnel.
10. Policy relations with executive subordinate staff.
11. The establishment of sub-committees.
12. The preparation of its budget.
13. The making of an agenda.
14. The presentation of matters by any person to the agency.
15. The conduct of hearings.
16. The announcement of decisions.
17. The issuance of orders.
18. The preparation of reports.
19. Recording of criminal and civil cases in which committee is involved.
20. The relations with other governmental agencies, in particular, the offices of the procurator and the courts.
21. The use or non-use of its properties by the public.

22. The attendance of visitors at the sessions.

23. Relations with the press.

A committee, commission or board, is normally presided over by the chairman, or in his absence by the vice chairman in the regular scheduled sessions or special meetings. The chairman or person authorized to call the special meeting has the secretariat send out notices to the members stating the time and the business to be discussed. Special matters are always specified in the call notice to allow members ample opportunity to prepare for the meeting.

The agency's meetings, as a rule, should be open so that the public can have an opportunity to attend. The press, also, should have free access to the sessions to observe their activities so that they can keep the public informed. The members of the body can never forget that it is responsible for its acts either directly or through a public official to the public.

In Japan, unlike many agencies in the United States, particularly boards of education, most committees or boards have to look to the assembly for the funds on which they have to operate. However, it is necessary for the agency in Japan to prepare a budget. It then submits it either directly or through an administrative section head, to the mayor, who in turn, includes it in his regular budget which he submits to the assembly. This budget includes remuneration for its members, salary for the secretary, for any other clerks that the committee needs, and other operating expenses that may legally be required. There is little question but that these independent agencies should have more control over their budgets.

The independent agencies of government which have the greater authority and more enumerated powers normally make many decisions, issue orders and have court cases, criminal and civil. The chronological record of all these is the heart of the agency's work. These decisions, orders and cases become the fundamental guide for future action. They should be printed and issued yearly with an appropriate title sudh as "The Report

of Such and Such an Agency, 1949."

Minutes of the agency's meetings comprise its "little policy" and operational file; they are kept by the secretary. Such minutes are kept as a matter of record. This record is most important for the purpose of member reference. Verification of action at a previous session is required frequently. Also, because of membership changes through death, resignation, and expiration of office, the agency's continuity of operation is interrupted, hence, a proper record provided by the minutes furnishes the new members their knowledge of what the board or commission has done previously. Moreover, minutes also can provide a means by which officials or people interested in the affairs of the agency can study its activities.

Much of the work of a committee is done other than in the regular session. It is in the meeting that discussion takes place, that votes are taken and that decisions are made. However, much work and study have to be done by the individual members outside the confines of their offices. They have to accomplish much before they can discuss intelligently the problem at hand and make a wise and sound decision concerning it. Members often must make investigations of their own. They certainly should verify evidence as well as get the opinions of persons who know something about the matter. In searching and seeking out these opinions a cross section of the citizenry can be interviewed to advantage. Small shopkeepers, farmers, and the like have crystallized opinions of their own just as do professional men and persons of academic training. Their practical views of city affairs ought not to be overlooked.

It sometimes happens that the ground work for a finished discussion at a regular or special session has to be done by a sub-committee appointed for that purpose and to bring in information on which the committee can act.

Relations with the Courts

Because of the most important relationship of the committee, the commission or the board, directly or indirectly with the courts, special attention must be directed to it.

The orders and decisions of the quasi-legislative, quasi-judicial and quasi-administrative agencies are binding on the people. The orders and decisions have to be obeyed by citizens. The precise reason why the law created the agency was that it would regulate and supervise some activity and that citizens would conform. However, the person whose conduct is affected by the orders and decision and who feels that he or she does not have to conform to the order or rulings, certainly has the right under law to contest the agency's rulings. Many legal disputes and law suits will take place.

The aggrieved party comes to court complaining that the committee's, commission's or board's orders or rulings are oppressive and unreasonable. These two terms mean that the plaintiff feels the rulings to be arbitrary, capricious or outright confiscatory of his or her rights.

The court's functions are (1) to determine whether the commission has statutory authority to act, whether its acts were reasonable, and then (2) to tell the parties what they must do, either plaintiff or defendant. When the organic act setting up the agency is well drafted and clear, the judge has little difficulty in deciding the competency of the board. The judge may then decide whether the board's action was reasonable. He does so by finding out (1) whether or not the action conforms to the law, (2) whether or not the action was, before being taken, based upon competent evidence or findings, and (3) whether or not it was issued arbitrarily.

Thus it is that the decisions of committees, boards and commissions are subject to judicial review in the courts of Japan. Not only can their decisions be reviewed but in certain cases they can be restrained. The agencies can be enjoined by injunctive relief from having their orders carried out pending the final decision in the proceeding for review. The authority for such legal action is found in "The Law for Special Regulations concerning the Procedure of Administrative Litigations" being Law No. 81 of 1948. Article 10 of the Law provides for injunctive relief. For example, an election committee can be enjoined from holding a recall election when a showing of irreparable damage can be made. Injunctions

were granted in the Mito and Utsunomiya district courts and two were granted in the Okayama district court. Injunctions were denied in cases in Hiroshima and Mito district court. In this type of case the committee, board or commission is made the defendant. It is purely a civil proceeding and the plaintiff or moving party is represented by his or her own private lawyer and not by the public procurator. The courts in Japan should not hesitate at any time to grant relief against all such agencies which act illegally, exceed their authority, do not have their decisions supported by the law or adequate evidence.

When the case is being decided in court, the judges rarely will substitute their judgment for those of the parties at court when they find only good faith and no improvidence or inefficiency. Furthermore, in deciding such important cases, the judges must adjudicate the full rights of both the public and the complaining parties. The public as one litigant is entitled to no more from the other litigant than fair protection to the government's authority or to no more return than the services given are reasonably worth. The individual or company as the other litigant is entitled to fair action or value from the public on what has been performed for the public's convenience. Very important for the judge in making his decision is whether the litigant on his or her part has acted wilfully. However, it must not be forgotten at all that one of the great duties of any court in representative government is to protect the individual citizen from illegal, arbitrary and capricious acts of public officials. Upon making decision the judge then instructs the plaintiff or the defendant that the order must be or need not be carried out.

When aggrieved parties come to court, involving these quasi-agencies, badly drafted laws regarding their powers and authority confuse everyone. The agency's position and the action taken by it are challengeable and weak. The complaining party's position is not too clear either; it can be placed in confusion. When such badly drafted laws mix the government's position and citizen's rights and a suit started by either arises

in court, an evil day results for many. Pity the judge who, because of weird provisions in the law, must sit alone in his chambers with ice pack and towels round his dizzy head attempting to fathom a legislative blunder which instead should have been a correctly drafted article of law! The legal snarl and kink in the badly drafted law vex and torment the best of legal minds. The judge has before him the plaintiff's brief which at first appears alright, and then suddenly they become blurred as does the photograph in the pan of bad developer fluid. This disappointment causes the judge to send for more ice and on securing it, he adjusts it and the towels round his head! He then picks up the brief of the attorneys for the defendant. This brief at first looks tenable, then unfortunately, it too becomes murkey because of the plural interpretations arising from the articles of the badly drafted law. The judge does not hesitate, he orders more ice! With fatigue, the judge puts both briefs aside, picks up his brush and with his deep conviction, begins to write and declare his own mind. Hardly has he begun when he realizes that his interpretations of the law are quite at variance from those of either of the contending parties' attorneys.

After a slight hesitation the judge decides that there can be no reconciling of these possible interpretations. Suddenly, right through his chamber door, comes a hollow but sincere voice! It is the voice of the assembly! The voice rasps out, "What we really meant, when we passed this bill is this, only this!" The judge quickly answers the voice, "But you did not state it so!" However, the voice is gone and there is no reply! The judge has no help from anyone; he finds himself in a futile situation, Gun-yo o Karite, Moko o Semu. To attack the wild tiger with a herd of sheep, all the judge can do is to order more ice and then finish his work as he views it himself. This irksome but solemn task is his responsibility.

Fully apart from all of the cases in civil litigation in which the committees, boards and commissions may become involved, there is the wide field of criminal violations. These are always handled by the

procurators' office. Violations of the organic act, cabinet order, or regulation of the agency carrying a criminal penalty should be rigorously enforced in the criminal courts by the procurators. For example, circulators of a recall petition who obtain signatures through fraud or forged signatures, wilfully or unintentionally, to the petition, violate the cabinet order and should be prosecuted by the procurator's office. When the agency can furnish the evidence to secure the conviction, it certainly is duty bound to do so. In all instances in which the agency does furnish the evidence, it of course is not a direct party in the criminal proceedings.

The committee, commission or board may or may not win its case in court. The important facts are that the agency goes to court to have its orders enforced and that, regardless of outcome, the orderly processes of government are carried out. These orderly processes of government demand the continuous use of the principle made clear in the Japanese proverb, Horitsu wa, Hito o erabazu: The law makes no choice of persons.

Required Committees, Commissions and Boards under Law

In Japan today a sound beginning has been made in the use of independent agencies for the administration of particular functions in local government. Hajime ga daiji. Some examples will be cited as to what the laws provide, both for the type whose activities directly affect the people -- the quasi-judicial, the quasi-legislative and the quasi-administrative, and the type whose activities affect only an office and are wholly advisory. Moreover, some commentaries will be advanced.

The Election Administration Committee. This agency, required to be a part of the local public entities of Japan, is the only one of its type provided for in the Chihojichiho. It is established in Chapter VII, Section II in the provisions of Article 181.

The total functions of this Committee are derived from the Chihojichiho and other laws and their cabinet orders.

The Law for the Election of Members of the House of Councillors and its Cabinet Order No. 191 of 29 July 1948: the Law Concerning the National

Election Management Commission, Law No. 154 of 7 December 1947; the Law Concerning the Provisional Exception to Election Campaign and Others, Law No. 196 of 29 July 1948; and the Law for Election of Members of House of Representatives, Law No. 47 as of 5 May 1923 and amendments.

Thus the functions of the city Committee are to conduct all national elections, and all prefectural and city elections within the city's area and to declare each election. These involve (1) proper registration of voters, proper voting, counting of votes, determination of valid votes, announcements of results, receiving complaints and appeals and making of decisions.

In executing these functions, the city Committee in addition to enforcing material articles of the laws, cabinet orders and instructions from the National Election Management Commission, formulates rules and regulations of its own under Article 194 of the Chihojichiho which the candidates for elections, the political parties and the voters at large must obey. Complaining parties can appeal to the courts for relief from these decisions. The city Committee, therefore, has many elements just like those of the quasi-judicial and quasi-legislative types of agencies. As was stated above, these particular types make decisions and formulate policies in the administration of their affairs.

The city Committee, like others in the prefectural, town and village governments, is responsible under the Chihojichiho to the public directly for its conduct of all local elections. Article 4 of the Law Concerning National Election Management Commission is contrary to the Chihojichiho for this local management; it also clearly violates the intent and purposes of Chapter VIII of the Constitution for administering local affairs. This portion of Article 4 should be deleted from the Law.

When the city Committee is conducting national elections, the four laws as given above apply; national supervision can be exercised. The city Committee is made up of four members elected by the city assembly for a term of 2 years from among those persons who have a right to vote. They are subject to recall procedure. The legal quorum necessary for the Committee to conduct its affairs is three. The city assembly can, if it

desires, elect an equal number of supplementary members, of whom there cannot be more than one from any one political party. A committeeman cannot be concurrently a member of the Diet, a public procurator, a government police official or a member of the Public Safety Commission. Furthermore, he or she cannot be a candidate for any elective position in the city.

These requirements are similar to those under which the Board of Elections functions in the City of New York. The Commissioners are appointed by the city council upon the recommendation of the two major political parties; they serve a term of four years and continue until their successor is appointed and has qualified. The president and the secretary are selected by the Board and cannot be of the same political organization. The Board has a chief clerk, a deputy and an office in each one of New York City's five boroughs.

The city Committee in the administration of the elections has great responsibility. The problems arising from candidates' excessive campaign expenditures or use of literature on speaking, call for patience, common sense and rigorous enforcement of the laws. The committeeman cannot be timid with these public duties.

This is the Committee which receives petitions for recall. The committeemen before accepting the petition from the responsible parties should make these people testify that the petition is in complete conformity with the Chihojichiho and its Cabinet Orders. People starting petitions cannot feign ignorance of their legal requirements; they must be held responsible under the law. The committeemen only invoke an election if the petition calling for it has the valid signatures of the registered voters of the city. Husbands cannot sign petitions legally for their wives nor can wives sign petitions for their husbands.

The signing of a petition by a citizen to call an election is a public act in the same sense that voting is. The individual citizen as a voter is the only person who can place his or her ballot in the box; no other person can do this for him or her. Under Article 94 of the

Cabinet Order No. 16 of 3 May 1947 as amended, the City Election Administration Committee must examine the signatures against the election register. It is not enough for the committeemen simply to find that a person's name is in the voters' register. This, of course, does not mean that the Committee go for days checking each signature house by house! They are required to be and they must be satisfied that the signing and sealing as demanded by Article 92 of the Chihojichiho is performed individually by the voter. What can the Committee do in suspicious cases? It can investigate, take testimony and call in writing experts to confirm genuineness of signatures. The Committee should not accept petitions which do not have the required number or percentage of signatures. Petitions in which the signatures are forged wilfully or unintentionally, and in which insufficient valid signatures exist for the requirement, should be rejected; the Committee should then turn these papers over to the procurator immediately for prosecution.

The Election Administration Committee has definite relations with the Office of the Mayor and with the city assembly. The Committee must make out its own budget for its normal operations and for those extra expenses which are caused by the elections themselves. The Law provides that the budget will be submitted through the Office of the Mayor to the assembly. The members of the Committee should be interested to follow their budget through the various offices and to final enactment of the general or special budget by the city assembly.

The Committee's relation with the assembly is not only the financial one to which reference has just been given as coming from the Office of the Mayor with regard to the budget, but also in terms of the provisions in Article 121 and Article 125 of the Chihojichiho. Members of the Committee must appear before the city assembly to make explanations with regard to the work of the Committee if the chairman of the assembly requests. Moreover, the city assembly may adopt petitions of its own and forward them to the Committee for action and the Committee is duty bound to make a report to the assembly of its progress and of the action taken with regard to this request.

The Election Administration Committees should assert their position in administration more forcefully. The members of the administrative affairs departments or sections are the subordinate officials for the Committee. These officials take direction and supervision from the Committee on administering the elections and on preparing financial statements and the budget. The Committee's rules and regulations for the personnel affairs of the subordinate executive staff should be unmistakably clear.

The Public Safety Commission

The Police Law in Chapter III, Section 1, Article 40, places clearly the authority and power of law enforcement and policing in every city of Japan and certain other autonomous entities: "Cities and urban communities having five thousand population or over (hereinafter called cities, towns and villages) shall be responsible for the maintenance of police and enforcement of law and order within their boundaries."

In the same clear manner, Article 43 places the control of the police authorities in the Public Safety Commission: "There shall be established under the jurisdiction of the mayors of cities and headmen of towns and villages Public Safety Commissions of cities, towns and villages to control the police within the boundaries of the respective cities, towns and villages."

It is absolutely fundamental to the understanding and solving of law enforcement problems in Japan that Article 54 of the Police Law be kept in mind: "There shall exist neither administrative nor operational control by the National Rural Police over the police of cities, towns and villages. These police shall be obligated to cooperate with each other."

Thus it is that the purposes of this municipal system are (1) to place the responsibility of policing in local jurisdictions; (2) to repose in the local communities one of the most important governmental functions; and (3) to have the Public Safety Commission control the police within the boundaries of the city.

The Commission, therefore, because of its policy-making authority being within the executive channel - that is, under the mayor's jurisdiction - is a quasi-administrative agency. However, it also has rule-making power of its own for the establishment of certain policies of law enforcement

which the chief of police will cause the police force to carry out.

The Diet, in enacting this Law, has taken every precaution to insure that the members of the Commission are (1) persons who have a clear public record, (2) free of any pressure which might influence their decisions, and (3) persons in whom the taxpayers can have the utmost confidence in their integrity and honesty. It is these commissioners who determine the type of police officers and the police force that the city both can and will possess.

The mayor of the city appoints, with the consent of the city assembly, the three commissioners, each of different political party affiliations, from among those persons who have the right to be elected to the assembly and who do not come within the restrictions of (1) having been in the police service (2) having held a public appointive office, (3) being a non-rehabilitated bankrupt, (4) having been sentenced to imprisonment, (5) being concurrently a member of an assembly, (6) being on the payroll of a metropolis, district or prefecture, (7) being an official of a political party or other political organization, and (8) being a person, who, on or after the date of the enforcement of the Constitution of Japan, has organized or joined a political party or any other organization advocating destruction by violence of the Constitution of the government created thereunder.

A member of the Public Safety Commission holds office for a period of three years. He may, however, be reappointed. In case of vacancy for any reason, the new commissioner appointed to fill the vacancy serves only during the unexpired term of his predecessor. Moreover, a commissioner automatically loses his seat on the Commission if he (1) becomes a non-rehabilitated bankrupt, is sentenced to imprisonment, (2) joins a political party to which another member belongs, (3) becomes a member of a political party or other organization advocating the overthrow of the Constitution or government by force, or (4) is recalled under the recall provisions of the Law Concerning Local Autonomy. No member may be dismissed against his will unless dismissed by the mayor with the consent of the assembly because he has become incapacitated, has violated his official obligations or committed "an act ill befitting a member" of the committee. The ascertainment

of what is "misconduct ill befitting a member" is difficult. However, by the Law it is an issue which the mayor and assembly must determine jointly.

