

MINUTES OF MEETING OF CHARTER COMMISSION

Date: November 14, 1942
Time: 2:50 p.m. to 5:10 p.m.
Place: Courthouse, 25-25
Chairman: Mr. Kiyochi Doi
Attendance: 35 members present

Meeting was called to order by Chairman Mr. Doi.

MR. DOI: The purpose of this meeting, primarily, is for general discussions. After the discussions are had, the necessary step would be on the election of the different committees. There is one other question, and that is for the selection of the executive or drafting committee, composed of six members from the Issei and six from the Nisei. The general agenda of the meeting is along that line. Mr. Housel is here to assist us in all of our proceedings. He will answer all legal aspects. I understand Mr. Housel will remain for the next ten days or two weeks. He is going to establish the project attorney's office. Is that right, Mr. Housel?

MR. HOUSEL: I intend to. I hope so.

MR. DOI: Regarding the provisions to be in that constitution, I think it would be very advisable that we get the legal end from Mr. Housel, himself. So far as the chair is concerned, his office is to see that the meeting is conducted in an orderly fashion. I have said what I intended to say and from now on, what the chair has to do is to sit down and listen to you gentlemen argue this out. By the way, before the arrangements for this meeting were made I had already made an appointment from which I could not get away this afternoon. It is an urgent matter which I have to take care of today. So, I am going to ask Mr. Bepp to preside."

MR. BEPP: At the conclusion of the last meeting we were trying to devise a means of selection of various committees. May we ask Mr. Housel to give us his phase and his connection with drafting of the Charter?

MR. HOUSEL: Gentlemen, Mr. Doi said that I would answer all the legal questions. I hope that I can answer a few of them. I was down to the Granada Relocation Center a few days ago and heard some speeches there. I think that the speech makers are here at Heart Mountain, according to what I heard about last night. I thought since you are all organized now to work out a system of permanent government here, it might be helpful to you if I were to give you the legal phases on which this system of local government would rest.

As a specific example: Suppose you provided for a Community Council, a Judicial Commission; suppose you pass ordinance or regulation that no one is to steal personal property belonging to another person in the Center, and after the ordinance is approved and on the books, some person sees a coat, or a wallet, and steals it; and the person who made the theft is brought before your Judicial Commission for violation of the Community Council ordinance; and suppose for a penalty he is sentenced for 30 days in the local jail. This individual may happen to be an attorney and comes back and says, "Well, you have no authority to arrest me. I'm going to sue you for false imprisonment." So he comes back and asks damages against his person. For good measure he

brings charges of assault and battery against police officers who took him into custody. Well, unless this whole system of government has a legal foundation under the Constitution and laws of the United States, that person can recover under these laws. So, it's important for that reason that we understand just what foundation this system of evacuee government will rest upon. As you all know I suppose, our Federal government in the United States has only these powers which were delegated to it by the states. All other powers are retained in the states. The Federal Government could have acquired exclusive jurisdiction over this land. By this is meant, the law of the state no longer applies, but that the land is subject only to the Federal law. If the Federal government had acquired exclusive jurisdiction, State and local officers would have little or nothing to do with it. However, that has not been done. The W.R.A. and the War Department have not acquired exclusive jurisdiction over the land on which this Center is located. What law is then applicable? It is both State and Federal laws, or what is called "concurrent jurisdiction." The question arises as to what extent state laws apply and to what extent do Federal authorities have exclusive control. The Federal Government has such incidental powers and control as may be reasonably necessary to perform its functions. For example, the Forest Service can make regulations for conservation of timber and forests.

The W.R. A. has the power and authority to carry out the relocation program. Under Executive Order No. 9102 the W.R.A. is authorized to formulate a program for the maintenance, supervision of evacuees and to make such regulations as may be advisable for the execution of these functions. The W.R.A. appropriation act of Congress provides funds specifically for the purpose of carrying out the functions of the W.R.A.

Can the project director constitutionally delegate the powers given him by the Executive Order to an evacuee government? The Bituminous Coal Conservation Act of 1934 provided that a majority of coal mine owners and miners together could prescribe the labor hours and wages in all bituminous coal mines. The constitutionality of the Act was contested. Can Congress delegate this power to a private group? The court held the Act unconstitutional. The reason was that it was an unconstitutional delegation of power to a private group; the power to dictate maximum hours and minimum wages should have final official.

A means by which the power to regulate an industry or an operation in an economic field was worked out in the Tobacco Marketing Act. Congress itself set forth the regulations and it two-thirds of the tobacco industry agree, the regulation becomes applicable. This was constitutional. The difference between the constitutional and unconstitutional laws is that there must be some final official authority.

Another example is the so-called "integrated bar associations". They provide that a group of attorneys, members of the association, can themselves hear cases of mispractice by attorneys and recommend their disbarment. However, the order of disbarment does not become final until it comes before the State Supreme Court and is approved by the Court. In the case of evacuee government, final jurisdiction must be in the hands of the project director. It is the only way we can legally establish a form of government.

Now, let's test some of these things by applying your Administrative Instruction #34 providing for a Community Council. It makes a few requirements as to elective offices and voting. Can the regulation hold up constitutionally? The regulation itself is not approved by the project director.

