

เรื่องเสร็จที่ ๑๑/๒๕๖๖

ที่ ๑๗/๓๕๙๒

กระทรวงยุติธรรม

วันที่ ๖ ตุลาคม พระพุทธศักราช ๒๕๖๖

แจ้งความมายัง นาย อาร์.กียอง หัวหน้ากรมการร่างประมวลกฎหมาย

ด้วยได้รับพระราชทานพระราชหัตถเลขาที่ ๓๐/๒๕๖ ลงวันที่ ๑๘ กันยายน พ.ศ. ๒๕๖๖ พระราชทานพระบรมราชวินิจฉัยในเรื่องออกกฎหมายเสนาบดี ดังมีข้อความพิสดารแจ้งในพระราชหัตถเลขานั้นแล้ว

ได้นำสำเนาพระราชหัตถเลขา ๑ ฉบับส่งมาพร้อมด้วยหนังสือนี้ เพื่อเป็นหลักสำหรับปฏิบัติราชการสืบไป

โดยโอกาสนี้ขอแสดงความนับถือมายังท่าน

(ลงนาม) เจ้าพระยาอภัยราชา

เสนาบดีกระทรวงยุติธรรม

No. 17/3592.

Ministry of Justice.  
6th. October 1923.

Monsiour R. Guyon,  
Chief of the Committee of Redaction.

I have received a Royal Manual No. 30/286 dated 18th. September 1923, enclosing his decision with regard to the issue of Ministerial Regulations, the contents of which appear in the Royal Manual.

I enclose you herewith one copy of same as an element for further service.

Yours sincerely.  
Chao Phya Abhai Raja  
Minister of Justice

No. 30/286

Aisavarya dibya-asana Hall,  
18th. September 1923.

To

Chao Phya Abhai Raja.

The members of the Dika Court have submitted a question relating to the dispute over the “sal chaoW land and asked for the decision as to what extent the Ministerial Regulations concerning charitable Institutions “sal chao” B.E. 2463 issued under the Local Administration Law, B.E. 2457 is enforceable. We have given our final decision that Ministerial Regulations which have obtained the Royal Sanction are undoubtedly deemed to be part of the law. It is of interest to take into consideration the question that Ministerial regulations should not contain provisions beyond those provided in the law which they formed part of it; and it is likely to make a definite limitation for same. Hence a Committee was appointed for this purpose.

The Committee have submitted a report to the effect that laws may be issued only by both, the legislative and executive powers which are, according to the customs of Siam, vested in His Majesty the King. But Ministerial Regulations may be issued under the power of the Minister for the proper execution of the law. They should not contain provisions contrary to or beyond those provided in the law under which such regulations are issued, and should not include punishment and fine. If we were to go back for the purpose of cancelling and modifying all Ministerial Regulations which have been issued in order to comply with this principle, it would be a great trouble. So we leave them as they were. But all Ministerial Regulations to be issued in future must comply with this principle. We agree with this opinion and lay down the following rule.

a.) Ministerial Regulations which have already been issued.

1) If they are issued after the Royal Sanction, they are deemed to be laws according to our decision given to the members of the Dika Court.

2) If they are issued without the Royal Sanction, they are applicable only in so far as they are not contrary to the provisions of law or beyond those provided by the law under which they are issued.

b.) Ministerial Regulations to be issued in future.

1) Whether they are issued after the Royal Sanction or not, they must not contain provisions contrary to or beyond the provisions of the law under which they are issued and not to include any punishment or fine.

2) If it is intended to include any provision which is beyond the law itself of to include punishment, it should be issued as a law and not Ministerial Regulations.

3) If the Ministerial Regulations are to be issued under any law and such law provides that the Ministerial Regulations must first obtained the Royal Sanction, then they must be issued only after having obtained the Royal Sanction. If the law does not provide so, even if the Royal Sanction must be first obtained, no mention of the Royal Sanction is to be made in the Ministerial Regulations, so that the responsibility shall lie upon the Minister who signs his name in the Ministerial Regulations.

4) In drafting laws (or Acts) in future, the customary wording of the provision empowering the Minister to issue Ministerial Regulations which says: “such Ministerial Regulations, after having obtained the Royal Sanction and published in the

Government Gazette, shall be deemed part of the law” is no longer to be used. It must be said: “The Minister of ..... is empowered to issued Ministerial Regulations for the proper execution of this law. Such Ministerial Regulations are applicable after having been published in the Government Gazette”.

Moreover, in order to avoid any mistake as to the drafting, whenever any law or Ministerial Regulations is to be issued, it must be sent to the Code Commission, Ministry of Justice, for examination or to make a new draft in order to be certain that it is in accordance with the principle and practice now in use and that it is done in a uniform manner. The provisions in such Laws (acts) or Ministerial Regulations must all be agreed with the officials of Ministry of Justice. After that such law or regulation may be submitted to His Majesty the King.

Ram R.