For purposes of comparison of some of the provisions of the Police Law just enumerated, a short statement regarding the police structure in New York City can be made.

The police commissioner as head of the police department is appointed by the mayor for a 5 year term and is removable at the pleasure of the mayor or the governor of the state. Any commissioner so removed cannot be re-appointed. Vacancies must be filled within 10 days. Neither the commissioner, nor any member of the force, can accept any other public office or any nomination for an elective office. No member of the police force can contribute any money to any political fund or become a member of any club or association either directly or indirectly intended to affect legislature dealing with the police department or any particular member. The police commissioner is assisted by 6 deputies. For the executive offices also, there is a secretary, a chief engineer, a secretary to the police commissioner, a chief surgeon, a property clerk, a superintendent of buildings and a superintendent of telegraph. Moreover, the police force is one of slightly more than 15,000 men.

In every city of Japan the functions of the police for law enforcement are provided for through Article 41 and enumerated in paragraph 2 of Article 2:

"1. Maintenance of public order;
2. Protection of life and property;
3. Prevention and suppression of crimes;
4. Detection of crimes and apprehension of suspects;
5. Control of traffic;
6. Serving of warrants of arrest and of detention and other affairs ordered by the Court, Judge or Public Procurator and provided for by law."

The Commission through its own rules of procedure and its regulations should implement each of these six powers explicitly to show its own duties. The Commission's own authority is thus made clear as to what it can and as to what it will do in carrying out its functions.

The Commission's executive subordinate is the chief of police. The Commission appoints him, and for cause dismisses him, in accordance with

the city's by-laws as provided in Article 47. The power of appointment and dismissal belongs to the Commission - not to the mayor, not to the assembly. The Commission approves the chief's appointment and dismissal of the junior police officers. The Commission at regular intervals should sit in review of its policies which it has instructed and directed that the chief of police carry out. This the Commission can do by having the chief report directly on such matters. The Commission should have real confidence in the chief; it should give the chief responsibility and then hold him liable for all of it. As the highest operational officer, the chief must be held liable for these duties. If he cannot perform then, the Commission has the duty to dismiss him and not keep him in office because as a little boy he was once very kind to cats or because his father one time received a very nice letter from some Daijin. The Commission must deal with the police force through the police chief. It must back up the chief's decisions. If these should be wrong, the Commission should correct them with the chief personally and not with the police force.

The Police Law in Article 54 provides that the National Rural Police and Municipal Police will cooperate and coordinate on law enforcement affairs; in Article 56 it provides that the chiefs of police of the respective systems will be the liaison officers. In times of stress or emergency, the Commission, not the mayor nor the assembly, has the legal power and must make the decision of whether or not to call in the National Rural Police for assistance, Article 55.

Like other committees or boards, the Commission has definite relations with the Office of the Mayor and the assembly. Some of these are executive in character, others are advisory or of a recommendational nature.

On matters of finance, especially the budget for the police, the Commission sends its budget to the Office of the Mayor for transmittal to the assembly. The police budget and police financing have to be studied carefully by the Commission. Moreover, the Commission should follow the police budget through to final enactment of the city's general or special budgets.

The financing of the municipal police force for adequate administration needs concerted and direct attention. A complete overhauling of the

tax structure has to be made so as to allow the local public bodies adequate sources of revenue. They have been forced to take the burdensome left-overs from the central government for 50 years and that period is long enough! Their financial condition today is most critical.

In its recommendational capacity the Commission should advise the mayor on general conditions of law and order in the city. The information should not be guesswork; the mayor should be given a good account. Because the mayor is the executive authority in the city, he has ideas and develops plans in connection with law enforcement. The Commission can well make recommendations for changes in or further enactment of new by-laws on law enforcement.

The Commission's relations with the assembly, other than those arising in terms of its work on which communication is desired, are specified in the laws. In the Police Law in Article 45 the municipal governments, by means of by-laws, establish within their boundaries "the location, name and jurisdiction of each police station and the name and organization of the headquarters of the police." The Commission must advise the assembly on all these important affairs.

In terms of the Chihojichiho, Article 121 and Article 125, the commissioners can be asked by the assembly chairman to appear before the assembly and there explain particular matters. Also, if the assembly sends a petition of its own to the Commission for action, the Commission has to report back not only its work of progress but also its final results.

It is most important that Japan develop governmental responsibility in the local administration of police affairs and law enforcement. It is vital to sound local government. England in its long remarkable history has not had a national unified police system appointed and controlled by the central government. The police system in England is a series of local police forces, each with a proud and singular history. In the United States each city, town and village has its local police authority. Viewed by democratic standards, the spy system which developed and stands out on the Continent of Europe is a bad substitute for a police force. In representative government each citizen has the opportunity of participating in

the preservation of law enforcement and maintenance of order. The present harrowing days of local government financing in Japan must not be a deterrent or used as an excuse to bungle or misuse the local municipal police system. Local government financing is poor today; it can and must be remedied.

The Local Board of Education

The Local Board of Education is a quasi-legislative authority. This legal fact is made plain in Article 53 of the Board of Education Law:

> "The Board of Education may legislate the regulations of the Board of Education concerning the affairs under their control, as long as such regulations are not contrary to the laws and ordinances.
>
> "The regulations of the Board of Education shall be publicly announced in conformity to a stated form of public notice."

The Board is responsible directly to the public for its educational program. It is not under the jurisdiction of the mayor nor is it responsible to him. It is not under the jurisdiction of the assembly, but it has certain responsibilites to the assembly.

The Local Board of Education, established by the Diet, should be organized in all cities, towns and villages by 1 November 1952. The Board is composed of five members, four of whom are elected by the people and one is elected by the city assembly from among its members. The term of office is four years. Half of the members are elected every two years but the assembly member holds his seat only during his term of office. Those persons who have the right to vote for or who are eligible for membership in the city assembly may vote for or be a member of the Local Board of Education. However, a member cannot concurrently be a member of an assembly, a national public official or a paid member of a local public body or a member of a Prefectural Board of Education.

The election of members of the Local Board of Education generally follows the provisions in the Law Concerning Local Autonomy which control the election of members of the city assembly. There are some exceptions, however. For example, a candidate for this Board must be recommended by sixty voters but he does not have to make a deposit with the Election Administration Committee. At the election, those candidates receiving the

greatest number of effective votes become elected members of the Board. The members of the Local Board of Education are subject to recall just as the members of the city assembly are, the same rules applying for each.

The Board of Education is a most important one. It takes charge of and executes affairs concerning education, science, and culture, Article 4. However, it has no jurisdiction over higher educational institutions or private schools unless so authorized by law. As Article 55 in paragraph 2 provides, the Local Board of Education is not under the direction of the Mombushō or the Prefectural Board of Education. Its main purpose is to see that the administration of education is free of undue pressure and based upon the popular will; also that its educational program meets the actual needs of the community.

Under Article 49 of the Law, the Board is charged with 18 enumerated fuctions. Summarized, these have to do with (1) the establishment, management, operation and control of schools, (2) the selection of text books, (3) the appointment and dismissal of teachers, (4) the curriculum to be taught, (5) the preparation of the budget, and (6) social education. Other such subjects fall within the consideration and determination of this Board. Since all these matters are of primary concern to the people in a community, the meetings of the Board are generally open to the public, so that the public can listen to the deliberations and can have an opportunity to hear the entire discussion on matters which affect them so vitally.

Broadly speaking, this Board is responsible to the citizens as a whole for its entire program. This is the case despite the fact that the operational affairs seem entirely directed to school children and their parents or concerned relatives.

The executive subordinate to the Board is the Superintendent of Education. He is appointed by the Board and becomes its chief executive officer. Special confidence should be reposed in him as a technically trained person. The policy of the Board is to be executed by the Superintendent in cooperation with the staff. He should make recommendations on the progress and results of his work and the Board should "sit in review" in terms of these reports as well as its whole program. Should the Superintendent become

incapacitated or incompetent, he should be dismissed. Precisely like the police function, the educational function is too significant in the life of the country to permit poor administrators to perform it.

The Board of Education has relations with the Office of Mayor and the assembly. The most significant one with the former is the budget. Unlike the condition in the United States the Board in Japan does not possess independent financial status. This power it should have; if not that, then at least separation from Ōkurashō and Mombushō. On financial affairs the Board must work up its own budget carefully. After sending it to the Office of Mayor, the Board should follow it through to final passage in the general or special budget. Although the Board has jurisdiction in operation and control of school properties under the Law in Article 49, it must consult on matters of ownership with the mayor on school buildings and construction because he is responsible for city government's ownership of all public buildings. Once the properties are assigned for school purposes, the Board assumes the control which includes abolishment of schools or their use by political or religious groups. For the latter purposes the Board must exercise great discretion and insure equal treatment.

The Board's relations with the assembly are not only such matters as local bonds for education, Article 61, and basic property and reserve funds, Article 61, but also others. In dealing with the assembly the Board should discuss its budget at the assembly's main budget hearings, Articles 56-60. The assembly determines the amount of remuneration the Board's members can receive, Article 61. It is the assembly that decides upon the number of teachers and of other personnel connected with educational administration, Articles 31, 45, 61 and 66. The Board, like all committees or commissions in their relations with the assembly, must adhere to Article 121 and Article 125 of the Chihojichiho.

Permissive Agencies under Law Established through By-Laws

As has been explained earlier, the national laws can either require the establishment of committees, commissions and boards in the local governments or grant authority to the local government to create them at will.

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agencies discussed above. This Committee must be established through by-laws.

This Committee has for its function the inspection of any enterprise carried on by the city and of the administration of the financial affairs of the city. The inspection must be performed at least once a year. A competent administrative official of the city or the assembly can make demand upon the Committee for an inspection at any time. The Committee, on the other hand, can initiate its own investigation at any time. The result or report of the inspection is made to the official or assembly requesting it, after which it is made public.

In a city in which an Inspection Committee is established, it is composed of either two or four members. They are appointed for two years by the mayor with the consent of the assembly. Moreover, the membership is divided equally from among the members of the assembly and from among persons having special knowledge and experience. An Inspection Committee member cannot concurrently be a paid official of a local public body, a public procurator, a government or local police official, a revenue official, or a member of a Public Safety Commission.

The Inspection Committee has another very important function to perform in case a citizen of the city is of the opinion that the mayor, the chief accountant or treasurer or other public official, has made an unlawful expenditure or has squandered public funds or wasted public property or has executed or performed an unlawful or ultra vires contract. The citizen can make a demand upon the Inspection Commissioners to make an inspection and to restrain, enjoin and prohibit the act. The citizen in doing so attaches to the demand his or her written proof of the charges. For this particular type of case the Committee has to make an inspection within twenty days. If it determines that the demand is correct, it orders the mayor to restrain, enjoin or prohibit the act. If it finds that there is no justification for the demand, it notifies the person who has made the demand to that effect.

By provisions of the Chihojichiho, Article 121 and Article 125, this Committee can also be called for questioning before the assembly, and it

can be made to make a report to the assembly on matters referred to it as a result of an assembly's petition. The members of this Committee are also subject to recall by the people.

The Inspection Committee has great power to see that the affairs of the city are properly administered and to see that the interests of the people of the city are protected.

Agencies Established under Municipal Powers

From what has been stated already, the issue is clear that the city government has enumerated powers under Article 2. For the execution of any one of these functions, both the mayor and the assembly may desire a committee, commission or board created in connection with it. Any of these can be quasi-legislative, quasi-judicial or quasi-administrative; they can, of course, be advisory also.

The city government has this authority and power to establish the agency either with or without the assembly's ratification. The initiative for establishment of the agency would normally be taken by the mayor, but the assembly need not be too content to wait on the mayor should the occasion in its judgment demand solution by a committee.

A number of cities in Japan have established these committees for varied purposes. A few examples are illustrative:

In Fukuoka there is the City Owned Evaluation Committee and the Police Personnel Committee; in Kurume there is the Committee for Handling Complaints of City Employees. In both cities the committees are appointed by the mayor and are advisory to him.

Summary: Three Conclusions

The power and authority of all the local governments in Japan to establish independent agencies to perform a particular function should and must be used with intelligence and real moderation. Good causes and good reasons ought to be in evidence before committees, commissions or boards are established. These agencies need not be established simply to make room for some person's forty-fifth cousin, especially when the other forty-four cousins are already having lunch off the municipality's unknowing

taxpayers! Indeed, these agencies need not be established as the Family Monopoly or the Friends' Institution! A municipal government or any government can easily be hampered or its authority dissipated wildly by a multiplicity of offices and agencies. Friction develops, discontent matures and inter-departmental jealousies become rife; good government is vitiated quickly and easily by overdoing the agencies. Moderation in number or function of agencies will produce no public censure or bad political repercussions.

When committees, commissions or boards are created, their function most assuredly is to perform the given task, to do the work; in short, they are duty bound to produce! Who is to see that the agencies do produce? How is it done? Does the checker or inspector close his eyes, squint with one, or open both? Some agencies report to the public, some to the mayor, some to the assembly and some to administrative offices. Each of these parties to whom the agency is responsible has the duty to check and to evaluate results. If an agency does not or cannot produce, even after change of personnel, the mayor must abolish it or the assembly legislate it off the books. The keeping of useless agencies is just grounds for wholesale criticism of the city's government.

What should the mayor, the particular office, the assembly or the city government as a whole do with the committee's, the commission's or board's technical advice or professional recommendation? Throw it away? Use it to start an argument? Or file it safely in some little dark corner where none need see it? When an agency of technically experienced or professionally trained personnel presents its findings and recommendations, the public, the assembly, the mayor or the administrative office - each is duty obligated to receive, to analyze and to give the most careful attention. To go counter to a qualified agency's report, the burden is on the party doing so to produce the strongest evidence. Why have the agency otherwise? Why use the taxpayers' money? Indeed, Koneori zon no katabire mōke: To labor hard but to gain nothing but fatigue.

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HEADQUARTERS EIGHTH UNITED STATES ARMY
Civil Affairs Section
Legal and Government Division

THE LOCAL AUTONOMY PROGRAM FOR THE CITIES OF JAPAN

Paper No. 4.

Municipal Administration

Administration is the heart of the executive branch of government. The universal use of the term administration in municipal government means not only the officers and other employees of the city's organization but also the structure of offices in which all these people perform their duties. People can frequently be heard to say, "I think that the administration has done well this year," or "Kobayashi-Kun belongs to the administration." In this case people are talking about the mayor's policy and the chief assistants. In another situation, the people may say, "This city's administration is very simply formed," or "What does the administration look like?" In this situation they are talking about the departments, bureaus, sections or units and offices into which the city government is divided.

While the organization of sections and units and office structure of municipal government is important, no guarantee in them alone exists that perfection can be achieved. However good the organization and structure may be, the ultimate success of good administration depends upon the officials and employees. In city government, as in all forms of human activity, good results are the factors that count. The number of administrative officials, assembly members, standing committees or independent commissions or boards, while important, are not the immediate guides to rating or ranking the success of the city administration. Factors such as schools, low crime rates, the decrease of illiteracy, the number of well paved, cleaned and lighted streets, well cleaned street drains, sidewalks, sanitational systems, well operated fish stalls and vegetable markets, dock areas, a lower death rate and cultural developments mark good municipal government. More than the mere passage of laws or by-laws has to be accomplished regularly to maintain schools, prevent fires when possible and fight them when they occur, to ward off epidemics, to lower a death or disease rate or to provide a pure water

supply. All such accomplishments are the products of skillful administration over a period of years. These great services are made possible chiefly by the efficiency and loyalty of trained technicians. They depend also in part upon the extent of intelligent public cooperation. Indeed, civic minded-ness is the great life-giving base to all representative government.

Municipal Policy and the Administration

The duty or obligation of the city administration is to execute and to give real life to the expressed public policy of municipal affairs. What is meant by public municipal policy? How is it formed? Through what steps do the elected representatives go to produce this public policy into final workable form? How do the civic minded people and taxpayers see the results for which they voted?

Simply put and of cardinal importance as the foundation to representative government, local governmental policy or national governmental policy, is the voters' and taxpayers' expressed wishes and mandates to accomplish a given objective or goal. Public policy is settled at the ballot box with a ballot - not with an assissan's bullet or by "a glorious dictator." To everyone it must be clear that public policy is the citizens' ideas of what they believe should be done. Their payment of taxes or their raising of special funds is the means by which whatever they want done, can be done. It is also clear that public policy begins and is generated by the people. Municipal policy or national policy in representative government is never the conjured dictates of some one man, never the wilful arbitrary action of one or two men coupled with a small "wilful group of little men." Never for certain is it one or a series of cunning acts of a party of grasping rogues, labeling themselves to disguise or to mystify busy and unsuspecting voters and taxpayers with such magnetic titles as: "The Noble Lovers of Freedom Party" or "The Splendid Party for the Peoples' Dictatorship" or "The Great Dictatorship Party of Government for No Cost to the People" or "The Party for Government of Free Service to Everyone," or "We are the People Who Have the Only Right Idea Party."

Municipal policy in representative government is formed in the following democratic steps: first, the civic minded citizens in their homes or in

private or public meetings discuss what they want done; for example, some new act or change in public safety, education, sanitation or a reduction of all city expenditures. In this stage, not always, but generally, these desires and statements of what "should be done at once by someone" are indefinite; they are not too well shaped; second, these people and other citizens who are members or executives of political parties of the public group which is sponsoring a candidate for mayor, take up these ideas and plans and put them all into much more meaningful form and language. The political parties and even the civic organizations can make these more definite statements because in their executive sessions and general meetings, they have worked out the inconsistencies and have taken the feasible issues and put them into a practical status; third, candidates and party members put these issues and questions in practical and final form to the voters, and the elections are held on the basis of them; and fourth, the public's selection results in (1) a candidate being elected mayor, (2) if up for election, as given in Paper No. 5 of this City Program, some candidates for the boards, committees or commissions, and (3) some candidates for the assembly.