The Judicial Commission is the keystone in your system of evacuee government. It applies policies made by the Council to particular cases, renders a decision which is sent to the project director for review. If the project director approves the decision of the Commission that's where the final official approval comes in. It doesn't matter that the ordinance before then has not been presented to the project director.

The question has arisen whether or not by the participation of the evacuees in self-government, they thereby endorse the whole evacuation program. From a legal standpoint, I don't think there's anything to it at all. Hauling coal or eating in the mess halls, participating in the daily life of the Center, is just the same.

When your executive committee is selected all of us want to be of as much assistance as possible. However, it would be a better job if you worked it out as much on your own as you can. Mr. Barber has had mimeographed here "Drafting the Plan of Permanent Organization" from the manual from Washington. Three or four pertinent sections of the Model City Charter, I'm having mimeographed at my Denver office. I have copies of the Manzanar Charter and articles on the Judicial Commission and the Arbitration Commission which will be mimeographed. I am sending for copies of forms of government other centers are working out. I hope you here in this Center will be able to work out the best form of government.

PAUL NAKADATE: If the Community Council is set up, what check would it have on the project director, that is, with the understanding, if we should have a project director who is not fair to the people?

MR. HOUSEL: The Community Council, or anyone else, for that matter, can write to Washington or the Denver regional office.

RIKIO TOMO: Is there any Federal system of education?

MR. HOUSEL: Which would be applicable to these Centers?

RIKIO TOMO: Yes.

MR. HOUSEL: I do not know of any. The Department of Interior has a bureau of education but it doesn't have a separate system of education.

RIKIO TOMO: Or the payment of sales taxes, what reason is there for our enterprises being under the jurisdiction of the State of Wyoming?

MR. HOUSEL: Legally, community enterprises probably are subject to the state law. In 1939 the extension of the area under which sales taxes could be charged was broadened considerably. As a matter of policy I'm not qualified to answer that question. I don't know. However, there will be many benefits that you will derive from the State of Wyoming. Any one who commits felonies or misdemeanors is subject to Federal and State laws. Divorces, adoptions, probate proceedings are brought before and handled by the courts of the county and state. You will have a highway which runs by the Center.

RIKIO TOMO: I mean franchise. If you pay sales taxes to the State of Wyoming why can't we vote here, too.

MR. HOUSEL: I don't know. In a studied opinion on that point, our Solicitor states that while the evacuees reside within the Center they probably won't acquire the right to vote. In order to change your domicile, first, you have to move, second, you have to intend to remain, and third, you must intend not to return to the former home; that is, make your home and interests here. (Subject of sales taxes in army and navy canteens was brought up, but was dropped because of lack of information as to whether such taxes are or are not charged in those canteens.)

MASAO KUBOSE: I would like to know the status of the residents here, whether we are prisoners of war or ordinary citizens relocated from California. What about citizenship and what about aliens being in these centers together? And what distinction, if any, does the W.R.A. make between the two?

MR. HOUSEL: You are not prisoners of war, you are not detainees, you are not internees. You are evacuees. You are not prisoners of war because you're not taken under such conditions. As a matter of fact the United States government has indicated to the Japanese government that the principle of the Geneva Convention would be applicable to you people. Legally you are not prisoners of war. Second, what about citizenship and what about aliens? Why can citizens and non-citizens alike be detained in a relocation center? Well, for a long time the United States has had a statute which provides that any person, citizen, alien or otherwise can be detained or restricted to the extent reasonably necessary to the national safety. Now the whole constitutionality of the W.R.A. program, the relocation center, the evacuation, itself, depends on whether the measures taken were for necessity of national safety. That question will probably be decided after the war by the courts. Our Solicitor believes that the evacuation was reasonably necessary. I think your third question was whether W.R.A. meant to make differentiation between aliens and citizens. Administrative Instruction #34 states that only citizens can hold administrative office. I can only say briefly that our experience in the other relocation centers, coupled with the matter of public relations with the outside, that some recognition to the Nisei in the relocation centers was necessary.

At some centers many of the nisei were being taunted by the issei regarding their citizenship status. For that reason the Administration took that as one measure by which to recognize the citizenship of the nisei. I don't know that there is any particular legal basis for that except that outside the centers it is the same. A policy has been established and in response to petitions, it has been reaffirmed.

KOIDE: Regarding that act you mentioned, Mr. Housel, if it was the Sedition Act of 1798, it was not renewed.

MR. HOUSEL: Irrespective of whether that is or is not the case, Congress has appropriated funds for the W.R.A. to provide for supervision and maintenance of evacuees. You might rest it on the war powers of the President.

KODAMA: I wish to ask a question concerning the citizenship status of the so-called nisei here in the Center. Since the Council has been directed to be composed of citizens only, can the Community Council appeal to the W.R.A. director at Washington regarding citizenship status?

MR. HOUSEL: Any question of that kind can be raised with the W.R.A. office.

KODAMA: For example, the fence; the psychological effect upon the people who are citizens; can we, as citizens, appeal to Washington office of the W.R.A. regarding it?

