

ABSTRACT

This thesis aims to study all problems relating to the delegation of administrative powers in the bureaucratic systems. In the Thai legal system, the principles on delegation of administrative powers have been prescribed. These principles appear in all of the laws providing powers in various kinds of matters. In addition, the general principles on delegation of administrative powers have been laid down. These general principles appear not only in the Administrative Organization of the State Act, B.E. 2534 (1991) which is general law on delegation of powers to all government officers of central and provincial administrations, but also in legal provisions on delegation of powers in the laws on establishments of all local administrations which are general laws on delegation of powers to all government officers of local administrations. However, although the delegation of administrative powers has been widely implemented in the Thai legal system, it is found from the study that for the delegation of powers in the Thai legal system, there are still a number of practical problems. This thesis is based on the delegation of completed administrative powers as criteria to classify the problems into two groups viz.: problems arising during the process of power delegation and problems on the consequence of power delegation. In this regard, for each group, the certain important problems are highlighted as the objects of this study as follows:

With regard to the first group of problems, problems arising during the process of power delegation, for the delegation of power by “Rules” in the Thai legal system, there are certain cases in which the legal provisions in the form of Rules are prescribed to provide the power delegation which are sources of law in the level of the Act. This is not correct in terms of the hierarchy of law because this may, consequently, allow the principles which are in the lower hierarchy to change the organs that are entitled to use powers provided by laws which are in the higher hierarchy.

With regard to the power delegation by group organs, when the administration principles on State organizations in the form of group organs are considered, it is concluded that the legal technique on the delegation of administrative powers fails to be applied to the work decentralization of this kind of administrative organizations since in the cases in which any powers are provided by laws for the particular group organs, the laws only intend to give

the decisions to use powers in such cases through the consideration, consultancy and discussions of persons or positions stipulated in the legal provisions which are sources of powers.

In cases relating to the enforcement to delegate powers, the power delegation in this form is not consistent with the fundamental concepts of delegations of administrative powers in which persons holding powers have freedom to consider or decide to delegate powers including to determine the persons who should be delegated powers as they may think fit within the legal frame.

With regard to the second group of problems: problems on the consequence of power delegation arising when power delegation is fully completed, the first problem is the case related to the powers of power delegators after the power delegation. It can be concluded that the power delegators cannot reuse their powers which have already been delegated to the persons who have been delegated such powers until the power delegation is final due to whatsoever causes. However, the power delegators as supervisors of persons who have been delegated powers are entitled to only use powers to control, supervise and control the lawful legitimacy and appropriateness of the use of powers by persons who have been delegated such powers. With regard to the liabilities due to the use of powers, for the power delegators, they have no any liabilities caused by the persons who have been delegated such powers since such powers are regarded as the use of powers on their names, not the act as the agent of the power delegators. However, the power delegators who are in the positions as their supervisors shall be liable if it appears that they are careless in the consideration to delegate or in the use of powers to control or supervise the acts of the persons who have been delegated powers. For the persons who have been delegated powers, they shall be liable for the use of powers as usual because it is the use of power on their names as it is earlier mentioned.

Finally, with regard to the organs who consider the appeal in the case where there are power delegations to act on someone's name, "the officers who shall issue the orders", who shall receive the appeals from the parties and shall initially consider such appeals are persons who have been delegated powers. This is because the use of such powers is regarded as the act on the names of persons who have been delegated powers. Moreover,

when persons who have been delegated powers issue the orders by themselves, they shall be knowledgeable and understand the facts which are fundamental to issue the orders more than the power delegators. For “the persons who have powers to consider the appeals” who are organs to consider such appeals in the second stage, the author is of opinion that they are the same organs in the appeal of the case where there are no power delegations because that any person shall have powers to consider the appeal is provided by law. Only the power delegation which is the administrative act should not affect to change the aforesaid matter.

It is, therefore, suggested for the two groups of problems that since the first group of problems which arise during the process of power delegation is derived from the applicable legal provisions which are not consistent with legal principles, these legal provisions should be repealed. For the second group of problems relating to the consequence after the power delegation, they are related to the enforcement and interpretation of laws. In this regard, the possible resolutions can be found by cultivating and developing the knowledge on public law to the administrative organizations in all sections. These activities should be enough for them to interpret and apply the laws accurately.