Municipal policy thus formed is molded in final legal form as jōrei by the elected representatives in a few democratic steps; first, although any assemblyman CAN and a great many do so in England and especially the United States, the mayor, because he is the executive, usually takes all these statements of policy and has them introduced into the assembly for action, as for example, a bill for public safety or a bill for construction of city properties; second, the assembly as the true deliberative body, puts the bills or series of them through its own procedures: (1) the referring of the bills to the proper standing or special committees, (2) the committees' public hearings and discussions, and their final drafting and reporting of the bill back to the assembly's general session, and (3) the bill's final enactment into a jōrei with the mayor's signature (or repassage over his veto); third, the placement through the Office of Mayor of the duties given in the jōrei to the proper section, board or office of the administration which is to have specific authority to execute the duties in an orderly professional manner.

The municipal policy thus in its completed form as a city jōrei, the voters and taxpayers can see. Moreover, they can observe for themselves how the policy is being executed and with what results: (1) watch for changes in the section or office as to its revised or new services offered, (2) see daily the construction or reconstruction of the buildings, bouleverds, docks or bridges and, (3) read and study the mayor's annual report and official releases.

The democratic formation of the municipal policy and its enactment into final jōrei for the peoples' benefit are the reasons why the administration has this one solemn duty, and only this one solemn duty, of executing the policy through the means of the orderly processes and procedures.

What is the exact meaning of this principle that the administration execute the provisions of the horitsu and jōrei? What is the meaning of the phrase, the orderly processes of government? The meaning of the principle is that the voters have spoken lawfully for the achievement of a named result and because of their having done so, that exact named result must be secured. The meaning of the principle can never be that the chief administrators and public civil servants can at anytime insert their own ideas of action as substitutes for those embodied in the voters' policy. The principle's meaning can never be that the chief administrators and public civil servants can alter the provisions of law or jōrei at their will. If upon solid evidence it is found that the administrators and civil servants are perverting the voters' mandates as stated in the provisions of the law, they should be disciplined administratively by the mayor immediately. If he finds the violations grave, he should dismiss them immediately from all governmental service because they certainly are unfit to administer the public trust.

The phrase, "the orderly process of government" means that voters of the government have established in a democratic and lawful manner, the foundations or structural framework of offices, the needed legal procedures between offices or officials, the vital machinery and the necessary administrative channels among offices and persons through which, and only through which, the governmental powers and functions can possibly be allowed to flow evenly and regularly or can possibly be administered and carried out.

The orderly processes of government can be compared to a great dam harnessing a mighty river which otherwise would rush devastatingly to the sea. The uncontrolled river would expend its energies uselessly and therefore deny to man both, on the one hand, power and light for his factories, trains, farms and home, and on the other the rich and abundant all year round harvests. The great dam can be many meters high, many meters thick and many meters across, from one side of the mountain to the other. The melting snows and the rains make this rushing river quickly form a great lake behind the dam. With good mechanical equipment and by flexible regulation, power and light can be generated. By the proper opening and closing of the water compartments and gates, a known given volume of water can be utilized properly and economically by the farmers and others who need it. In government the voters' mandates and desires are, in results, like those of the melting snows and rains. The orderly processes of government in having policy, laws and jōrei flow through them and enforced through them are like the great dam having the pressured volumes of water go through all its fixtures and equipment. When the competent section or office of administration functions properly as the compartment or gate in the dam allows water to go over the spillway, a good municipal program results for the schools, or the police force acts with promptness to apprehend the criminals and violators of the law. As the lake behind the dam builds up higher and higher, the pressure generated against the dam is terrific. The pressure can be extremely dangerous. In government, so the demands and urgings of the citizens for immediate action build tremendous pressures against and even within the orderly processes. On the lake's edge and in parts of the river dangerous whirlpools and eddies develop and after herd torrents, tonnages of detritus float around and ugly dirty water is everywhere. In government, too, there are ugly, ulcerous conditions attacking and corroding the orderly processes. Criminals, pressure groups, and concerted subversive parties loyal to a government other than the one under which they profess loyalty commit these evil acts. They are bent on the outright destruction of any and all things which stand in front of their evil goals that they are directed to attain by any means. Sometimes in the dam the machinery breaks or stalls, and all gates fly open to remain jammed.

Hence, uncontrolled volumes of water in terrifying roar to everyone gush forth all over land, wash away homes and drown people. In government also, now and then these criminals, pressure groups and subversive elements cause wilful disturbances and provoke riots which break down the orderly processes momentarily so that some citizens and officials are beaten and injured; some of them frequently are shot or killed. The damage to the dam and humanity can result from no action at all through sheer ignorance of the dam's control operators. The damage to government can, and nearly always does, result from indecisive, late or stupid actions of weak-willed, compromising or limp officials. Just as it is so in the law of nature that the river will in certainty reach the sea, is it so that the overwhelming majority of people want the orderly processes of government. They do not want smothered, dictated and stifling order and peace, but they do want order and government which they can make with others, and in which they can have a part in living with others.

When the dam's machinery goes wrong and must be changed or repaired, the engineers do not stay up all night or meet in mountain yadoya derising cunning plans to throw bombs or dynamite at the dam or sabotage the rest of it. The engineers appraise. They get at the causes. They reconstruct. Just so in government, the majority of civic minded citizens and loyal officials seek out the causes and produce democratic remedies. They will not allow parties with cancerous tactics to continue living or attempting to wreck the orderly processes of good government.

Far away from the dam, the mills operate and homes are lighted; immediately below the dam, the terraces and paddies yield a harvest. The products of both the mills and the harvest enrich the owners, the nearby community and the country as a whole. The factory owners and the farmers, their families and friends appreciate the dam; they understand its function. They are impressed by its enormousness. They know that its equipment can be operated properly by schedule. They know that the results of orderly operation are beneficial. None of them, however, will ever stand in awe of the dam. All are thankful that man with his engineering and architecture has triumphed. For the orderly processes of government the citizens' same appreciation is true. The same understanding is true. The same impressiveness with government's

enormousness is true. Moreover, none of the citizens need stand in awe of government. They all know that government is man made. Moreover, they all know that an honest, loyal and intelligent officialdom will always execute and administer the municipal policy for the benefit of the community.

The Administration's Impression on the Public

In a major degree the citizens make their judgment of the city government by the character and manner in which the officials and employees greet them in daily business. This fact in government is of great importance. There has been an ever increasing and direct attention paid to the selection of officials and employees and to their conduct not only by the candidates for mayors or assemblymen but also by the voters themselves. They desire more efficient, less costly and more courteous accomplishment of municipal affairs. As a group the public servants are called the bureaucracy. As individuals they are called bureaucrats.

Because of their contact or association day by day with the public, the officials and public servants are the people of whom the voters and taxpayers think first when the question is asked, "Is your city good or bad?" Taken as a group these officials and employees are the ones who impress the citizen more than the mayor or the assemblyman year in and year out. Who are these officials and employees? They are not the chiefs or policy heads of bureaus, departments or sections, because these persons the public rarely sees. They are the officials in the various offices to whom all kinds of bills are paid, especially, the tax collectors and the registration officials who as a class have long been called the "white collar group." They are also the policemen in the keisatsushō or koban, the firemen in the shoboshō and the officials or employees in the city owned utility, whether it is the power and light plant, the gas works, the transportation system or water works. These are the public servants who rub shoulders with the public daily. The actions, manners or courtesies shown or not shown by these public officials and civil servants, politically fortunate or unfortunate for the mayor and the assemblyman, have lasting effects on the citizen who lives within the city and on the visitor and stranger who come from without.

For many years the terms, bureaucracy and bureaucrats when used, have not meant anything favorable. They are not terms used to convey a compliment. The unpleasant general meaning in Japan has arisen because many bureaucrats over the years have been austere, uncommunicative and haughty persons; they have managed to secure positions and to remain in them. These bureaucrats have caused the public discomfiture. These bureaucrats are the people who when challenged for improper acts always manage to shunt the responsibility on some other person. This stigma to the term bureaucrat is rightfully deserved by these people. Unfortunately this stigma has been loosely transferred over and applied to greater number of bureaucrats and to good administrators also. Therefore, it is easily seen that the decorum and conduct of these officials and employees of the city must at all times be beyond reproach. That this task is most difficult goes without saying. In the United States, England and Australia, this factor has been partially solved by institutes and associations of civil servants which seek to raise the status of members in the community by inculcating the principle that service to the public is the highest idea of the public official.

Specific Services of the Administration

It is clear from what has been stated thus far that in representative government the elected officials serve to carry out the popular wishes. The elected officials, therefore, have the duty of executing responsibilities which generate from and change with public policy.

The foundations of representative government support not only the general rooms in which these political responsibilites are exercised but also a particular series of rooms in which administrative responsibilities are carried out. This series of rooms is constructed in such a manner that the factor of stability can be maintained by the civil servants. Thus, the first great service of administration in the orderly processes of government is supplying staff and organizational stability. The administration performs the work which elected officials are not fitted to perform, do not have time to perform and are not inclined to perform if they did have time.

The administration contributes the service of stability because it is permanent. It is permanent in the sense that it does not change materially

from one election to another as is the general case for mayors, assemblymen and other elected officials. The great body of civil servants remains together year in and year out. The changes which do take place within it are caused by the exceptional "shake-up" in organization every so often, and the normal factors of discipline, resignation, sickness or death.

The second service furnished by administration is continuity of policy and operation. The service of continuity must be furnished somewhere in any government to insure its functioning regularly. The administration records the city's affairs, function by function, year by year. Moreover, this recording of "what goes on" is as much an oral and personal affair as it is a written and documentary matter. These public servants in their workaday duties live with somewhat the same procedures and practices. Innovations and new changes are, of course, brought forth. The public servants invent things themselves. The officials work with laws, by-laws and rules day by day. They are thus the source for regular information for all incoming elected or appointed persons.

A third service made by the administration is its daily performance with professional and technical ability. The great percentage of the public servants are people with ability; they are trained and have experience in particular work. For example, on examination of the agricultural offices, the agricultural officials are found with their special knowledge and experience in animal husbandry, in soils and chemistry of the soils, or in ground and tree crops. In the public health office a person should not be found posing as a health technician who had spent all his former life selling whiskey and sake. He would be apt to be too enthusiastic about giving advice to people of delicate constitutions on the use of alcohol.

Within the administration, of course, there is the usual percentage of people who do little. They stagnate in position. A similar percentage of incompetent people exists in all organizations of any size. Therefore, administration cannot be singled out alone for sharp criticism any more than any other organization. That this fact exists, however, is never an excuse for the mayor as the law now reads, or personnel authority as the law should read, not to weed out incompetent persons. Neither is this same fact an excuse

for the mayor, who now exercises the power of personnel, not to replace the incompetents regularly with people of ability. It is a vital principle of administration that money should be spent only on the purpose for which the elected representatives allocated it. Retaining of incompetent or negligent officers for compassionate reasons is diverting money to relief and welfare purposes. This type of diversion should not take place because this allocation of funds has been voted for the technical work of government.

Representative government is dynamic. Its entire fabric is made of people, and people are not machines. People and conditions change; so does government itself. Too few people understand how much government ought to change. Representative government requires the political services of politicians and political parties to keep abreast of these fast moving social and industrial actions. In the same degree of necessity, representative government has to have the professional services of good administrators and officials trained scientifically and technically to execute the public's action as expressed in laws or codes. These two groups - the elected representatives and the civil servants - harmonize the continuing actions and reactions of the municipality for the benefit of the community.

General Principles of Organization

All the city administrations of Japan whether in large cities or small cities need some type of uniform rules to be applied when people enter the public service, when they remain in it and, for some reason, when they leave it. Some form of the merit system in each municipality should be in operation. A law passed by the Diet could establish the minimum requirements for a good merit system for all cities. Whether or not an independent separate agency, or a separate office in the administration publicly charged to administer the merit system of minimum requirements, would be needed instead of having this function centered in the Office of Mayor, is a matter to be decided more on a scientific basis than on a political one. A merit system cannot function as a merit system should under political control. In fact, the municipal merit system, and whatever the authority for administering it, should be removed as far as possible from politics and political maneuverings. Such non-political factors include (1) the variety of functions and services the people desire

the municipality to perform, (2) financial resources and support for each of these functions and services, (3) the city's total population, and (4) the city's territory and area.

The elements of a simple yet workable and practical municipal merit system must be defined in the law and implementing regulations, or by the authority duly created to administer it, in clear, precise language; the system must include the elements of: (1) a classification system for all the positions in the municipality with fixed adequate salary or pay scales for each class; no ungraded positions should be left, (2) specified, enumerated entrance qualifications for each class, (3) a positive system of recruitment <u>within</u> the administration as well as without for each class, followed by competitive examinations and personal interviews pointed to evaluate the candidate's knowledge and use of the specified qualifications for the position to be filled, (4) a specified probationary period for new entrants, the conditions of which can be thoroughly made plain to the candidate, (5) a definite procedure for advancement in salary and position by a method of efficiency determination through proper training, safety factors, health factors, welfare factors, recreation, employee evaluation and employee utilization, (6) protection from discrimination or dismissal because of "trivial, personal, religious, racial, political or other arbitrary or extraneous reasons," (7) well defined procedures for discipline and dismissal in terms of an established and known minimum standard of performance, and (8) a workable system for retiremen with adequate, specified pay ranges.

Some cities in the United States have municipal merit systems which incorporate all these well known elements. Some cities for reasons of their own have procrastinated and lagged behind in enacting good municipal civil service regulations.

In the United States cities of large size, because of large numbers of civil servants and employees, there exists the definite opportunity to utilize in full time a separate personnel authority staffed with persons professionally trained in personnel management. In the United States a large and growing number of municipalities warranting only a small group or staff of administrators and officials with experience in personnel relations, have placed the

administration of the merit system out of direct political control under a personnel office which secures advice for personnel management from their municipal league which they, themselves, control as a professional organization in public administration. The cities themselves make up the league. When a city needs personnel assistance, the personnel office gets it from a professional trained and experienced staff.

In Australia there is a legal contractual relationship between the Municipal Officers Association and the Municipal Association which is an organization comparable with the City, Town and Village Association in Japan. It broadly incorporates these eight elements. Another advantage of this system is its uniformity so that a brilliant and ambitious officer is not handicapped because he commenced work in a small municipal office.

In the United States a bipartisan city civil service commission with either three of five commissioners is the system most widely used. The varying methods of electing or appointing the commissioners are discussed in Paper No. 5 of this series. The commissioners have over-lapping terms of office to secure continuity of policy and to prevent political tinkering from one mayor's election to another mayor's election. The commissioners have authority, they know their authority and they use it.

The New York City Municipal Civil Service Commission consists of three members appointed by the mayor for six year terms until a successor is appointed and qualified. Not more than two members can be from one political party. The mayor has the power to remove a commissioner for cause after public hearing. Appointment to the vacancy is for the unexpired term. The State of New York Civil Service Commission also has the power to remove any Municipal Commissioner but can only do so on charges after a hearing, by unanimous vote, and the governor's written approval. The Municipal Commission has a secretary, a director of the examining division, a chairman, an administrative assistant, a committee on laws and rules, and seven bureaus as follows: Certification, Examining Service, Fiscal, Information and Record, Investigation, Payroll and Service Rating. Moreover, the budget for New York City for the fiscal year 1947--1948 provided for 157,419 positions of which 42,596 were full-time teachers, 19,801 were in the Police Department, 12,935 in the Sani-

tation Department, 6,757 in the Welfare Department and 2,691 were in the Department of Water Supply, Gas and Electricity.

In the United States the municipal merit systems generally in use have four classifications for the positions. First is a small classification reserved for the major office chiefs. This classification is fixed upon the principle that if the chief executive is held responsible personally for administration, he must be allowed to choose at least the first level of executive subordinates. The mayor can say, "I will best carry out my duties with the staff of persons whom I know." This is common sense as well as good management. Second is a classification relatively small which is normally called "the non-competitive class," and reserved for the few positions requiring personnel who are specialized and possess administrative or technical ability. The personnel authority selects these people by means of special recommendations, long interviews and evaluations of the candidates' former successful experiences. Normal examinations for selecting persons of these qualifications would be inadequate. Third is the classification for competitive positions which are filled by means of the personnel passing qualifying examinations and having personal interviews. This class is the large semi-technical and clerical class. It is not composed of highly trained technicians or people with great professional ability and experiences. Fourth is the classification reserved for skilled and unskilled labor. Here, although competitive examinations are not required, personal history qualifications and physical tests must be met by each employee.

On the basis of the position or job descriptions within the classifications as to what duties are required, the official's or employee's salary or wage is determined. In the United States, among the 200 largest cities, sharp variations for salaries exist among particular positions. However, the salary group ranges as a whole for most municipalities are approximately the same; particularly is this so in regional areas composed of a number of states.

