

FREE CITY OF DANZIG

DANZIG CONSTITUTION DECREE ADOPTED BY THE DANZIG SENATE ON JANUARY 31ST, 1934, CONCERNING THE APPOINTMENT OF M. HEINZ EGGERT AS STATE COMMISSIONER.

C.197.1934.VII.

LETTER FROM THE HIGH COMMISSIONER OF THE LEAGUE OF NATIONS AT DANZIG TO THE SECRETARY-GENERAL.

[*Translation.*]

Danzig, May 5th, 1934.

At the request of my predecessor, you communicated to the Council for information on January 8th, 1934 (document C.11.1934.VII),¹ a letter, with annex, addressed to you by the High Commissioner on December 23rd, 1933, concerning the Decree promulgated by the Danzig Senate on July 29th, 1933, regarding the appointment of State Commissioners for communes of the territory with reference to Article 68 of the Constitution of the Free City

On January 31st, 1934, the Danzig Senate adopted the following Decree:

Decision of the Senate No. 393.

In virtue of the Allgemeines Landrecht II, 6, § 191, and of Article 1 of the Decree concerning the provisional appointment of State Commissioners (Staatsbeauftragte) for communes and groups of communes, dated July 29th, 1933 (*Law Gazette*, page 348), decisions as to communal affairs of the City of Danzig are transferred from the City Council to the Chairman of the City Council, Heinz Eggert, qualified engineer, in his capacity as State Commissioner.

Danzig, January 31st, 1934.

“ Senate of the Free City of Danzig:

(*Signed*) Dr. RAUSCHNING.
GREISER.”

In view of the foregoing fact, I applied to the President of the Senate and asked him to be good enough to acquaint me with the Senate's views as to the bearing of the Decree of January 31st, 1934, on Article 69 of the Danzig Constitution, which states:

The City of Danzig is an independent commune of the State, possessing its own property

The communal affairs of the City of Danzig shall rank as affairs of State, and shall be administered by the Senate and Popular Assembly

“ A City Council shall be elected by the Popular Assembly from its members and from other citizens of the City of Danzig to decide upon the communal affairs of the City of Danzig. The composition and competence of this Council shall be determined by a special law.

“ The provisions of this article may be amended by a law passed by a two-thirds majority, at least two-thirds of the elected deputies being present.

The Senate shall undertake to submit such a law to the Popular Assembly before November 1st, 1931.”

The President of the Senate sent me the attached *aide-mémoire* (Annex I) on March 2nd.

On March 6th, the Centre Party groups in the Popular Assembly and Danzig City Council sent me a request with three appendices (copy of which will be found in Annex II) concerning M. Eggert's appointment as State Commissioner. I transmitted this request to the President of the Senate and later had a few conversations with him concerning M. Eggert's appointment. On May 4th, the President of the Senate sent me a letter (with annex) of which I attach a copy (Annex III).

I should be grateful if you would bring the foregoing to the notice of the Council.

(*Signed*) Sean LESTER,
High Commissioner

¹ See *Official Journal*, March 1934, page 292.

Annex I.

AIDE-MÉMOIRE FROM THE PRESIDENT OF THE DANZIG SENATE
TO THE HIGH COMMISSIONER.

[Translation from the German.]

Danzig, February 28th, 1934.

The appointment by resolution of the Senate, dated January 31st, 1934, of the Chairman of the Communal City Council, M. Heinz Eggert, qualified engineer, as State Commissioner with power to take decisions regarding the communal affairs of the City of Danzig instead of the competent City Council is based.

1. On § 191 of Allgemeines Landrecht II, 6, which reads as follows:

“ If, in consequence of abuses or defects in the internal constitution, the achievement of the desired object is hindered or injury is done to the common welfare, the State is empowered to take the necessary measures for the removal of the abuses and the restoration of good order.”

This provision makes it a duty for the State to intervene when an administrative organ does not function, and to not take the necessary measures to remedy defects.

This provision is still in force in Danzig as well as in Germany to both of which the same law applies in this respect. It has not been replaced by any more recent legal provisions. The appointment of State Commissioners on the basis of Allgemeines Landrecht II, 6, § 191, has been a constant Danzig and German practice, not only under the National-Socialist Government, but also earlier, particularly under Chancellor Brüning's Government in Germany.

Allgemeines Landrecht II, 6, comes under the heading which deals with the dissolution of corporations and communes and therefore relates to organisations like a city administration and not only to guilds and similar organisations.

2. The appointment of a State Commissioner in the City of Danzig is based on the Decree of July 29th, 1933, regarding the temporary appointment of State Commissioners in communes and unions of communes (*Law Gazette*, page 348).

