

Justice Department Position on Delegation of Authority to SACB

Your editorial of Aug. 11 quotes Senator Ervin's "sense of the Senate" resolution to the effect that the President's Executive Order vesting additional authority in the SACB is "an attempt to usurp the legislative powers conferred on Congress by the Constitution," and goes on to state your judgment that the charge, though in strong language, is "precisely right." An editorial on the same subject last week stated that "[t]he pretext for this executive usurpation is once more, as so repetitively in the recent past, an assertion of 'inherent' presidential power." Both charges, I believe, are demonstrably unsupported.

The President's Executive Order, transferring from the Attorney General to the Subversive Activities Control Board functions relating to the investigation of categories of groups described in the order was not, so far as I know, ever defended by the administration on the basis of "inherent power." There is ample statutory authority for what the President did, and it is necessary to go no further in justifying the legality of his act.

Congress has given the President by statute responsibility of making regulations for the employment of individuals by the Civil Service, and of ascertaining the character and ability of federal job applicants. 5 U.S.C. 3301. Congress has also by statute given the President power to delegate func-

tions vested in him by law to "any department or agency in the executive branch." 3 U.S.C. 301, 302. President Truman some years ago delegated to the Attorney General the authority to prepare a list of totalitarian, fascist, communist and similar organizations. The information thus obtained was for the use of federal employing agencies. This delegation was modified and reaffirmed by President Eisenhower in 1953. The U.S. Court of Appeals for this circuit on two occasions upheld the authority of the President to make such a delegation, first in 1949 and again in 1954.

What President Nixon has functionally accomplished by the Executive Order which The Post feels is such a classic example of executive usurpation is simply to transfer from the Attorney General, where it previously resided, to the Subversive Activities Control Board the function of listing organizations for the information of federal employing agencies. This is part of a function which, in the absence of delegation by him, Congress has by law confided to the President.

Previous exercises of this authority to delegate to agencies by other Presidents have gone unchallenged by either the third or fourth estates. For example, President Eisenhower designed the Federal Communications Commission to exercise his power to

approve the landing of submarine cables, E.O. 10530; President Roosevelt authorized the FPC to hold hearings on whether pipelines can be connected at our borders, E.O. 8202. The additional task which the President has delegated to the Subversive Activities Control Board is completely compatible with the basic assignment given it by Congress, and the delegation was not only in accordance with law but entirely justified from the point of view of public administration.

In the present case, a basic disagreement on the policy question of continuing the SACB or expanding its role has apparently led critics of the President's decision to cast about for some legal flaw in the procedure used to carry it out. Your comparison of the present order to the situation which would obtain if the President "suddenly" ordered the CAB to regulate the railroads is a good deal wide of the mark. Congress has *not* told the President to regulate the railroads; it *has* told him to make regulations for the employment of individuals by the Civil Service and to ascertain the character and ability of federal job applicants. It is a portion of this authority conferred upon *him* by Congress, and not authority which Congress had confided to another agency of government, that the President delegated to the SACB.

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