In the municipal merit system, standards should be exacting and qualifications high. Such good standards cannot be maintained without compensating factors, not all of which will be found in salaries. However, salaries

in Japan of municipal officials and employees are at present so far below those of the average private businesses that sufficient capable personnel are most difficult to attract even when there are no civil service examinations and though required qualifications are low. The impoverished state of municipal finance today in Japan does not permit the municipality to compete with the salary ranges of commercial firms as it ought to be able to do. Salaries equivalent to those within the city's region, enforced selection and weeding out processes and good morale factors make for real insurance against waste and inefficiency in municipal government. At present in many cities in Japan, firm measures as a means of curbing breaches of discipline are tempered somewhat because of the unavailability of suitable replacements. Hence, cities contemplating the establishment of a truly effective system of civil service when they are financially more able, should consider as a prerequisite the best salary standards possible to attract the ablest citizens in the community and nearby region.

From the point of view of public administration and personnel management, the public generally classifies personnel into two groups. The first group is composed of the planning and policy officials. This is normally small in numbers and small in ratio to the second group. The planning and policy groups are given derogatory nicknames frequently by the press and others as "red tape spinners," "desk crouchers," "desk planners" and the "signature boys." At times because of particular actions these "pen pushers" deserve this type of caustic criticism. Generally they do not deserve this stigma. This group normally provides the plans and supervises their execution either directly or indirectly through inspection. The second group is the very large number who actually carry out the particular function and execute the duties day by day. These are the officials and employees who meet the public daily. These are the public servants to whom attention was directed earlier in this paper. These persons also rightly or wrongly get their share of nicknames. They are called the "wood butchers," and "the payment pounders," "the wrench throwers," "the pick and shovel boys" and "the field generals." However, the public should know before it brands the administration. Proper coordination, through instructions being sent and

reporting of the city's problems as they arise, can keep the mayor from being embarrassed both publicly and within the offices, as well as protect the administration from public censure.

Careers as goals in the public service are not only desired but are also followed by hundreds of thousands of qualified persons. The merit system must be constructed to provide all people with an equal opportunity to serve in public office on their demonstrated abilities whenever the position exists. The merit system must provide the correct incentives and advantages if people of ability and high character are to make the field of public administration their career. Moreover, the fact that some people can and do make careers in municipal government is of great benefit to society as a whole, not just to the city concerned. Of great importance to the whole merit system also is the factor of morale. Conditions must be so arranged in the public service that a position of high morale can be maintained. Continuing leadership within the administration has to be available. Armies or units of armies upon the field of battle are by no means the only large or small organizations dependent upon leaders and high morale. The city administration as a whole must have them. So must the various offices, departments, sections and their component parts. As compared to the municipal official affairs, those on the battlefield are certainly more dramatic; they necessitate great decisions by officers in short, cramped intervals of time; they can and have turned courses of history. The official affairs of the workaday world of the public servant are not dramatic but they can be pleasant for all. They necessitate a continuing series of decisions which must be given in varying spaces of time, sometimes after deliberation, sometimes "off the cuff." They too can be momentous; they can turn a costly, incompetent and cold municipal administration into an efficient, well balanced city government. However, to achieve this, leaders and leadership must be there. There must exist within the administration a living potential to supply leaders and leadership. There must certainly exist within the citizenry likewise, a living potential to be everlastingly vigilant to keep the whole of administration fruitful and progressive.

Structural Factors of Administration

When the elected representatives of the city government decide how many functions and services and which ones will be performed, the problem arises automatically as to the manner and means by which they can be carried out. There must be some practical and economical arrangement of the administration's offices and divisions. There must be some logic and a purpose to the arrangement. The arrangement is the mechanical element of the administration. While the arrangement is mechanical, its planning cannot be passed over lightly. Its structure requires that continuing and the most careful thought be put upon it.

The greatest number of municipal administrations in all the western countries shows the arrangement to be on a functional basis. The effort is constantly made to keep the performance of the function within the specific office or division determined for it. This is not an easy matter to keep under control. In the execution of a given function, other functions emerge from it and still other functions are related to it. Without care and precision in arrangement, overlapping functions develop. They are always costly; they are for most of the personnel the source of confusion and jealousy. Examples of a function with such offshoots of other and related functions can be found in: (1) the finance department which if set up as a complete function could include (a) taxation, (b) other revenue producers, (c) bonds, (d) the budget, (e) purchasing, (f) disbursement, (g) insurance, (h) auditing; and (2) a public safety department which could include (a) police, (b) fire, and (c) sanitation. It is obvious in both of these examples that while the sub-divisions are functionally related, at the same time some are functionally different enough to be singled out. They should be administered in particular divisions and channels of their own. In Australia and in many cities in the United States the function of auditing is separated from the general administration.

Following the decision that the arrangement of services will be upon functional lines, there is next the specific task of organizing not only the total number of divisions or offices within the administration but also the total number of levels of authority which will operate it. The mathematics

for arriving at the solution to the number of levels of authority, contrary to some bureaucrats' desires, need not involve geometric progressions! The number of levels should be kept few and the channel of authority within the division, as well as from the division to the Office of Mayor, should be direct and clear. The divisions of the administration may be called bureaus or departments; these may be divided into sections, these into sub-sections and these further into branches. Thus it is that a hierarchy of authority has been created naturally and automatically; the branch chiefs report to the sub-section chief and the sub-section chiefs to the section chief and these finally report to the department chief. The department chiefs, as the highest in the administration, constitute the mayor's first level of executive subordinates; hence, they consult with and take direction personally from the mayor. The hierarchy of authority must be friendly and clear to all, not aloof and mystical.

A fourth and final decision to be made by the city government in determining the structure of the administration concerns the number of officials to control the department or office. Will the number be just one person or several persons? In addition to the four reasons given in Paper No. 5 of this series for several persons by the establishment of committees, commissions and boards to administer certain functions instead of just one person, there is another significant reason which comes directly from a principle of public administration and personnel management. The principle is stated: When the function to be administered is of a quasi-judicial or deliberative character, divided responsibility or group decision can best be utilized. Some functions by their very nature can be executed in a more practical and useful manner by a plural authority. Orders of the office are arrived at more judiciously by a plural authority than by an agency of one person. Administrators and officials with long public experience state that for such a particular function and for the decisions making the orders to execute it "the balanced judgment of three or more qualified persons" must be used.

This principle can be stated from the opposite point of view: When the function to be executed is purely administrative - that is, quite operational in character - or at least more administrative than deliberative in nature, undivided responsibility or single command or a single body can best

be utilized. This means that the policy or the decision making and the essential course for action have been determined somewhat in advance. Also it means that the execution is characterized by straight supervision or direction. At the same time, however, this does not mean that the single command does not have the power of discretion to use as he administers the function. Thus it is that decisions for the order to execute a non-deliberative function are arrived at more judiciously by one person rather than three or more.

Arising from this comes the modern doctrine of individual responsibility of a public servant for his own executive actions. In most countries this is in force only on the higher levels but the idea is gradually being applied lower down. Institutes of public administration have done much to propagate this.

Municipal Organization in Japan

The executive authority of the city in Japan either supervises or coordinates all the offices of the administration, the independent committees, commissions and boards and Office of the City Treasurer. In order to observe how the city "keeps house" for the citizenry, the executive branch will be shown and discussed in its three essential parts.

1. The Office of Mayor. The major functions of this Office are given in Paper No. 2 of this series. Discussion here is entirely on the coordinative and supervisory manner in which the mayor directs the city administration.

The mayor of the city must devote his full time to policy issues: (1) the overall policy for the municipality as determined by the electorate at the ballot box, (2) the divisions of that policy as expressed legally in jōrei and resolutions, and (3) the implementing policy and plans which the mayor himself establishes to execute the jōrei and resolutions. His implementing plans and policies must be geared within the city's overall policy and the specific requirements of the laws and jurei. Therefore, the carrying of this policy responsibility is difficult and it requires long, busy hours outside the business day. On specific occasions, results caused by the execution of particular policies will develop in the city that will make the mayor alter his implementing plans and take a new course of action. The mayor through prompt advice from his executive subordinates will know how his plans are working out. Thus the mayor can foresee the development of

bad or poor results. He will, of course, change his course of action to prevent the errors from occurring. To be able to do this smoothly requires a flexible policy with which to start. The safer principle always by which the Office of Mayor should be guided is: "Evaluate conditions carefully beforehand and thus prevent improvidence." The other principle, "Eliminate all those who oppose," has certain merits to it but, even with these, the principle is limited. Should the mayor practice this principle too freely, he will find that the number of those whom he has eliminated will soon grow in sufficiency so that he himself will be eliminated!

Certain authority for the disposition of particular affairs should be lodged with the assistant mayors. The competency of the assistant mayors can best be made clear to all by having it set forward in the city's by-laws. The degree to which and the affairs in which the assistant mayors assume the actual powers of the mayor, ought to be defined and enumerated in writing. Some cities have accomplished this necessity already. In other cities the mayors on this matter have acted only administratively within their office. Although this latter practice is not as finished a piece of executive work as the former, it is better than the practice yet found in which only oral delegations and instructions exist between the mayor and the assistant mayors. Article 152 and Article 153 of the Chihojichiho provide the authority for the city government to define the assistant mayor's duties. Articles 122, 127, 130 and 133 of the Cabinet Order also relate to the assistant mayors assuming the mayor's duties.

The assistant mayors should make the decisions on the defined delegations and be held responsible for them. The duty of such important officers is to assume most of the executive responsibilities for the final action on the city government's affairs. Assistant mayors cannot be mere executive advisors; they must be evaluators and selectors in exercising their executive authority. Their duty is to select and to give only the more important papers to the mayor for his personal attention and decision.

Moreover, when the assistant mayors make their decisions, the mayor should give them his support. There is the absolute presumption that when the mayor appoints the assistant mayors, he can state at all times, "I appointed this

man or woman. He or she has made a decision within the city's policy. As an executive subordinate of mine, I will take the consequences of that decision." The assistant mayors will, in their daily course of business, receive matters of detail. They too, however, cannot be bound down by this detail. They should always insist that bureau, department or section chiefs bring them completed studies or recommendations for specific things to be done. They should insist that the studies show that the chief with his staff has solved the matters to the best of his ability and that he has pointed out alternative courses of action with specific advantages and disadvantages for following each. The assistant mayors should make it clear to the kyokuchō, buchō and kachō that half finished work cannot be accepted. The top executive level cannot be performing what the lower level is bound and paid to explore and recommend. The assistant mayors should maintain a working relationship with the buchō and kachō in which the latter officials have made their own decisions upon the normal host of details and disposed of all but the more important.

By the regular exercise of such coordination and supervision in the daily management of the city's affairs with the administration, the Office of Mayor actually is the significant function which the law creates it to be.

2. Central Administration of the Municipal Government. The central administrative divisions and offices underwent little structural changes by the enactment of the Chihojichiho. However, many cities have made progressive reorganizations of their own in terms of the increased activity of city affairs. Offices and divisions have been rearranged. With the exception of law enforcement, which is administered by the Public Safety Commission and does not come under the jurisdiction of the orthodox series of city offices, and education, which is supervised and controlled in some cities by the Board of Education and should eventually be placed in local school boards in all cities, Japanese municipal administration is charged with executing the duties prescribed in laws and the functions and services enumerated in Article 2 of the Chihojichiho.

Article 158 of the Chihojichiho states that the mayor can create under authority of by-law any necessary divisions or sections for the purpose of

allotting the affairs which fall within his powers. Although the number and types of bureaus, departments and sections differ widely among the Japanese cities according to the size, financial position and needs of each city, similar names for most of them exist in common among many cities. This similarity results in part from the functions delegated to the municipalities by national laws or cabinet orders. Therefore, there will be found usually:

(1) A General Affairs Section, responsible for personnel matters, collection of statistics, custody of official documents, and often for the compilation of the budget;

(2) A Census Section, which collects population statistics in accordance with the Census Law;

(3) A section dealing with the levy and collection of local taxes in accordance with national tax laws and Article 236 of the Chihojichiho. Types and rates of surtaxes of prefectural taxes and so-called "independent taxes" are prescribed by city by-law in accordance with the Local Finance Law which defines the present narrow and cramped scope of the municipal tax power. Additional financial functions are also provided in Article 217 empowering the city to collect certain allotted charges, in Article 226 authorizing local bond issues in accordance with the law, and in Article 243 on competitive bidding when disposing of city property or letting municipal contracts;

(4) A section on commerce and industry, handling among other things, rationing of commodities in critical supply according to the provisions of the Temporary Supply and Demand Adjustment Law;

(5) A Water Service Section, to insure an adequate and sanitary water supply to the community. In most cases the water system is a municipally-owned enterprise requiring the services of a large number of technical as well as administrative employees;

(6) A section entrusted with rationing of foodstuffs, even though actual distribution lies in the hands of government corporations;

(7) A city planning section, to administer the City Planning Law and city by-laws. City planning has been and ought to be increased in scope because of the extensive damage to large industrial centers during the war;

(8) A section devcted to the improvement of agriculture, drainage and irrigation systems. This section is a prime requisite in almost all cities, because all available agricultural land within municipal boundaries must be utilized to the maximum in the light of the present food situation;

(9) A special section devoted to rehabilitation in place of the usual public works section, because some cities were as much as 80% to 90% destroyed during the war;

(10) A Labor Section in some municipalities, established to emphasize the increased role of good labor relations among its employees. It is entirely separate from the General Affairs Section, as it deals with employee benefits, employee welfare associations, personal loans for marriage or hospital expenses;

(11) A Sanitation Section, administering such laws as the Communicable Disease Prevention Law, Tuberculosis Prevention Law, National Health Law, and many others; and

(12) A Welfare Section to administer such national legislation as the Child Welfare Law, the Social Enterprise Law, the Daily Life Protection Law, and the law prescribing the activities of the Minsei Iin, as well as the local social welfare by-laws.

Sections dealing with education in many cities remain a necessity until the establishment of city boards of education. In the United States decentralization of education to the local boards includes ownership of properties and separate taxation, as well as the responsibility for school administration. Education is completely in the hands of the local school boards in America.

Most municipal by-laws provide only the skeleton of municipal government structure, merely stipulating the names of the executive departments and their principal functions. It is essential that the executive branch maintain a wide degree of initiative and discretion in enforcing legislation. Undue interference in the city administration ties the hands of the executive and results in conflicts in administrative authority.

The City of Matsumoto, Nagano-ken, has a population of 85,681. The total number of administrative personnel is 377. The city's central administrative structure is given as follows:

Section	Branch	Functions Performed
(1) General Affairs	(a) General Affairs	General and personnel affairs.
	(b) Liaison	Liaison affairs.
	(c) Documents	Documents and ordinances.
	(d) Registrar	Registration.
	(e) Civil Affairs	Distribution of goods, residents books. Supervision of the five branches of city administration.
(2) Finance	(a) Taxation (b) Adjustment (c) Land	Taxation and clearance of arrearage.
	(d) Estimates	Estimates.
	(e) Property Management	Managing property of city.
(3) Accounts	(a) Cashier	Payment to public.
	(b) Payments	Payment for employees.
	(c) Purchasing	Purchasing goods for office.
(4) Development	(a) Planning	Planning for civic promotion.
	(b) Commerce & Industry	Instruction for commerce and industry.
	(c) Statistics	Statistics.
(5) Education and Culture	(a) General Affairs	General affairs of schools.
	(b) Education	School-education.
	(c) Social Education	Social education and culture.
	Kominkan I, II	Civic auditorium.
	Library	
	Museum	
	CIE Reading Room	
	(d) Physical Culture	General advice on physical culture of citizens.
	Baseball grounds	
	Swimming pool	
	Tennis court	
(6) Welfare	(a) Welfare of Citizens	Welfare for citizens.
	(b) Residence	Residence for citizens.
	(c) Welfare Laborers	Welfare for workers.
	Municipal Houses	Houses for citizens built and managed by city office.
	Municipal Pawn Shop	Pawn shop for citizens managed by city office.
(7) Sanitation	(a) Health	General for section.
	(b) Prevention	Prevention for disaster.
	(c) Cleaning	Cleaning for city.
	Public Sanitation Hall	
	Slaughter House	
	Dirt Disposing Plant	
	Funeral House	
(8) Agriculture	(a) Agriculture	Agricultural products, quota.
	(b) Instruction	Instruction for improvements.
(9) Engineering	(a) General Affairs	Registration of houses and lands.
	(b) Planning	City building plan.
	(c) Engineering	Engineering.
	(d) Repairing	Repairing.

Section		Branch	Functions Performed
(10) Water Service	(a)	General Affairs.....	Estimates and materials.
	(b)	Business.....	Water-service fee.
	(c)	Accommodation.....	Construction and repairing for water supply.
(11) Sight-Seeing	(a)	Sight-Seeing.....	All for sight-seeing.
(12) Women and Child Welfare	(a)	Women..... Women's Consultation Center	Women's affairs, general cultural development planning.
	(b)	Child Welfare..... Mother and Children House.	Welfare of children.

In addition to the offices givon above, the City of Matsumoto has the following additional agencies:

(1) City Assembly Office.....(a) General Affairs Section
(b) Proceedings Section

(2) Auditing Committee's Room

(3) Election Administration Committee

(4) Farm Lands Committee

(5) Public Safety Commission.....(a) Matsumoto Police Station
(b) Matsumoto Fire-Brigade Station

(6) The Civic Promotion Conference.....(a) Finance
(b) Welfare
(c) City Planning
(d) Agricultural Products
(e) Commerce and Industry
(f) Culture and Education

The administrative organization of the city is, therefore, simple and direct. It can be easily understood by the citizens, which fact is a favorable attribute in itself for a municipal administration to possess.