This Decree is valid for communes in general and therefore also for the municipal commune of Danzig. The special arrangement provided for in Article 69 of the Danzig Constitution is no obstacle to this, since, in virtue of Article 69 (1), the City of Danzig is also an *independent commune* of the State, and Article 1 of the Decree of July 29th, 1933, provides as a general rule and without any exceptions for the transfer of the administration of a “commune” to a representative of the State taking the place of the communal authority

Both legal provisions (Allgemeines Landrecht II, 6, § 191, and the Enabling Decree of July 29th, 1933) are also in agreement with the Constitution in another respect, since Article 69 (3) of the Constitution prescribes that the competence of the City Council will be determined by a special law. Accordingly the Senate has to settle by law the extent of the competence and hence also the degree of self-government of the City Council. According to generally recognised political principles, it is the duty of the State to do all that is necessary to ensure the smooth working of the administration. Among the measures which are accordingly admissible must be included, if and so long as reasons of State and the State's duty of supervision require it, the temporary abolition of the City Council's powers by the appointment of a Commissioner responsible for discharging the duties of the defective organ of the communal administration.

The appointment of a State Commissioner in the *City of Danzig* was necessary because a serious deficiency of this kind had been noted in the activities of the City Council; in particular, there was delay in the carrying-out of important administrative tasks, more especially in the financial sphere.

The provision of Article 69 (4) of the Constitution, which prescribes that that article may only be amended by a law passed by a two-thirds majority is not applicable in this instance, as it only refers to an amendment of Article 69 of the Constitution, and here, as already explained, the question is not that of an amendment of Article 69 of the Constitution, but only of the extent of the *competence* of the City Council. In this connection, Article 69 (3), sentence 2, expressly stipulates that the *competence* of the City Council shall be determined by a (*single*) special law. Moreover, as will be seen from the above explanations, the Senate regards the restriction of the City Council's powers by the appointment of a State Commissioner as a purely *temporary* measure.

The appointment of the State Commissioner for the municipal commune of Danzig has up to the present only led to a question being asked by the Centre Party which has since been answered without eliciting any further rejoinder.

Annex II.

LETTER FROM THE CENTRE PARTY GROUPS IN THE POPULAR ASSEMBLY
AND THE DANZIG CITY COUNCIL TO THE HIGH COMMISSIONER.

[*Translation from the German.*]

Danzig, March 6th, 1934.

The two undersigned groups of the Centre Party in the Popular Assembly and the City Council of Danzig venture to submit the following petition.

On January 31st, 1934, the Senate of the Free City of Danzig issued a Decree transferring the right to take decisions on communal affairs of the City of Danzig from the competent City Council to the Chairman of the City Council, M. Hemz Eggert, qualified engineer as State Commissioner.

The reason given for this Decree was that the composition of the City Council was not such as to guarantee the execution of the necessary measures for relieving the distress of the people and State in the municipal commune of Danzig. Legally this Decree is based on Allgemeines Landrecht II, 6, § 191, and Article 1 of the Decree of July 29th, 1933, regarding the provisional appointment of State Commissioners in communes and groups of communes.

A copy of this Decree, together with the notification to the individual municipal councillors, is enclosed.

The undersigned groups take the view that this Decree is contrary to the provisions of the Danzig Constitution. They have informed the Senate of this view in a note of February 7th, 1934, and requested it to rescind the Decree.

We also enclose a copy of this note.

The Senate replied by a note of February 14th, 1934, in which it referred to the two above-mentioned legal provisions and stated, that the Decree should be regarded as in accordance with the law. It also stated that it was not in a position to rescind the Decree.

A copy of this note of February 14th, 1934, is also enclosed.

The undersigned groups, however, still maintain their previous point of view the reasons for which are briefly as follows:

The provision of the Allgemeines Landrecht referred to is not applicable. The Prussian Communal Law of May 30th, 1853, is authoritative for the administration of municipal communes. This law was taken over by the Free City of Danzig. It is one of the "special" laws, according to which, under Article 68 of the Danzig Constitution, the towns are self-governing under the supervision of the Senate. The Communal Law however, contains no stipulation which grants the Senate such authority as that provided for in the Decree in question.

The Enabling Decree of July 29th, 1933, can in no case be used as a basis by the Senate for a provision which, like the Decree in question, entirely abolishes self-government in the city. The above-mentioned Article 68 of the Constitution grants the towns self-government under the supervision of the Senate. This self-government cannot, however, be restricted by a Decree of the Senate, in such a manner as to nullify the principle laid down in Article 68. This would be entirely contrary to the spirit of the Constitution. The Decree is, however, also at variance with Article 69, which regulates the special affairs of the City of Danzig within the section of the Constitution relating to communal organisation. In view of the peculiar position of the commune of Danzig, which differs from other municipal communes in its relations with the State, the Constitution in paragraph 3 has attached particular emphasis to self-government, since it is laid down that a City Council elected by the Popular Assembly must take decisions upon the communal affairs of the City of Danzig. It should be observed here, as in the case of Article 68, that this self-government cannot be entirely abolished merely by an order based on the Decree.