MR. HOUSEL: You can appeal to anyone at any time you please, even the Director. You can appeal to him at any time. You can send a petition to him direct.

KODAMA: Could this be put in the Charter?

MR. HOUSEL: There is no object in doing so, since any group or individual can get up a resolution and send it to anyone; to the President if he so wished.

NAKADATE: In view of the fact that citizens can be elected to the Community Council, can the Council have the power to have the alien members paid?

MR. HOUSEL: Community Council members will not be paid.

TOMO: It's like putting you on the spot. Question is this: Now that we are citizens and the alien Japanese are free people, regarding any thing that we provide for in our regulations, why is it that the project director has to pass over it? If somebody has to be above us, it seems to me rather ridiculous.

MR. HOUSEL: Under Executive Order #9102, Director of W.R.A. is directed by the President to provide for supervision and maintenance of the evacuees. The responsibility is his of administering these centers. Do you mean, irrespective of his responsibility?

TOMO: Then we are under the jurisdiction of the U. S., state of Wyoming, and under the jurisdiction of the military. Is that right?

MR. HOUSEL: You're right.

TOMO: I think we're not citizens.

MR. HOUSEL: You're just getting more governmental services than the other citizens, three times as much. Of course, you've got to assume that the director is the one who is responsible for administering the center. You're limited. Anybody is limited. There are all kinds of limitations imposed on all of us during a war. It's the same principle.

KOIDE:

MR. HOUSEL:

KOIDE:

MR. HOUSEL: The only condition is that you have to report your change of residence. The leave which is issued to you is revokable on two grounds, first, upon additional evidence becoming available second, when conditions are so far changed, that the original leave should not have been granted.

For example, when evidence is brought before the director that the releasee is subversive, the leave can be revoked. Second, the releasee goes to a community, but because of the turn of events in the Far East, the community becomes so hostile that it endangers the life of the evacuee, then, too, can the leave be revoked.

KOIDE: Unnecessary restrictions, as erecting a fence--is that because of fear that there may be a disturbance here?

MR. HOUSEL: The disturbance will be restricted.

KOIDE: Is there any military necessity of our being detained in the centers now?

MR. HOUSEL: You're not being detained.

TOMO: Regarding the delay and red tape in getting releases for work outside--can't something be done about that?

MR. HOUSEL: They are going to get a list of people who want to work outside, but who do not have a job, then have a system worked out whereby a person on this list can get a release as soon as the job suited to him is available.

KODAMA: About the Charter--is there anything within the WRA code or regulations where the project director can delegate some power to the Community Council? Put some teeth into it? For instance, internal security.

MR. HOUSEL: When the Community Council is established, such powers may be provided for through the penal code.

KODAMA: When the project director does something wrong, then, is he held responsible, or the Community Council?

MR. HOUSEL: In case of emergency it would be necessary to call the Military Police in. They would be responsible to the Army while the project director would be responsible to the Director in Washington. Under permanent government the Council will pass the regulations and they will not be reviewed by the project director until it comes before the Judicial Commission.

HAYASHIDA: In your reply, Mr. House, you mentioned that the only reason why the WRA requires qualifications of citizenship for the Community Council is purely a matter of policy relative to the outside world. Is there any law that confines?

MR. HOUSEL: I said that was our reason. There is no rule that denies anyone here the right to hold appointive office.

HAYASHIDA: Is it permissible in the scope of the manual we have, that we can put in the Charter the system of two houses, as the United States Congress, one as an elective, and the other an appointive body? One group of citizens and the other, of Isseis?

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MR. HOUSEL: No. A board of elders to give advice, perhaps, but the final control must be in the Nisei group.

HAYASHIDA: Could the Charter provide in its advisory board the right of review or veto when they differ in the opinion?

CHAIRMAN MR. DOI: The question is irrelevant and uncalled for at this time!!

MR. HOUSEL: The final authority will have to be in the Nisei group.

HISATOMI: I have a solution to that. The Community Council has the power of appointing an advisory board.

NAKADATE: If the Community Council should set up a board of elders, would it be possible for that body of elders to ask for recall or reconsideration of any regulation that has been passed?

R. HOUSEL: If it is set up, its functions would be only advisory. It would have no power to veto or recall.

HAYASHIDA: Can the Community Council provide that the final veto be in the power of the advisory board?

MR. HOUSEL: The final power is put in the Nisei group. The functions of the advisory board, if provided for, probably should not be provided for in the Charter.

TOMO: I am sure the Niseis would provide something that would be advisable.

CHAIRMAN MR. DOI: Selection of the six committees will be postponed until the next meeting. However, what shall constitute a quorum, gentlemen? (Mr. Hisatomi moved that two-thirds, or 27 members out of 40, constitute a quorum. Mr. Bepp seconded the motion and approved unanimously.)

(Mimeographed copies of "Drafting the Plan of Permanent Organization" were distributed.)

(Next meeting of the Charter Commission was set for Monday, November 16, at 2:00 p.m. sharp at the Courthouse.)

(Meeting then moved and seconded for adjournment.)

Respectfully submitted,

Secretary
Charter Commission
Heart Mountain Relocation Center