The following examples show the variations in the number and types of bureaus, departments, sections and branches through which the city's affairs are administered:

1. The City of Miyakonajo, Miyazaki-ken, has a population of 34,008 and an administrative personnel total of 346. Its central administration is organized into eleven sections: (1) General Affairs, (2) Registration, (3) Accounts, (4) Commerce and Industry, (5) Taxation, (6)Welfare, (7) Agricultural, (8) Statistics, (9) Education, (10) Health, and (11) Construction.

2. The City of Kashiwazaki, Niigata-ken, has a population of 35,963 and its central administration organized into nine sections: (1) General Affairs, (2) Tax Affairs, (3) Public Welfare, (4) House Registration, (5) Education, (6) Economics, (7) Civil Engineering and Water Works, (8) Gas, (9) Finance, with one special section, Recovery Council Meeting Room.

3. The City of Miyako, Iwate-ken, has a population of 37,953 and its central administration organized into twelve sections: (1) Secretariat, (2) General Affairs, (3) Finance, (4) Tax Affairs, (5) House Registration, (6) Health, (7) Welfare, (8) Industry, (9) Distribution, (10) Education, (11) Investigation, and (12) Civil Engineering.

4. The City of Sendai, Kogoshima-ken, has a population of 41,022 and its central administration organized into three departments: (1) General Affairs Department, with seven sections: (a) General Affairs, (b) Planning, (c) Registration, (d) Taxation, (e) Welfare, (f) School, and (g) Social Education; (2) Economics Department, with four sections: (a) Mining Products, (b) Livestock, (c) Cultivated Lands, and (d) Commerce and Industry; (3) Construction Department, with three sections: (a) Public Works, (b) Construction, and (c) Planning. The personnel total for the City's administration is 219.

5. The City of Noshiro, Akita-ken, has a population of 47,339 and an administrative personnel total of 219. Its central administration is organized into eight sections: (1) General Affairs, (2) Public Welfare, (3) Education Affairs, (4) Industry and Economics, (5) Finance, (6) Tax Affairs, (7) Civil Engineering, (8) Peace Preservation, with two special sections: (1) Investigation, and (2) Temporary Rehabilitation.

6. The City of Yatsushiro, Kumamoto-ken, has a population of 50,737 and an administrative personnel total of 191. Its central administration is organized into eleven sections: (1) General Affairs, with four units: (a) Secretariat Affairs, (b) Miscellaneous Affairs, (c) Documentary Affairs, and (d) Planning Affairs; (2) Finance, with two units: (a) Tax Imposition, and (b) Tax Collection; (3) Social Affairs, with two units: (a) Assistance, and (b) Livelihood Protection; (4) Construction, with three units: (a) Public Works, (b) Buildings, (c) Town Planning; (5) Economics, with three units: (a) Foodstuffs, (b) Commerce and Industry, and (c) Materials; (6) Accountants Affairs, with two units: (a) Accounts, and (b) Supply; (7) Agriculture Affairs, with four units: (a) Products, (b) Agriculture Administration, (c) Statistics, and (d) Cultivated Lands; (8) Registration, with three units: (a) Census Registration, (b) Certification, and (c) Temporary Residents; (9) Sanitation, with three units: (a) Health, (b) Cleaning, and (c) Prevention; (10) School Affairs, with two units: (a) School Affairs, and (b) Social Education; and (11) Fire Fighting, with one unit: Fire Fighting and Cooperation.

7. The City of Nakatsu, Oita-ken, has a population of 51,643 and an administrative personnel total of 208. Its central administration is organized into eight sections: (1) General Affairs, with eight units: (a) Miscellaneous, (b) Investigation, (c) Accounts, (d) Taxation, (e) Tax Collections, (f) Tax Improvision, (g) Family Registration, (h) Temporary Family Registration; (2) Education, with two units: (a) Education, and (b) Social; (3) Industry, with three units: (a) Agriculture and Forestry, (b) Fishing Products, and (c) Commerce and Industry; (4) Social Affairs, with two units: (a) Social Affairs, and (b) Protection; (5) Civil Engineering, with five units: (a) Land and House, (b) 1st Public Works, (c) 2nd Public Works, (d) Business, and (e) Construction; (6) Water Supply, with one unit: Supplies and Engineering; (7) Public Health, with two units: (a) Health, and (b) Police and Fire Fighting; (8) Citizens, with three units: (a) Citizens, (b) Distribution, and (c) Branch Offices.

8. The City of Yonezawa, Yamagata-ken, has a population of 55,405 and its central administration is organized into nine sections: (1) General Affairs, (2) Tax Affairs, (3) Public Welfare, (4) Health, (5) Education, (6) Industry, (7) Civil Engineering, (8) House Registration, and (9) Investigation and Paper.

9. The City of Beppu, Oita-ken, has a population of 95,036 and an administrative personnel total of 549. Its central administration is organized into three departments: (1) General Affairs Department, with five sections: (a) General Affairs, (b) Investigation, (c) Education, (d) Family Registrar, and (e) Taxation; (2) Social and Economic Department, with seven sections: (a) Agriculture and Forestry, (b) Trade and Commerce, (c) Tourist, (d) Distribution,

(e) Sanitation, (f) Social, and (g) Citizens' Section; (3) Installation Department, with four sections; (a) Water Works, (b) Civil Engineering, (c) Construction, and (d) Hotsprings.

10. The City of Aomori, Aomori-ken, has a population of 95,904 and its central administration organized into four divisions: (1) Rehabilitation Division, with four sections: (a) Supervision, (b) River Canals and Ports, (c) Civil Engineering, (d) Farm Land Planning; (2) General Affairs Division, with seven sections: (a) General Affairs, (b) Tax Affairs, (c) House Registration, (d) Finance, (e) Statistics, (f) Education, and (g) Industry; (3) Health Preservation Division, with five sections: (a) Epidemic Prevention, (b) Health Section, (c) Welfare Section, (d) Fire Section, (e) Water Works Section; and (4) Traffic Division.

11. The City of Morioka, Iwate-ken, has a population of 111,899 and its central administration organized into fourteen sections: (1) General Affairs, (2) House Registration, (3) Education, (4) Statistics and Investigation, (5) Health, (6) Agriculture and Forestry, (7) Commerce and Industry, (8) Livelihood, (9) Tax Affairs, (10) Repairs, (11) Finance, (12) Welfare, (13) Civil Engineering, and (14) Water Works. The city also has eleven Shisho or branch offices, and the following special sections: (1) Municipal Hospital, and (2) Equipment for Public Welfare.

12. The City of Asahigawa, Hokkaidō, has a population of 111,988 and its central administration organized into eleven sections: (1) General Affairs, (2) Secretariat, (3) Sanitation, (4) Industry, (5) Taxation, (6) Materials, (7) Engineering Business, (8) City Planning, (9) Social, (10) Education, and (11) Accounting; also a special section, Asahigawa City Hospital. The personnel total for the City's administration is 451.

13. The City of Hokodate, Hokkaidō, has a population of 213,034 and its central administration organized into six departments: (1) General Affairs Department, with nine sections: (a) Secretariat, (b) Accounting, (c) Investigation, (d) Taxation, (e) Education, (f) Welfare, (g) Finance, (h) Registration, (i) General Affairs; (2) Engineering Department, with three sections: (a) Public Works, (b) Construction, and (c) Port and Harbor; (3) Water Supply Department, with three sections: (a) General Affairs, (b) Business, and (c) Engineering; (4) Transportation Department, with four sections: (a) General Affairs, (b) Traffic, (c) Accounting, and (d) Engineering; (5) Sanitation Department, with two sections: (a) Sanitation, and (b) Disease Prevention; (6) Economics Department, with three sections: (a) Commerce and Industry, (b) Agriculture and Marine Products, and (c) Materials Section. The personnel total for the City's administration is 1,382.

Excluding metropolitan Tōkyō composed of the 23 autonomous wards, the five largest cities of Japan exhibit variations in the number and titles of the bureaus, departments and sections. The following figures indicate the nature of the variations:

1. The City of Ōsaka, Ōsaka-fu, has an area of 187.44 sq. kilometers and a population of 1,822,050. Its administration is composed of 14 bureaus, 15 departments, 96 sections and 344 branches. The personnel total is 8,272. The City is divided into 22 wards, but there is a total of 25 ward and branch ward offices.

2. The City of Kyōto, Kyōto-fu, has an area of 325.31 sq. kilometers, and a population of 1,052,624. Its administration is composed of 10 bureaus, 1 department and 50 sections. The personnel total is 3,455. The City is divided into 7 wards, but there is a total of 90 ward and branch ward offices.

3. The City of Nagoya, Aichi-ken, has an area of 161.73 sq. kilometers, and a total population of 971,834. Its administration is composed of 10 bureaus, 3 divisions and 2 sections. The total personnel is 3,546. The City is divided into 12 wards.

4. The City of Yokohama, Kanagawa-ken, has an area of 400.97 sq. kilometers, and a total population of 902,660. Its administration is composed of 9 bureaus, 4 divisions, and the Chuo Oroshiuri Ichiba or Central Wholesale Market. Its total personnel is 1,677. The City is divided into 10 wards, with 68 sub-branches which perform partial city affairs.

5. The City of Kobe, Hyogo-ken, has an area of 390.50 sq. kilometers, and a population of 678,201. Its administration is composed of 12 bureaus, 72 sections and 822 branches. Its total personnel is 7,626. The City is divided into 7 wards, but there is a total of 17 ward and branch ward offices.

From an overall point of view many of the names of the bureaus, departments and sections used in Japan are similar to those used in the United States, England, and Australia. However, variations in performance of the complete function, as indicated by the title, will be found. Contrary to the municipal organization in Japan today, and even historically, is the practice in each city of the United States of maintaining the Office of the City Attorney or a Legal Bureau. This is essential to city government. The office or bureau is charged with the administration of the city's legal affairs. The chief attorney and the two or three deputy attorneys and the staff of lawyers perform all services in which legal counsel and work are required or are needed in advisory capacity by the city government. Australian municipalities practice different methods for legal matters. The smaller cities retain outside practitioners for city contracts and, in general, the municipal officials possess qualifications in legal studies. The larger cities have, in addition, not only qualified legal practitioners employed on the payroll for legal counsel, but also accountants and other officials with legal degrees. The Municipal Association will retain lawyers and obtain opinions on matters of common interest which are available then to all municipalities.

The cities of Japan, as their affairs expand more and more, could well (1) create legal bureaus, departments or sections and staff them with good legal talent, or (2) adopt the system of securing the best professional lawyers by means of a municipal association.

The various bureaus, departments or sections, and the branches within them, cannot merely have a nameplate attached, be just a series of rooms, and appear officially in some directory list. Each must be made a daily functioning organ of municipal government and each must contribute with the

others collectively as an entire organization for the execution of the city's policy. To obtain unity of public administration, no bureau is to be favored as compared to another; no department is to be overloaded as compared to another. The mayor and his whole executive staff must strive for a balanced administration.

The chief of the bureau, department or section, because of proper training and experience, should be the responsible leader as well as the administrator. Personalities come forward, others retire. Should occasion demand, the chief must also be a professional person and take the lead in sharing his knowledge with his associates. A prime essential which the chief has the duty to instill in those who compose his bureau, department or section, is the limits of his competency. All within the bureau must know its policy; the kyokuchō must so inform the buchō and they must inform the kachō. In so doing, administrative difficulties are few to arise. Knowledge of policy aids all.

It is almost as important for the chief of one bureau to know the competency of each of the other bureaus as it is to know his or her own. What is of primary interest to one bureau may be a strong secondary interest to three or four other bureaus or departments. Concurrence or non-concurrence of the interested bureaus is the correct procedure; it yields finished work and produces the best results of a professional group of people. The mayor as the chief executive responsible for final policy execution is entitled to best inter-bureau, inter-departmental or inter-sectional procedure and work. Without the proper coordination of all the departmental chiefs, fundamental mistakes will be bound to occur. It is extremely easy for one chief working in blind isolation from the others to advocate, if not actually to produce, a course of action which, even though satisfying to his or her bureau, is in terms of the city's essential planning needs not only stupidly impractical but also excellent reason today for the mayor, and in the future the personnel authority, to take the proper procedure to relieve him or her from office.

The chief has professional public servants to supervise. He should study and know their abilities and limitations. The career public servant is soon imbued with a definite service loyalty. The highest of professional

ethics or professional morals belongs in public administration and personnel management just as claimed so long to exist in the medical and legal worlds. The chief must know what he is doing to bring forward the best efforts of his staff. The chief cannot be "a meddler in affairs" once he makes his assignments. He ought never to attempt "running" subordinate offices and his own too. Certain details should never be his to see or hear much less to decide. Even though there is great turnover in staff and other personnel, the members of the bureau, department or section should be made to realize early that a given assignment is their duty to execute and complete and that he or she "must sink or swim" in terms of how they completed it and sent it to the chief as their best work. The supervision must be friendly and firm, not cold and overbearing; the work must be gotten out. Who cares regardless of salary paid to be a member of the Red Tape Bureau which is presided over by Mr. Know-it-all? Who cares to work in the Frantic Department headed up by Mr. Clock Watcher? Who does not relish leaving the High Pressure Section overlorded by Mr. Snooper? Obviously, organizations of such bad atmosphere and poor management make municipal administration dismal and expensive to operate both in manpower and money. The chief must have ideas and inculcate the desires in his staff for them to produce their ideas or solutions. Although the chief needs to produce new ideas and changed ideas, he cannot lead by being a person of a changeable mind. Indeed, Mikka bōzu. To be bronze for three days only. Such a person is difficult to work for.

3. Branch Offices of the Municipal Government. In cities of large area as well as large population, the central administrative offices are not sufficient for the adequate service of all municipal affairs. The establishment of branch offices is necessary for the rendition of many services. The provisions of Article 155 of the Chihojichiho are the legal basis for creating the city's branch offices. These are established "for the purpose of allotting the affairs which fall within" the mayor's powers. The location, area of jurisdiction, and name are defined in the by-laws.

When a city is designated by cabinet order, the mayor, again by means of by-laws, divides the municipality into ku or wards. These are not the special wards such as the twenty-three large ones in the Metropolis of Tōkyō.

They are administrative wards, each with an office and personnel directed by a kuchō or ward chief appointed by the mayor. Most wards are organized to perform the city's regular work or the duties prescribed in national laws for the city to carry out, such as in the census, collection of "business" statistics, or in the conduct of welfare and social work, including aid to war sufferers, unemployed and disabled, and physically handicapped persons. Branch or ward offices are also engaged in the detailed administration of rationing, excluding actual distribution, supervision of the schools, prevention of epidemics, and other sanitary measures, as well as tax collections. Frequently these administrative wards have been formed from former towns or villages which had been absorbed by surrounding cities because of financial difficulties. This trend became pronounced because of Japan's economic condition and in view of the inordinate costs of some local governments.

In the larger cities, because of the great population in them, branches of the wards also exist. They perform essentially the same functions as the ward itself. Abolished in 1947 by the Naimushō, the former rengokai, chonai-kai and tonari-gumi existed as districted offices in the municipal government to compel the enforcement of detailed administrative matters. Their creation and existence were accompanied unfortunately by too many sinister aspects of thought control, regimentation, and undue interference in the private life of the individual citizen to warrant their continuance as an organ of representative government. No such organization has any place in a democracy.

The chiefs of the branch or ward offices in most cities in Japan are under the immediate supervision of the Chief, General Affairs Section; in other cities they report to the Assistant Mayor. Coordination of the branch or ward offices with the city's central administration is vital to a workable overall policy for the city. How is it established and maintained? Those matters outside the regular routine, the chief of the branch office can and should take up with his immediate superior. The Chief, General Affairs Section, or Assistant Mayor should have regular conferences with all the branch office or ward chiefs to discuss mutually the latter's affairs. Important information from these conferences should be passed to the mayor at once. At stated intervals the mayor should meet with these chiefs to learn at first hand the result of his existing policy in the various areas of the city and

to give to them personally any changes in policy or new plans. Moreover, the mayor and assistant mayor, particularly if he is not the immediate superior to the chiefs, should on occasions make inspections of the branch offices or wards. Such visits are morale building factors to the subordinates concerned if nothing more. Once the city's branch offices are created that fact does not prevent, and it should not prevent, the mayor or assemblymen from re-examining and re-evaluating the need for them. The city should not follow the example nor the prefectural government should not follow the example set by the national bureaucrats during the past two years in spider-webbing Japan with costly duplicating, overlapping branch offices stuffed and overloaded with personnel.

Whenever a supposedly functional service or operating office starts to decay or to become so mechanically routine that the work and the administrative procedures require little thought to exercise in their one, two and three order, and the administrators are restricted and cut off from exercising discretion, the taxpayers should see that the mayor or the assemblymen take specific action to save municipal expenses by (1) replacing the professional officials with clerks, or (2) eliminating personnel, or (3) abolishing the office altogether and having the services performed through the post office. Branch offices must serve a real governmental service to justify continued existence. Bureaucratic empire building is dangerous to good government.

Use of branch or ward offices is not usual in Australia. With one exception, Brisbane, communities which are too unwieldy for centralized administration are divided into separate municipalities. In such cases, however, metropolitan boards made up of representatives from all municipalities concerned may be used to operate public utilities for the benefit of all. Thus, Melbourne, with a population of 1,115,200, has a Board of Works to provide water supply and sewerage, a Tramways Board to operate bus and streetcar transportation for the group of cities, towns and boroughs of which it is comprised. In Australia this is then considered a better means of obtaining policy control by electors in local affairs than through the branch office system. Much good exists in the application of this principle of government.