For the sake of completeness, it may further be pointed out that the conditions of fact were not such as to allow of the order being issued in virtue of the Enabling Decree of July 29th, 1933. The preamble of the Decree states that the composition of the City Council is not such as to safeguard the execution of the measures necessary for relieving the distress of the people and State. This is incorrect. Apart from other facts, it may merely be pointed out that the party in Danzig from which the Government is formed possesses an absolute majority in the legislative bodies, and this in itself is sufficient to ensure the proper working of these institutions.

The undersigned groups request the High Commissioner, on the basis of the powers granted to him, to examine the above question from the legal point of view

By order

(Signed) Dr. Richard STACHNIK,
and the other members of
the Popular Assembly Group.

By order

(Signed) Georg WAWER,
and the other members of
the City Council Group.

Appendix 1.

[Translation from the German.]

SENATE OF THE FREE CITY
OF DANZIG,
DEPARTMENT OF THE INTERIOR.

Danzig, January 31st, 1934.

To the City Council of Danzig, c/o the Chairman.

In virtue of the Allgemeines Landrecht II, 6, § 191, and of Article 1 of the Decree concerning the provisional appointment of State Commissioners for communes and groups of communes, dated July 29th, 1933 (*Law Gazette*, page 348), decisions as to communal affairs of the City of Danzig are transferred from the competent City Council to the Chairman of the City Council, M. Heinz Eggert, qualified engineer, as State Commissioner. The composition of the City Council is not such as to guarantee the execution of the necessary measures for relieving the distress of the people and State. In order to deal with this unsatisfactory political situation, the appointment of the State Commissioner is justified in virtue of Allgemeines Landrecht II, 6, § 191, and Article 1 of the Decree of July 29th, 1933, regarding the provisional appointment of State Commissioners for communes and groups of communes (*Law Gazette*, page 348).

(Signed) GREISER.

Danzig, February 6th, 1934.

To all municipal representatives.

Copy of the above Decree of the Senate is sent to you for information, and you are also notified that, during my tenure of office as State Commissioner, the City Council and its committees will not be convened.

The free passes for the Danzig electric tramways, the omnibus service of the Danzig electric tramways and the omnibus service to Zoppot expire on March 31st, 1934.

(Signed) EGGERT,
State Commissioner

Appendix 2.

[Translation from the German.]

Danzig, February 7th, 1934.

Vice-President Greiser Senator for the Interior Danzig.

The two undersigned groups of the Centre Party of the Popular Assembly and City Council of Danzig beg to inform you as follows:

By decree of the Senate dated January 31st, 1934, decisions as to communal affairs of the City of Danzig are transferred from the competent City Council to the Chairman of the City Council, M. Heinz Eggert, qualified engineer, as State Commissioner. This Decree is based on Allgemeines Landrecht II, 6, § 191, and Article 1 of the Decree of July 29th, 1933, regarding the provisional appointment of State Commissioners in communes and groups of communes.

The undersigned groups of the Centre Party are of opinion that the legal basis cited does not justify the Decree, particularly since the Decree is incompatible with the provisions of the Constitution of the City of Danzig.

We venture to point out the far-reaching consequences that may ensue from this Decree, which in our opinion is not in accordance with the laws, and we accordingly request that the Decree be annulled.

Should the Senate not accede to our request, the undersigned groups consider themselves bound to take such proceedings in the matter as are permitted by law.

Popular Assembly Group:
CHAIRMAN.

City Council Group:
CHAIRMAN.

Appendix 3.

[Translated from the German.]

THE SENATE OF THE FREE CITY OF DANZIG.
DEPARTMENT OF THE INTERIOR.

Danzig, February 14th, 1934.

In reply to the note of February 7th, 1934, regarding the appointment of the Chairman of the City Council, Herr Heinz Eggert, as State Commissioner for the City Council, we reply as follows:

The appointment of the Chairman of the City Council, M. Heinz Eggert, qualified engineer, as State Commissioner, by a decision of the Senate of January 31st, 1934, with the duty of taking decisions on the communal affairs of the City of Danzig in place of the competent City Council, is based on.

1. Allgemeines Landrecht (II, 6, § 191), which reads as follows:

"If, in consequence of abuses or defects in the internal constitution, the achievement of the desired object is hindered or injury is done to the common welfare, the State is empowered to take the necessary measures for the removal of the abuses and the restoration of good order."

This provision imposes on the State an obligation to intervene, if an administrative organ does not function, and to take the necessary measures to remove the abuses. Such means of remedying abuses also include the appointment of a State Commissioner. The appointment is also based on.