Fundamental Relationships of the Administration

1. Relationship with the Assembly. City office personnel are called upon to perform clerical work for the Assembly Affairs Office, an organization similar in purpose to the Diet Secretariat. This should continue as long as municipal assembly sessions are brief and the volume of clerical work required is small. As the expansion of local government services takes place, the use of personnel on a full time basis by the assembly will be required. The city assembly should employ its own personnel to provide itself with a staff whose interests and loyalty will lie primarily with the assembly and, therefore, not leave the normal administrative offices with extra burdens.

It is the rule in democratic countries that officials in the executive branches of the government when called, appear before the assembly committees to talk on bills and measures relating to the public which they administer as the competent municipal officials. In addition, they can be sent for to produce books and documents or to pass upon the technical correctness and advisability of projected legislation. In general, they can be asked to answer any non-confidential question relating to municipal administration. When the mayor or assistant mayor is unavailable, it is the duty of the chief officials, or those directly responsible for the compilation of the budget, to give full explanations of the items contained therein to the assembly. They must avoid any attempt to conceal expenditures or executive maneuvers which might later become the basis for criticism of the mayor and other subordinates. For the assembly to fulfill its obligations wisely and efficiently, it must gain a true picture of every phase of municipal administration. This can be accomplished best by close cooperation between assembly committees, set up to specialize in certain functions, and the corresponding or appropriate executive department. As a warning, it should be recalled that Article 100 of the Chihojichiho provides severe punishment for false statements made by persons, including government officials, before assembly committees.

In order to promote greater harmony and understanding between the administration and the municipal assembly, it is imperative that the heads of the executive departments, after clearing with the Office of Mayor, confer with the assembly leaders to the greatest practicable extent concerning the functions and problems under their jurisdiction. Failure to keep the assembly

fully informed frequently leads to misunderstanding and resentment, a condition which is most natural. It can result quickly in personal embarrassment to the mayor as well as bring forth charges of arrogance and bureaucratic callousness. Many times this severe censure is well deserved.

2. Relationship to the Independent Agencies. The administration is a service body. Unless the work of the committee, commission or board is sufficient to justify the full time employment of a secretariat or clerical staff, the personnel from the appropriate bureau, department or section in the administration, or those persons assigned through the Office of Mayor, will be the part time assistants and clerks. This work is important. The records and files should be kept by the independent agency even though worked upon by personnel not strictly its own. Hence, during the period of elections, audits of city accounts or similar special work, the administration must perform additional duties. Plans can be made ahead of time to allot this work.

Insofar as some administrative sections are responsible for the final stages of municipal budget drafting, the Chief, General Affairs Section, or Finance Section and assistants must hold frequent conferences with the Public Safety Commission, Election Administration Committee and the Board of Education. It is not the function of the administration to do all the estimating and calculating for the budget of each of these agencies. Each of the three authorities is duty bound to produce its finished budget which, when coordinated with others, becomes the city's general or special budget.

3. Relationship with the Prefectural Government. Most official relationships between the city government and the prefectural government are carried on between the mayor and the governor and this is a correct procedure. Some relations, as well as contacts and conferences between the city administration and prefectural administration, are not only necessary but also most desirable. City officials can go either to the central prefectural offices or to the prefectural branch offices. The latter offices at present are too restricted as to competency to justify much time on the part of the top city officials. Moreover, as long as the prefectural branch offices are of this nature, they should be curtailed and their number kept few.

The relationships existing at present can doubtless be strengthened to the benefit of both groups. Examples of functions in which the corresponding

working level relationships can always be improved are in finance and public works projects. In today's hard system of taxation, a close relationship must exist between the prefectural authorities and the municipal governments which have to levy surtaxes upon the prefectural taxes; unnecessary duplication of effort can be avoided. The public works projects which require joint participation by the prefectural and municipal governments necessitate close coordination for maximum effectiveness. From such working level collaboration, many if not most, otherwise troublesome issues can be settled satisfactorily before they reach the mayor or the governor for final arrangements.

4. Relationship with the National Government. Most mayors and city officials in Japan prior to the enactment of the Chihojichiho had very little dealing with the central government directly. Under the old Shisei and the many related ordinances, the prefectural governments were the strong regulating, regimenting arms of the Naimushō and national government. They performed most of the functions transferred, suddenly and unwerrantedly by the national ministries bent upon retaining their grasping authority, to an overly large number of newly established branch offices. The calculating bureaucracy in this vicious expansion attempted a wholesale usurpation of local government powers and responsibilities which they can perform most reasonably. The national bureaucracy in this case was practicing again in its customary happy fashion the feudalistic principle of power, Kanson Mimpi.

Under the old Shisei and the Chihokankansei, instructions received from the Naimushō and other ministries were handed down by the governors to the mayors. Today, although some categories of commodities and foodstuffs continue to be allocated by the competent ministries to the prefectural governments, and then to the cities, other categories are now allocated by the local office of the national branches. As long as these offices exist, the officers of the city government must exert their utmost for prompt execution and compliance of laws. The national bureaucracy invented the idea and perpetrated the costly duplicating offices and system upon the alleged grounds that municipal authorities are incapable of administering national laws as thoroughly and efficiently as they would with their own personnel in their own branch offices. Most all city administrations in Japan can demonstrate the folly of this flimsy premise! Nevertheless, in order to forestall further

encroaching possibilities and to protect their own local autonomy, it behooves the city administration to give close attention to faithful, efficient execution of all national affairs coming to the city's jurisdiction.

Some working level relationships between the city administrators and the national bureaucracy are, as with the prefectural governments, needed and desirable. Many a national bureaucrat can get good advice from a municipal official if he only will do so instead of thinking that he has the answer before he knows the problem. The stupidity of arbitrary quotas and many other distasteful actions shunted to the local governments and impossible of sensible execution could be avoided. The ministry could be saved possible embarrassment. The mayor and the chairmen of the city assembly, beyond their own necessary official trips, should see that those of the other city officials are likewise officially made and that the number taken is not to become symptomatic of a chronic disease! Particular attention should be given to the factor of rotation of personnel making the official trips, unless continuity of operation on a project is deemed vital. The total number of all trips to Tōkyō, directly or indirectly relating to official business, should be few. City officials should be deciding issues locally on their own judgment.

The various national laws, examples of which are given in Paper No. 2 of this series, assign either the mayor or the city government with definite responsibilities. Study of the material provisions show the duties and services which require continuous coordination between the city administration and the central government either in Tōkyō or its regional agencies.

Saving the Taxpayers' Money

The cry to save city expenses is chronic. Seemingly individuals and all parties take up the slogan, "Save the taxpayers' money!" The voters have to hear this magic phrase over and over again. Some people mean what they say when they use the slogan. Others can mean to accomplish savings when they declare and promise so, but somehow on assuming the reins of office they manage to pile up still larger budgets!

The savings of tax monies can best be accomplished by carefully planned courses of action. They ought to be the most careful courses of all. There should be thorough studies and analyses with exacting evaluations of (1) the

city's functions or services, (2) all the property, equipment and mechanical devices of either fixed or moveable types, from Diesel, gasoline or steam power generating equipment down to typewriters and dictaphones, and (3) the procedures and practices within the whole city government. Saving money is a science. It is not a hit or miss operation. A farmer makes his mikan no ki, nashi no ki or mono no ki bear their delicious fruits by his careful pruning of their branches year after year. The uekiya and the niwashi, who produce the beautiful bōnsai, study and evaluate each of their actions most carefully before they touch the roots or apply the knife. Even when the farmer wants to cut the tree down completely and to do away with it, he does not stand off a distance and throw the axe at it! The uekiya and the farmer perform their work with a purpose, which produces excellent results.

Too many people with savings of expenses in mind approach the governmental budget with the idea of cutting drastically here and whacking wildly there. Therefore, they force the principle of "pinch penny finance" into operation in government. Where this odd principle of finance belongs, if it belongs anywhere, is in our childhood when we save our sen in momentary majesty in order to make the grave decision of whether to spend all our money on ice candy or to squeeze a little out for another ticket to have one more look at the monkey! When we make our recommendations for saving expenses in government, we must use only the most careful methods, the best planned and calculated actions as does the niwashi and farmer in their work.

The following illustrations show how study and investigation can produce savings in money and manpower:

1. A city police department maintained an office for emergency services for all types of accidents: automobiles, trains, gas leaks, asphyxia, fires, and for assistance to police authorities in difficulties. The personnel strength was approximately 500 policemen and the office had 20 emergency trucks. The fire department maintained a staff of 100 firemen and 4 rescue trucks to do almost precisely the same duties. By consolidating the function in the fire department, (1) no additional men had to be added to the fire department, (2) more than 350 policemen were freed for regular police duty, (3) three-fourths of the trucks were transferred from the police department, and (4) over one million dollars a year in salary and police service time were saved.

2. A city had three very large departments, which over a period of years had grown up with no particular planning. Each department maintained separate medical staffs and laboratories. The total personnel of all three departments was over 35,000 men and women. On examination, many bad practices and conditions found among the three were: (1) doctors' and nurses' salaries varied materially from one department service to the other, and some subordinate medical doctors actually received more money than their supervisors, (2) the

work load of some of the doctors and nurses was greatly out of proportion to others, not only among the three departments, but also within two of them, (3) the quality of services rendered and the treatment time to the individual allowed were not the same because of physical equipment and clinic policy, and (4) sick leave policy and compensation payments to employees were sharply different. A consolidated system remedied these ills, produced better morale in the whole city administration and made savings of over one-half million dollars.

3. In a city of relatively small size, each of five departments maintained a small fleet of passenger cars and trucks and each attempted to operate a repair shop of its own. This was a costly operation for all departments and bad service to the city employees resulted frequently. Infrequent breakdowns, different types of repairs necessary, part-time employment of mechanics and relatively poor equipment were the causes. Although the immediate outlay for machinery and repairing equipment was costly, the sum spent was the proper investment for the city, for it: (1) centralized repair work, (2) provided regular repair services, and (3) gave regular and better maintenance for all vehicles.

4. In many large cities in the United States, hand labor when used regularly and in considerable quantity becomes very expensive in comparison to machine operation. A city in this category, after much experimentation, invested in a mechanical snow and broom sweepers because one operator of a mechanical broom sweeper could replace eight hand sweepers. The machine could sweep eight miles of streets while the hand sweeper did less than a mile. In localities in which hand labor is very cheap as compared to mechanical equipment, such savings could not be gained.

5. Some cities have found that the equipment which they possess is not only out of date but also that it is costly to operate in man hours and money, in power bills and building space to house it. One 30-year-old printing machine was used by two city departments jointly. The machine operated slowly and awkwardly. It necessitated 32 men, 9 of whom were uniformed firemen. Only rough calculations convinced the mayor that for the printing work of the two departments, he could, case for case, save the city substantial sums by having the printing done commercially outside and returning the firemen to their proper duties rather than make printers out of them. The city had hired the firemen to be firemen not printers!

6. Many cities frequently "clean house" regularly of old or bad office equipment. The mayors and department chiefs make improvements by securing (1) good typewriters, (2) good mimeographing equipment, (3) dictaphones, (4) steel record cases, (5) microfilming equipment to replace tons of city papers and many tsubo of space, and (6) desks, desk equipment and practical office furniture. Regularized savings can accrue by such regular methods.

7. In all cities savings in personnel are familiar. There is little question but that many offices are overstaffed or that some offices should, along with all the personnel, be abolished. Surveys of positions, jobs, services and whole bureaus, departments or sections yield the proper answers.

Many mayors in Japan have discussed their need for more practical, less costly and more useful equipment. Similar action in the types of cases shown above can be taken in most any city in Japan.

Summary Conclusion

In the New Japan the cities will unquestionably perform more services and execute more functions. The role of the administration will be more demanding of the civil servants. Specialized training will be preparatory for this.

The administration of the cities with new incentives for all of its work must render a yen's worth of effort for each yen spent in the municipal payroll.

Moreover, in order to insure impartial execution of all laws and to exclude partisan influences, the individual civil servant must keep his political activities to himself. He or she certainly can and each certainly should vote. He and she can attend political meetings and be a member of a political party, but neither can campaign for anyone, even indirectly. Nor can the public servant accept outside employment whether for private businesses, political organizations or for employee associations. His or her sole employment is that in the public service.

The municipal officials can help themselves by themselves. In England the National Association of Local Government Officials has 70,000 members. It is an organization designed to improve the professional status of the local government employees. It has developed its Preliminary Test for which public examinations are held twice a year. It has convinced many local governments to require the Preliminary Test as an entrance qualification of incoming employees. The Association gives examinations for advanced certificates in public administration. It conducts correspondence courses for higher professional examinations and in similar manner, by agreement with universities, has the latter award the Diploma of Public Administration to qualifying candidates. The Association also has arrangements which foster improved and better civil service. Organized on an entirely different basis is the Civil Service Assembly of the United States and Canada, famous for the type of professional services rendered because of its wealth of experiences with public administration. Both national and local governments avail themselves of the Assembly's services. For most municipalities such work is difficult. Nevertheless, the work is good, and in similar fashion it can be done well in Japan today.

The members of the municipal administrations of Japan can achieve great service in loyalty to good government and its orderly processes. The city employees do not need to be in a position of disdain in which so many of the national smug bureaucrats have held them so long. The national bureaucrats might well change: Yo wa aimochi.

For the first time in Japanese history the Chihojichiho provides the legal framework for real popular participation in government. The municipal administrations can give vitality to the framework. There is no question here, Seishin itto nanigoto ka narazaran. For generations the Japanese people have desired a system of bureaucracy which insured and perpetuated the principle that as long as the government needed services, opportunities open and equal to all would exist for those of demonstrated abilities. In attaining the legal structure for such a merit system today, the Japanese people in certain civic mindedness must be vigilant to support it and to keep it functioning at all levels of government, whether village, town, city, prefectural or national.

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THE LOCAL AUTONOMY PROGRAM FOR THE CITIES OF JAPAN

Paper No. 3.

The Assembly in Japan

The successful operation of city assemblies in the nation is of vital importance to the long range objective for Japan to implant and keep sound and healthy representative government. The new assemblies have real power and authority as contrasted with the impotent and weak character of pre-war assemblies. To the extent that the assemblies actually use and exercise their presently established functions, can the success of representative government be measured in cities. To the extent that they develop democratic leadership in local government, can the cities command respect and secure desirable reputations. The Chihojichiho or Law Concerning Local Autonomy creates assemblies as deliberative organs composed of representatives elected by direct popular vote of the people. The old laws provided for direct elective representation but they certainly did not provide for the assemblyman to do anything after he was elected. The assemblies are vested with a range of local functions to permit and encourage a maximum of individual thought, initiative and judgment in the management of their local community affairs.

One significant fact will be remembered. The assembly as an institution in the United States and English countries, is the foundation of representative government. In England and in the United States the greatest interest has been generated by the position in government of the assembly as a deliberative body. In England the very existence of the national and local governments rests upon the power and functions of the free assembly - the parliament and the local council. In the United States great stress has been laid on the character and power of the legislative body in all governmental units, the federal government, the state, the county, special districts, cities, towns and villages.

The exercise and concentration of all the power of government in one man, or in one man and a small clique of men, or in just a clique of men is dangerous inherently to the people who comprise the populace or citizenry of the state. The United States has never countenanced such a condition. England dropped the condition in the year A.D. 1215 when the people secured from wilful King John, the Magna Carta or charter of liberties. A strong deliberative assembly as a branch of government as it exists today in the United States and in England is a guard against a powerful executive branch which far too often in European and South American experience has led to evil authoritarianism or dictatorship.

The good conduct of city government in Japan is fundamental to the welfare of the whole nation. The conditions in the cities affect the welfare of rural dwellers as well. Epidemics, water pollution, policing and law enforcement within the city affects the neighboring communities. No city can live for itself; the welfare, prosperity and good government of the nation as a whole depends in great measure upon the condition of the city governments within its borders.

In this Paper the organization and operation of the assembly will be discussed with emphasis not so much on the variety of functions but rather on the way in which they are being executed. It is from the city assembly that the by-laws are obtained by the mayor which empower him to execute the desired affairs of the community for the citizenry.

City Governments and Assemblies

Under English and American law a city is a municipality authorized to exist and to carry on its affairs as a public corporation. The state as the central government creates the municipality and clothes it with many legal rights. It has continuity of life; it can own and dispose of property.

What is the purpose of the creation and establishment of cities? In European countries like France, Germany and Italy, cities have functioned as agencies of the central government. In such a capacity the municipality has only a few legal rights of its own. However, in France

the city has more local authority [illegible]

In the latter countries the city assembly or council merely meets; the members barely have power to greet each other and then say "Good-bye!" The assembly can do little freely; it is under [illegible] rigid control. In Fascist Italy the cities were an absolute part of the central administrative system. In Fascist Italy, city councils had no authority. They did not meet to carry on city affairs; they merely met to say "Yes!" to anything given them by an overpowering one man - one party central government.

Another purpose for the creation and establishment of cities is demonstrated by English and American experiences. The people or citizens largely settle all their own problems which arise within the city's area. The elected representatives hold the peoples' trust and therefore are the public corporation's trustees. As shown in Paper No. 1, these elected officials render the services of city government. American and English experiences demonstrate also that the city is not an isolated unit of government in the state. The city is given state duties and obligations. The city has a definite governmental relationship with all the other municipalities within the state's boundaries. Within this state governmental sphere, the city exercises its powers and responsibilities.

Thus, in England the great acts of Parliament create all local governments which are the County, the County Borough, the Municipal Borough, the Municipal District, the Urban District and the Parish. Each of these local governments has a council and each council exercises specific powers of its own. The County Council's powers extend over all the units within the County except (1) for the County Borough which has independent status, and (2) for limitations on police, elementary education and roads which result from certain permissive conditions.

In the United States with but one sole exception, all municipalities are creatures of laws or special acts of some one of the 48 states. The District of Columbia contains the City of Washington and the capital

of the United States; it is a special governmental agency created by a particular act of the United States Congress. Because of its singular legal character, neither Washington, as a city, nor the District of Columbia, as a federal municipality, is ever in the same classification of regular municipalities as is being discussed in this Paper. With this exception then, the powers which all cities exercise are specified in the state laws or the particular charter granted to the city by the state. It also occurs that one city may have legal variations from another city within the same state, because all incorporators seeking status for their area as a municipality do not apply for the same powers to be put in the various charters. Moreover, all city charters are not amended at the same time. Certainly there is wide legal variation among the governmental powers exercised by the cities of the 48 states. The great principle of government controlling the constitutionality of state laws or charters creating municipalities was settled in the United States by the Supreme Court in the case of Stoutenburg vs. Hennick many years ago. The decision makes clear the legal position in the municipality's governmental structure of the deliberative legislative body whether it is large or small in membership. The decision shows further why the city assembly can enact its local by-laws (the first underlining of words below) and what the legal nature of the local by-laws is considered to be (the second underlining of words below). The famous decision, in part, reads, "It is a cardinal principle of our system of government, that local affairs shall be managed by local authorities and general affairs by the central authority, and, hence, while the rule is also fundamental that the power to make laws cannot be delegated, the creation of municipalities exercising local self-government has never been held to breach that rule. Such legislation is not regarded as a transfer of general legislative power, but rather as a grant of authority to prescribe local regulations."

Because the city is created and established by the state, it, therefore, exists solely under the power or will of the state. Out of this

fact and of fundamental importance to the whole system of representative government, is another fact: the will of the state can only be expressed by the assembly. This means that "the grant of authority to prescribe local regulations" is expressed neither by the executive nor the court. So, too, in Japan today the central government through a national law, the Chihojichiho, has created the municipality. The law has created the city as a juridical person, a public corporation. The municipality is a public corporation because the state established it as an aiding instrumentality for government to benefit the public and to further the good of the public. The term public, of course, means the people. The term corporation here means the body or legal agency which is to act for all the people in the designated area. The two terms used frequently, civil corporation and political corporation, mean the same thing as public corporation. In older language, very real and very practical language, the municipal corporation is a body politic. This term means that all the people of the district are brought together legally by the state to be one person, to be one body, and that this person, this body, will act to benefit and to assist all of those people. In doing this very thing, it will benefit and assist the state's government as a whole. Moreover, the body politic has life. It, therefore, lives. It has continuity; its legal nature permits it to go right along governing and acting for the people year after year. The municipality in Japan is a juridical person under the Chihojichiho; hence, the city has a life of its own. It can own property and exercise its legal rights and responsibilities like a city in America or in England, Australia, New Zealand or Canada.

The Law Concerning Local Autonomy

The character and extent of the granted powers for city assemblies to pass local regulations are found in Chapter I, Article 2 of the Chihojichiho.

The character and structure of the city assemblies are stated in Chapter VI of the law beginning with Article 89 extending through and ending with Article 138.

Other matters relating to the assembly, such as election of its members and its relation to other divisions of government, are found in other articles.

Additional laws passed from time to time which require the city government to take directed action in particular affairs, such as for example, health, finance or public welfare, can empower the assembly with more authority. These laws are important and should be carefully referenced by the city officials.

In this Paper certain aspects of the character and position of the assembly are discussed. A point for point treatment of all the articles of the laws is not given.

Organization of the Assembly

The city assembly of the present 232 cities in Japan has a minimum membership of 30 directly elected representatives; the maximum number is 100. The members are elected for a period of four years. When, for any reason, a member fails to serve his full term, a by-election is held and the winning candidate fills out the unexpired portion of it.

Upon convocation the assembly from among its members elects a chairman and a vice-chairman, both of whom have a four year term. If for any reason neither of these can serve, nor an elected acting chairman, then the Senior Assemblyman does so. The assembly also has a clerk and secretarial assistants who are appointed by the chairman. As given later in this Paper the assembly is further organized by its creation of standing committees and, for particular purposes, special committees.

The Chihojichiho did not alter the long custom handed down in the three old laws concerning prefectures, cities and towns and villages with their unicameral system. The provision for the one chamber in city government in Japan is like that in the borough and city governments in England and that in nearly all the city governments in the United States. In fact, less than 20 cities in the United States have the bicameral system. However, two examples can be given of great cities with this system: the City of New York, with a population today of 7,900,000 persons, (Metropolitan District approximately 12,000,000) has a Board of Estimate of 8 members and the Council of 25 members; and the City of Atlanta, Georgia,

with a population of 302,288 persons in 1940, has 12 councilmen and 6 aldermen. Virtually all English cities have aldermen but their aldermen do not constitute a separate chamber. The English administration in local government calls for the unicameral system.

The size of the city assembly in Japan, both in number of members and in proportion to the city's population, is substantially larger than that in the United States. Thus, Chicago, with its population of 3,396,808 in 1940, has a council of but 50 members; San Frarcisco, with a population of 634,536, has a council of but 11 members; and Detroit, the automobile capital of the world, with a population of 1,623,452, has a council of but 9 members.

In England the size of the Council of the local governments in relation to the population is relatively small, especially when one considers that the Council is a "combined" legislative and executive authority. Thus, London proper, with its 28 metropolitan boroughs of 8,700,000 persons, an area of 117 square miles, governed by the "Mayor and Commonality and Citizen of the City of London," has a council of 226 members. The City of Birmingham, with a population of 1,076,000, has a council of 136 members.

In Australia, too, the councils are small as, for example, Sidney with a population of 1,336,520 is a city composed of 13 wards, each of which elects two councillors to the council; and Melbourne, with a population of 1,115,200, is a city of 11 wards, each of which elects three aldermen to the council.

There is little question but that the size of the city assembly as well as the prefectural assembly in Japan could be reduced 50 percent. This reduction would yield great savings in city expenses and the taxpayers' money as well as increase the efficiency of the assembly's operation.

The Sessions of the Assembly

The Chihojichiho provides for not less than six regular sessions of the assembly a year and such special sessions as are called either by the

mayor or members of the assembly. The old Shisei, because the assembly did not have much legislative power and was not supposed to have many affairs to pass upon, required only the yearly short session and such special sessions as the mayor would call. By wise and careful planning of the assembly's agenda in advance, the number of special or extra sessions could be reduced to no more than one or two a year. Every session is costly for the taxpayers. The cost of these sessions, regular as well as extra, should be of concern to the assemblymen as they should set an example for economy to the entire city administration. The length of the session and its adjournments are matters the assembly today decides for itself, Article 102. The assembly could not do so previously.

It is important at the convening of the session that the assembly go through a number of established procedures before the regular or special business is taken up.

The Chihojichiho provides that the session of the assembly, although normally called by the mayor, Article 101, is opened by the chairman, Article 106. However, in Article 114 the members are given the right to elect an acting chairman to open the session if the regular chairman or vice-chairman is incapacitated. The closing of this session is accomplished by resolution of the members.

Before business can be transacted legally, a quorum must be present and the Law stipulates that a majority of the full membership constitutes a quorum. However, in order to prevent non-operation of the assembly by absenteeism, the Law allows a lesser number than a majority of the full membership to constitute a quorum in the event a sufficient number are not in attendance subsequent to full notice being given of the session as stated in Article 113. The quorum is directly affected by the eligibility of membership and by resignation, Article 113. The assembly is the judge of the qualifications of its own members and Article 127 gives it the right by a two-thirds vote to determine the eligibility of its members on three grounds: (1) mental competency, (2) court sentences which may have been adjudged, and (3) any sentence in an election law violation case. In this proceeding the member can appear and speak in his own behalf

but cannot vote on the issue. It is important to note that the Diet in passing the Chihojichiho provides in Article 128 that the assemblyman is not to be suspended from office until after final court action has been completed. This provision rightly presumes the official to be innocent pending his or her trial and possible appeal proceedings. It is necessary to do so not only from the standpoint of principle but also from that of maintaining stability in government. The provision in Article 126 of prohibiting an assemblyman from resigning until he secures the permission of the assembly or of the chairman if the assembly is not in session, is likewise a stipulation to secure stability. The Japanese custom to resign on a moment's notice is, therefore, not only contrary to democratic principles but also counter to the clear intention of the Diet. Many instances have occurred in which assemblymen, in simple emotion, have needlessly resigned. This tendency is not only wrong, but also is a waste of the taxpayers' money in the cost of further by-elections.

After the session is opened the clerk of the assembly must keep an official record of the business of the session. A copy of this report signed by the chairman and two members is required by Article 123 to be delivered to the mayor as well as the governor. In the United States no report from the cities is required to be sent to the governor.

Standing committees for particular functions are, of course, formed and meet to discuss the affairs which have been sent to them or which the members have originated themselves. When the standing committee functions properly, it is an essential element in the life of the assembly. The standing committee must do all the preliminary work on bills or resolutions and present its best findings and results to the plenary session.

Both in England and in the United States the committee system in local government is fundamental. In England, as has been given above, the council enacts all decisions in local government. The committees which augment the work of the council as it governs are of two types: there is the statutory or obligatory committee which, by an act of Parliament, the local governments must create. There is the permissive committee

which the local governments at their discretion can establish. Examples of the statutory committees are the Education Committees of the County Councils required by the Education Act, the Agricultural Committees, also for the Counties, required by the Ministry of Agriculture Act, and very important, the Finance Committees of the County Council and the Metropolitan Boroughs established by the Local Government Act of 1888 and the London Government Act of 1889. The acts frequently require certain particulars regarding the committees, such as (1) before the council itself can act on the special function it must receive and study the specially charged committee's reports, and (2) the committee's structure must be of a particular character; thus, the Child Welfare Committee required by the Maternity and Child Welfare Act, must have two-thirds of membership composed of members of the council and one-third from outside representation of specialists, at least two of whom must be women.

The permissive committees which the councils of the local government create have delegated authority. The delegated powers vary in degree among the different local governments. Although they have varied delegated powers, finance is one which they do not have. It is not the practice for councils ever to allow these committees to levy taxes or raise funds by means of loans.

In England, the committees, because of their smooth functioning and important rendering of services, have for most practical purposes become autonomous themselves so that the action which they produce is normally final for the council. Thus, the committee system is a fundamental part of the council.

In the United States, committees are part and parcel of the city assemblies. Those committees which are created by the assembly function solely for the assembly, rather than for the entire city administration as is the English custom. This difference is the result of the separation in the United States of the executive power from the council's or assembly's legislative power. The committee system is discussed at some length in Paper No. 5 of the Local Autonomy Program for the Prefectures of Japan.

The committee system for the assemblies in Japan as provided in the Chihojichiho follows the procedure in the United States more closely than that in the United Kingdom.

The majority vote to settle virtually all issues of the assembly is the parliamentary practice closest to the heart of representative government. The majority vote is a mechanism of political science by which the divergent wishes of the people are expressed through their elected representatives. Some instances have occurred of late in various assemblies which indicate that some members are trying to avoid the principle and to circumvent its practical application. In some assemblies particular issues have caused the most heated kind of arguments and debates. The number of assemblymen taking opposite views has been approximately equally divided. Where compromise has seemingly been impossible to reach, some members have threatened recall of those not in agreement with them. Others have gone farther and tried actually to have a petition started for dissolution of the assembly! They have done this rather than let the issue come to a vote - that is to have it settled by the majority, settled by the traditionally correct majority vote. This action and type of thinking defeat the very purpose of representative government.

As assemblyman, you have only to do the best that you can. You have only to support your position and then cast your vote even though the other side may out-number your side. As assemblyman, you vote the issue as you see it. This also means that you vote the issue in terms of the desires of the constituency or district that you represent. Having voted the issue, you and your group may have won or may have lost. When you lose, the result is simply and only that in this particular "political fight" the opposition has won. The fact that you and your group have lost an issue is never grounds to attempt to turn the assembly chamber into a circus, to get crowds outside to run around with signs and banners or to attempt some other stupid trick which is indicative of a bad heart. Such actions are not reflections of a good heart - a loyal heart for good government. The loser of a political issue today is often the winner

of another tomorrow. In the western world political defeats are taken with a smile as well as political victories.

While it is your duty to accept the decision of the majority, it is also your duty to make your opinion clear before the vote is taken and to register your vote on behalf of that opinion. Compromise is a good thing but it must be real compromise, not just timidity or a desire to "be in with the stronger side." Therefore, if you are absolutely sure that you are right, make sure to vote in that sense, even though you know that your opinion is a minority one. Minority opinions in western democratic countries very often exercise an important moderating influence on the action of majorities and are thus extremely valuable. Do not be afraid then, of being in the minority.

To a degree the winning and losing of issues in politics and government can be compared to winning and losing in the great and manly game of baseball. There is but one principle in the game of baseball. That principle is good sportsmanship. No baseball player is particularly fond of losing games but when he does lose, he doesn't feed the baseball to the elephants or use the ball bats for fire wood! Good sportsmanship is demanded from every player on the team whether playing in the field or sitting on the bench. All of you assemblymen know this fact. Therefore, carry out the city's affairs within the rules of representative government.

The sessions of the assembly in representative government must without exception be conducted in an orderly and dignified fashion. This is a cardinal principle to which the assembly must adhere. As to the conduct in the assembly chamber of the assemblymen themselves, the Chihojichiho makes clear that that conduct should be exemplary. The chairman can rule an assemblyman out of order and stop him from speaking. The chairman, if necessary, can have the assemblyman removed from the chamber for the balance of the day. Should the occasion be an extraordinary one, the chairman can order the session closed for the day. Assemblymen are prohibited from making personal or insolent statements against one another. Proper discipline in case such offenses are committed must be meted out. The chairman has the power of disciplining assembly members. Discipline

can result in expulsion, if approved by a three-fourths vote of two-thirds of the members. Lesser action can consist of (1) public reprimand, (2) public apology, or (3) suspension for a fixed period. Articles 134 and 135.

Powers of the City Assembly

The powers and authority of the city assembly are essentially legislative, they are also investigative. In the conduct of the city's affairs the assembly is often in need of facts to enact effective by-laws or to obtain information on the results of action taken by the administration. Although the legislative and investigative powers are different functionally, almost universally the investigative is used as supplementary to the legislative.

It should be stated at the outset that the assembly passes giketsu or resolutions and jorei or by-laws. The giketsu is an intention of the assembly; it is an internal affair of the assembly and under normal conditions the duties or rights of the citizen are not affected. The exception occurs only when the giketsu has been promulgated in a fixed form; in this special character it can have similar effects to the by-law. The jorei is the by-law. The purpose in enacting it is to produce some type of public action. It, therefore, does affect the rights or duties of the citizen.

In Article 2 of the Chihojichiho the enumerated powers are stipulated under which the city assembly can pass needed by-laws for city's affairs:

> 1. To maintain local public order, protect and preserve the safety, health, and welfare of the inhabitants and visitors thereto;
>
> 2. To establish and manage parks, playgrounds, open spaces, greens, roads, bridges, rivers, canals, reservoirs, irrigation and drainage waterways, and dykes and similar matters, and to regulate the rights to use them;
>
> 3. To manage water plants and other water supplies, sewage systems, electric plants, gas plants, street-car services, automobile services, vessels and other transportation systems, and other services;
>
> 4. To establish and manage docks, moles, piers, wharves, warehouses, sheds and other establishments necessary for

other maritime and land transportation and to regulate the rights to use them;

5. To establish and manage schools, laboratories, experimental stations, libraries, art museums, goods exhibitions, auditoriums, theaters, musical pavilions and other establishments relating to education, science, culture and promotion of industries, and to regulate the rights to use them;

6. To establish and manage hospitals, isolated wards, sanatoriums, disinfecting stations, maternity hospitals, residences, hostels, dining-halls, baths, public latrines, pawn-shops, workhouses, public nurseries, asyla for the aged, almshouses, reformatories, jails, butcheries, dust-disposing stations, dirt-disposing stations, crematories, cemeteries, and other establishments relating to health and sanitation and social welfare and to regulate the rights to use them;

7. To clean, disinfect, beautify, and prevent noises or to restrain acts injurious to public morals and acts staining cleanliness and besides to deal with the matters relating to health and sanitation and refinement of public morals;

8. To prevent crime, to prevent disasters, and to carry out relief and protection of victims of disasters and to deal with similar affairs;

9. To relieve, protect and care for minors, the poor, the sick, the old and weak, widows, defective persons, vagrants, insane or inebriate persons and similar persons;

10. To manage forests, meadows, land, markets, fishing watersurface, public workhouses and besides to undertake profit enterprises deemed to be necessary for the promotion of public welfare;

11. To carry out hill-and-river-improvements, agricultural land development, adjustments of arable land, reclamations of land from public water surface, city-planning, improvements of districts under poor conditions and other improvements of land;

12. To deal with affairs relating to fostering and promotion of inventions, improvements of special products and other increase and improvements in production;

13. To protect and manage historic places, places of scenic beauty, and monuments;

14. To investigate the matters necessary for disposition of affairs of an ordinary local public body and to make statistics of them;

15. To deal with the affairs relating to official registers, identification and registering and other similar matters relating to the inhabitants, visitors thereto and other persons deemed necessary;

16. To inspect, carry out inspection with respect to such matters as relate to meters, various products, domestic animals;

17. To establish limitations relating to structure of buildings, facilities, the area of yards, court density, open space districts, the areas on the basis of dwellings, trade, industry and other state of business of inhabitants in accordance with the determination of laws;

18. To appropriate, entor upon and hold personal or real property for any public purpose in accordance with the determination of laws;

19. To adjust and coordinate the activities of the public bodies and other similar bodies within the area of an ordinary local public body;

20. To levy and collect local taxes, rents, fees, alloted charges, entrance fees, or statutory labor and actual articles in accordance with the determination of laws;

21. To create and manage the permanent property, sinking funds and besides the reserve fund and grain and similar matters;

An ordinary local public body may not deal with such national affairs including but not limited to those mentioned as follows;

1. Affairs relating to all judicial matters;

2. Affairs relating to penal punishment and national disciplinary punishment;

3. Affairs relating to national transportation and communication;

4. Affairs relating to post;

5. Affairs relating to national institutions of learning, and research;

6. Affairs relating to national hospitals and sanatoriums;

7. Affairs relating to national navigation, meteorological and hydrographic institutions;

8. Affairs relating to national museums and libraries;

A special local public body shall, in accordance with this Law, deal with its affairs.