2. The Enabling Decree of July 29th, 1933 (*Law Gazette*, page 348), which permits the entire administration to be transferred by the Senate from the communal executive or communal representation, or both these communal authorities, to a State Commissioner, "in order to meet financial, economic, social, cultural or political difficulties pending revision of the communal constitutional law"

Both decrees are constitutional, for Article 69 (3) of the Constitution provides that the competence of the City Council shall be determined by a special law. It is therefore competent to the Senate to determine by legislation the extent of such powers of self-government if and so far as demanded by the needs of the State and its supervisory duty. The extent of those powers as so determined may be greater or smaller. In the present case, the restriction placed on self-government by the appointment of a State Commissioner was necessary because an abuse of the nature above described had come to light in the City Council.

The Senate is therefore not in a position to annul the Decree of January 31st, 1934, regarding the appointment of the Chairman of the City Council, M. Heinz Eggert, qualified engineer as State Commissioner for the City Council of Danzig.

(Signed) WNUCK.

Annex III.

LETTER FROM THE PRESIDENT OF THE DANZIG SENATE TO THE HIGH COMMISSIONER.

[Translated from the German.]

May 4th, 1934.

In reply to your letter of April 6th last, I have the honour to acquaint you with my attitude to the petition of April 6th submitted by the groups of the Centre Party

(1) It is not the case, as is stated in the petition, that the Decree of the Senate of January 31st, 1934, whereby decisions as to affairs of the City of Danzig were transferred from the competent City Council to the Chairman of the City Council, Herr Eggert, as State Commissioner, infringes the provisions of the Danzig Constitution. On the contrary the decision is in accordance with the Constitution of the Free City of Danzig, since Article 69 (3) of the Constitution provides that the competence of the City Council shall be determined by a special law. Consequently the Senate must determine by legislation the extent of such competence and therefore also the degree of self-government of the City Council. In conformity with generally recognised constitutional principles, it is the duty of the State to do everything necessary to promote the smooth working of the administration. The measures which are admissible in this connection must therefore, if and so far as this is demanded by the needs of the State and its supervisory duty also include the provisional restriction of the competence of the City Council by the appointment of a Commissioner for the purpose of discharging the duties of the defective organ of communal administration.

The appointment of the State Commissioner in the *City of Danzig* was necessary because a serious abuse of the above-mentioned kind had come to light in the work of the City Council, in particular through delay in carrying out important administrative duties, especially in the financial sphere.

(2) The Senate's Decree of January 31st, 1934, is based on the Allgemeines Landrecht II, 6, § 191, and on the Enabling Decree of July 29th, 1933. The provisions of the Allgemeines Landrecht II, 6, § 191, have not, as is stated in the petition of March 6th, 1934, been annulled. They continue to exist, together with the communal legislation and the law regarding the administration of the municipal commune of Danzig, and are therefore applicable.

(3) It is also incorrect to say that self-government in the Free City of Danzig has been *entirely* suspended by the Senate's decision. All that has occurred is that the *right to take decisions* on affairs of the City of Danzig has been transferred by the Decree of March 6th, 1934, from the competent City Council to the Chairman of the City Council, Herr Eggert, as State Commissioner. The special committees (administrative committees), consisting of representatives of the Senate and members of the City Council provided for in § 24 of the law on the administration of communal

affairs of the municipal commune of Danzig of October 9th, 1923, for the permanent administration of certain branches of affairs, *have continued to exist* and have met on many occasions since the Decree of April 25th, 1934 (A.I.4804), regarding the appointment of the State Commissioner.

(4) Since the appointment of the State Commissioner in the City of Danzig in January 1934, the uniformity in the entire administration of the municipal commune of Danzig has again made considerable progress. The Senate has therefore been in a position to *restrict the decision* of January 31st, 1934, so that, in future, the power to take decisions on affairs of the City of Danzig has been transferred from the competent City Council to Herr Eggert, Chairman of the City Council, as State Commissioner, only in so far as they relate to the employment programme of the Government and the financing of that programme. All other matters are again subject to the decision of the City Council. In view of the position described above, therefore, the City Council possesses self-government in accordance with the requirements of the Constitution.

The complaint of the groups of the Centre Party is therefore, in my opinion, unjustified in view of the reasons stated.

(Signed) Dr. RAUSCHNING.

DECISION OF THE SENATE No. 727.

The decision of the Senate No. 393, of January 31st, 1934, to the effect that the right to take decisions in affairs of the City of Danzig is transferred from the competent City Council to Heinz Eggert, qualified engineer, Chairman of the City Council, as State Commissioner, is restricted so that the right to take decisions on affairs of the City of Danzig is transferred from the competent City Council to the said Heinz Eggert, as State Commissioner, only in so far as they relate to the employment programme of the Government and the financing of that programme.

Danzig, April 25th, 1934.

The Senate of the Free City of Danzig:

(Signed) Dr. RAUSCHNING.
GREISER.