The by-laws which are enacted by the city assembly must legally come within the Constitution, the laws passed by the Diet and the by-laws enacted by the prefectural governments. This legal position in Japan of the city's by-laws is similar to that in the United States and in England. The Constitution of the United States establishes certain powers and affairs for the federal or national government and lodges all remaining powers in the state governments. The State Constitutions and laws in their turn, make divisions and refinements. They do so in

the creation of the cities by enumeration and separation of city powers from the greater state authority.

In England, the Administrative County, of which there are 62 including London, was created by the Act of 1888 as the largest territorial area of local government. The extent of the County Council's powers in some functions is limited within its territory because of (1) other local entities and (2) established legal relations among all the autonomous bodies. Thus, the County Council's power in Elementary Education "stops short" of the Municipal Boroughs whose population is 10,000 or over and of the Urban Districts whose population is 20,000 or over. The County Council's police powers "stop short" of Municipal Boroughs whose population is over 10,000. The County Council's powers on important road matters "stop short" of Boroughs, of Urban Districts and Rural Districts. Stated in another way as between the various local governments within the county on the one hand and the county government itself on the other hand, there is a division and separation of some administrative and financial affairs.

This situation is similar to that of the police system in Japan in which the power of the National Rural Police "stops short" of all towns and villages of 5,000 or more. Many similar comparisons will be found in the United States.

The assembly confirms the appointment of the deputy mayor and can authorize more than one deputy mayor. It can dispense with the office of treasurer, transfer the functions to the office of deputy mayor or it can increase the number of treasurers if deemed necessary, Articles 161 and 169. It confirms the appointment of the inspection commissioners, Article 199. Not only does the assembly have authority to confirm appointment, but it also sets the rate of compensation and expense allowance, and in case of a complaint it passes on the issue within twenty days after the complaint is submitted by the mayor, Article 206. The assembly alone by resolution can change the users of public property or establishments when a question of old customs and usage is involved. Likewise, the creating of an establishment outside the boundaries of

the city is an assembly prerogative, Articles 209-211. Complaints of citizens on these matters are finally settled after hearing by the assembly. Leases and franchises are likewise granted by the assembly; however, when the term is for a period of ten years or more the proposition must be submitted to a vote of the citizens. For periods of less than ten years a vote of the people is also required unless the lease or franchise receives an approval of two-thirds of the assembly, Article 213.

Allotted charges (special assessments) can be levied by the assembly but only after public hearings have been held by the assembly or by a committee so delegated. Twenty days notice to the public is required and in case the notice is published in a newspaper the notice must be repeated every seven days after the first publication, Article 217.

In cases of emergency, disaster or special necessity the assembly may impose statutory labor and appropriate personal property which can be computed in terms of money and levied as a city inhabitants' tax. An appeal can be made in this instance for regular rents and charges, but again the assembly decision after review is final, and there is no appeal to the courts, Articles 218-224. The assembly is prohibited, however, from using public funds or property for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprise not under the control of the public authority, Article 212, Article 230. Article 231 provides an exception to this rule, "if it is necessary to do so for the public interest thereof." Local assemblies now appropriate 10 percent of the welfare funds spent in the community. This money is allocated to the various agencies on the basis of actual need of all institutions, public or private. Lump sum appropriations direct to private institutions should not be made under Articles 230 and 231. All such grants should be made to the local welfare agencies to be administered in accordance with the Welfare Law and regulations.

Normally, contracts with the city should be let by competitive bidding. However, the assembly is authorized in certain cases of

urgency or, when the cost of the bidding procedure makes it impracticable to do so, to waive the requirement, Article 243.

An audit of the city books is required to be made once each month and an extraordinary audit is required twice a year. At this time two members of the assembly must be present and participate. A report of this audit must be made to the assembly, Article 240.

Cities have been staggering under the financial burden imposed by Article 228, which provides that the local public body "is bound to pay its necessary expenses and such expenses as have hitherto fallen thereon under laws or ordinances duly authorized by laws . . ." Actual experience in the past two years has proved the fallacy of this provision. It is impossible with the present limited sources of local revenue to meet the requirements of the school law, police law, public health law, and welfare law, just to name a few. Not only normal local functions but national functions as well have been thrown on the shoulders of city governments in Article 229. While it was believed that the transfer of the admission tax, the five percent levy on alcohol and the increase in local taxes provided for in July 1948 would be adequate to maintain this burden, it is quite obvious now that this is not true. Now that local loans have been restricted, the local governments are indeed facing a crisis. The desperate resort to contributions, lotteries, horse racing and now dog racing as a source of revenue is a sad spectacle. Upon such foundation a sound local government cannot be constructed. Every effort must be made to correct the existing situation.

The assembly not only has the right to pass resolutions and by-laws, levy local taxes and fees, approve contracts, let franchises or leases, but it also may inquire into the manner in which these policies are being carried out by the executive and administrative branches of the city. Thus, the chairman of the election committee, a member of the inspection commission, a member of the public safety commission, or any other group or person delegated by the assembly to perform a function, may be summoned to appear before the assembly and make a report on the progress of any matter with which it is concerned. This right is not limited to

purely local affairs but it is extended to national affairs which have been delegated to local officials as provided in Article 99. In addition to asking for reports of explanations, the assembly may issue written opinions of its own for the guidance of the administrative officers, notwithstanding the fact that the primary right of supervision rests with the mayor. Inspections can be made by the assembly itself or the assembly can delegate the function to the inspection commissioners and receive their report.

The assemblies today are not limited merely to asking for reports or explanations from the city government. They now have the authority under the new Article 100 to conduct their own investigation, either acting as a committee of the whole, or authorizing a standing or special committee to conduct an investigation. This Article empowers the assembly or its committee to subpoena witnesses as provided for in the Code of Civil Procedure. Except for official secrets or matters determined to be of a confidential nature, the witnesses must testify or produce records as required, and in case of refusal, the assembly or its committee can file an indictment against the witness. The subpoena is a new and powerful weapon in the hands of assemblies. Extreme discretion should be used in connection with it. Above all, the subpoena should not be used simply to go on "fishing expeditions." It should be based on definite facts or issues.

The Public's Duty to the Assembly

The sessions of the assembly are normally opened to the public. This procedure is correct and as it should be. When the citizens of the city come to view the assembly in session, they must at all times be able to observe that the assemblyman not only knows what he is doing, but also that he has a true interest in discharging his responsibilities. The public has a right to attend the sessions, but at the same time that the public accepts this right, all the members of the public automatically owe an absolute duty not to disturb the assemblymen in the process of their deliberations. What does this fact mean? It means that the assemblymen must always be free to discharge their duties in an orderly and rational fashion. Further, it means that the citizens in the visitors'

galleries must remain quiet; it means specifically that they only observe the processes by which the city's affairs are conducted. Representative government is a series of orderly processes. No interference with these orderly processes can be tolerated by anyone, officials or citizens.

When the assembly's sessions are disturbed by disorderly acts of disgruntled citizens, agitators or organized hecklers, instantly the chairman must rap for order. If he does not obtain order immediately and the occasion is in the slightest degree serious to obstruct governmental functioning, the chairman under the power given in the Chihojichiho, Article 130, should send for and then request the police to remove the offending individual or entire group from the assembly chamber.

The Police Law gives the police all the power that is necessary to act in such serious cases. The police, too, should act promptly. They should not hesitate or wait around. Every effort should be carefully made to maintain order in an assembly without closing the session to the public. However, when the maintenance of order does become impossible because of visitors or of a prearranged plan on the part of individuals or on the part of minority groups who are bent on obstructing work of the assembly and, therefore, orderly government, then justification fully exists for the execution of any and all disciplinary measures as are established by the laws. There is no course of action but that the ejection of these people from the assembly chamber should be made immediately. Demonstrations and rabble-rousing incidents are not a part of representative government under any condition. Mass demonstrations inside governmental buildings and offices, or <u>even worse</u> the forcible entry into the assembly chamber itself, are acts no official of representative government can countenance.

For assemblymen to sit limply and to submit to such pressure and anarchism means that the majority of loyal citizens and voters who elected you to carry on orderly government have been robbed as a result of your election. The chairman of the assembly as well as the members of the assembly itself should be most firm in such serious affairs. None ought

to yield to agitation or such intimidation by milling or parading groups even outside the buildings. Real citizens in Japan seeking redress of grievances or changes in government have but one course for such affairs and one course only to pursue. They seek only legitimate means - persuasion not coercion. The loyal people of good government must take up their matters with their representatives, who, in turn, will present the issues as they see or understand them to the proper legislative body. Certainly, too, they can write to their local newspapers and explain their views. Moreover, only rational deliberations in the assembly can produce the proper course for correction.

A citizenry loyal to good government speaks its mind and authority at the polls with a ballot, or if not that, then by means of letters, communications and interviews with elected or appointed officials. The assemblymen are the law makers and they must be entirely unhampered as they make the laws.

Assembly's Relation with the Mayor

The Chihojichiho provides that all financial measures or estimates of budgets are proposed to the assembly by the mayor. Custom and practice in Japan have dictated that practically all measures going before the assembly be proposed by the mayor. The custom and practice need not continue so rigidly. Article 112 of the Law provides that members can introduce their own bills. In western democracies this practice is general and should be gradually developed in Japan. However, it is recognized that until a definite source of revenue is available to cities which is ample to carry out normal operations, the mere right to introduce a bill is, of course, meaningless. If the money to support the measure is not in the treasury or forthcoming from positive levy, the by-law will have little substance. A remodeling of the national tax structure by the Diet can remedy this evil condition.

The provisions of Articles 176 to 180, defining the relationship of the assemblies with the mayor, should be thoroughly understood by the entire city's government. Any resolution or by-law, or any amendment to or repeal of the same, unless the subject matter is specifically provided for in the law, can be vetoed by the mayor or he can cause it to be

reconsidered by the assembly. The mayor must specify his reasons and give notice of his action to the assembly within ten days after passage of the resolution or by-law. The assembly can honor the veto message or it can refuse it. In refusing the veto the assembly generally repasses the measure. To overcome the veto a two-thirds vote of the assembly is required. When the by-law is so repassed, the measure becomes legally final. The first paragraph of Article 176 contemplates a wide latitude on the part of the mayor in selecting a reason to veto. Any reason he deems appropriate is permissible but he should be rational about it.

Paragraph four of this Article provides for a special veto on the grounds that the section is ultra vires, that is, that the action taken is beyond the legal jurisdiction of the assembly or that it contravenes existing laws or regulations. In this latter type of veto in which the assembly over-rides the mayor's veto, he may bring an action in court to test the legal question involved. This he should do without delay.

Where the resolution or by-law concerns revenue or expenditure of funds and the mayor considers the action impossible to execute, he also files his veto with the reasons therefor. This provision particularly applies to resolutions to strike out or reduce expenses or appropriations for the following purposes: (1) expenses to be paid by laws or ordinances, expenses ordered to be paid ex cathedra by administrative authorities or expenses required to be paid by local entities, (2) expenses necessary for emergency or recovery facilities caused by emergency disasters, or expenses necessary for the prevention of epidemics.

Where a resolution involving one of the items named above is repassed by the assembly, the mayor can nevertheless order the expenses paid or order the appropriation made. The mayor may in his discretion consider repassage of this type of resolution as a vote of non-confidence. When he takes such a stand he must dissolve the assembly within ten days. Likewise, where a formal resolution of non-confidence is passed by the assembly he must dissolve the assembly within ten days or resign. Where the assembly is dissolved and the new assembly repasses the original measure, then the mayor must resign. On a formal vote of non-confidence, a three-fourths vote is required with two-thirds of the members present.

It is apparent that the Diet in requiring a three-fourths vote intended that the procedure be a real expression of a number of responsible people. Normally the parliamentary procedure of over-riding the executive's veto is sufficient for all issues coming between the executive and the assembly. The vote of non-confidence procedure should only be used in extreme cases and as a last resort. It is the more powerful procedure of the two. It should never be used on trumped-up charges.

It must never be used unless the assemblymen can say frankly and sincerely, "We cannot decide this issue ourselves. The mayor has an opposite view. Therefore, we must take this serious issue back to the taxpayers and voters for them to decide by re-electing us or other representatives!" Administration of local governments is extremely difficult today because of lack of finance, scarcity of materials and other factors which should be taken into consideration by the assembly at all times. The taxpayers should not be burdened with extra election expenses caused by emotional votes of non-confidence every time a dispute arises between the mayor and the assembly. Aside from the consideration of expense involved, the instability of local governments should be considered. The public will soon lose confidence in their representatives and probably should do so if they develop each issue into one election after the other. Serious thought should be given to this problem by all assemblies throughout Japan, not just the city assemblies.

<u>Assembly's Relation with the City's Committees, Boards and Commissions</u>

The assembly elects the members of the four-man Election Administration Committee. The assembly must exercise extreme care to select qualified candidates who can discharge the duties of the office. The work of the committee will become increasingly more important. Because the assembly does appoint the Committee, it can be stated that the assembly has an indirect responsibility for its actions. This responsibility is moral only; it is not legally so.

Financially and administratively the assembly will have relations not only with the Election Administration Committee but also with a number of others, such as the Police Commission, the Board of Education and other agencies which are created as part of the city government to be

responsible directly to the public and, hence, not at all like those committees which are a part of the assembly itself. In many instances the assembly may be called upon to settle disputes among these agencies. Problems of budget drafting for their personnel and their supplies will normally arise. Reciprocal dispatch of reports and communications will also be normal. The relations should always be cooperative and in good time.

Summary

The assembly as an organ of city government will and must become more and more important, especially as financial conditions in Japan become better. With better finances more powers can be exercised by the assembly for better or varied services to the city. In the meantime, through exemplary decorum and dignity, the assembly can command respect. Neither dignity nor respect is dependent upon financial or other power. Assemblymen should be creative and quick to take action for the city's needs. Many assemblymen in Japan, seemingly for want of else to do, like their distant brothers in other parts of the world, have been content, far too content, to attend the assembly merely for purposes of voting themselves a salary and expense funds. They have contributed nothing; they have left no record of progress. For such guilty persons, of course, only recall or a blank ballot should be their reward.

That the Chihojichiho provides that the city by-laws should not contravene the Constitution, the laws of the Diet or prefectural by-laws, should not be misconstrued to mean that the assembly has no work of its own - that the assembly can pass no by-laws at all. Many assemblies have done well thus far. Many assemblies have passed by-laws on matters of fishing, sanitation, public safety and policing, fire prevention, health and welfare. That some argument and discussion have arisen about the validity of some of the by-laws cannot in any manner whatever be a cause for discouragement. The courts and only the courts will decide the validity of the by-law after it is passed. Neither bureaucrats, hungry for keeping control to themselves, whether residing in Tōkyō or locally, nor the procurators overzealous as some are, have any legal power whatever

to decide a by-law valid or invalid either in the proposal and drafting stage or after enactment. Even their advice many times is faulty. The assemblyman himself must act. The assemblymen should proceed in firm deliberation to enact proper by-laws either for abolishing and correcting outmoded and old issues or for securing new, better or more timely services.

In my travels around the prefectures in Japan I have been greatly impressed with the varied sights which I have seen. I have been impressed more than all else with the rice-planting season - the planting of rice itself and the hard working farmer and his family and friends who do it. I am impressed with the way the paddy field is laid out. I like to see the heavy earth and mud edges neatly banked to block off and hold the water to make ready to receive the little green rice plants. I like even more to watch this farmer measure off the land for the spaces in which the green rice spears are to be planted. He uses his gauge with great care. He puts each little rice plant in its exact place with loving care. Above all else, I am impressed with the manner in which the farmer surveys his work when it is done, how he walks from one corner of the field to the other to survey it, how he stands now and then to give it the one last careful measuring look before he trudges homeward. And there it is! Each little green plant is in line, row for row, no matter how you look at the field. Moreover, these green little rows above the shallow water make in pattern a geometric nicety of angles and squares. Had I never seen the farmer at work but only the planted field which shows these planned and careful results, I would, in viewing it as I passed along, be bound to say in happiness, "This man knew exactly why he did what he did! This man has done his best." You assemblymen know this fact, too. You assemblymen have watched and seen the planting. Even more than I, some of you assemblymen have been a part of this farm life with its exacting work. Also you assemblymen know full well, as do I, that the abundantly rich harvest is the farmer's reward, his rightful reward.

So far as the city is concerned, so far as the assembly within it is concerned, and so far as each of you assemblymen is concerned, in the most preciselike manner - the same most careful manner of the farmer's course - good government in the New Japan can be achieved with careful planning and action.

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