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COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

House of Representatives, U.S.

WASHINGTON, D.C.

April 8, 1964

MEMORANDUM

To: Members of the Subcommittee on Territorial and Insular Affairs

From: John L. Taylor, Consultant on Territorial Affairs

Subj: Changes in Administrative Procedures Regarding the High Commissioner of the Trust Territory of the Pacific Islands

Ref: My Memo on the same subject dated March 5, 1964

On March 18, 1964 Chairman Aspinall asked Secretary Udall for the reasons for the changes in the method of appointing the High Commissioner and in promulgating rules and regulations for the inhabitants of the Trust Territory.

A copy of Secretary Udall's reply to Chairman Aspinall is attached.

Enclosure

COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D.C.

Dear Mr. Aspinall:

This is in response to your letter of March 18, 1964, concerning Department of the Interior Order No. 2876 captioned Government of Trust Territory of Pacific Islands, Extent and Nature of Administration. As you correctly point out, this Order, among other things, deals with the manner of the appointment of the High Commissioner of the Trust Territory and certain approval required in connection with laws and regulations proposed or promulgated by him.

You ask first what prompted this Order. As you know, by Presidential direction, a Trust Territory Survey Mission was created and under the chairmanship of Anthony M. Solomon, conducted a field study. The findings and recommendations of the study group were subsequently set out in the so-called "Solomon Report." One of the recommendations contained in the report was that the then existing Order providing for the Government of the Trust Territory dated August 29, 1951 (Order No. 2658), as amended by Order No. 2812 of April 6, 1956, which was then eleven years old and believed by some to be at least unclear if not in fact inadequate, be updated. The Report contained a draft order which it was suggested would implement the recommendation of the study group. Within the same time frame, President Kennedy, in a letter to me, directed that henceforth the Secretary of the Interior should appoint the High Commissioner of the Trust Territory. In view of the instruction of the President, and because we found merit in the Solomon Report recommendation, we prepared and promulgated Order No. 2876 dated January 30, 1964, which reflects such instruction, and the recommendation of the study group as modified by our thinking.

Secondly, you inquire as to what we anticipate the effect of these changes to be. You are already well acquainted with current policy respecting the Trust Territory, the goals we seek to achieve, and the machinery which we hope to employ, since these matters have been discussed at length both in informal briefings and in formal testimony before your Committee by representatives of this Department and other interested agencies. Order No. 2876 is intended to do nothing more than assist us in reaching our objectives in the Trust Territory and we believe that the changes that have been incorporated will have a beneficial effect. Actually, the changes involved are not of any great magnitude.

First, whereas the High Commissioner of the Trust Territory had heretofore been appointed by the President, Order No. 2876 now provides he

shall be appointed by the Secretary of the Interior. The reason for this change has already been noted. In his letter to me of November 4, 1963, President Kennedy, noting the full authority and responsibility delegated to the Secretary of the Interior to administer the affairs of the Trust Territory and his agreement with the view that the authority of the Secretary of the Interior should extend without question over the High Commissioner, said:

"Therefore, In the future I will expect the Secretary of the Interior to exercise full control over the appointment, direction and removal of such U.S. High Commissioners."

Secondly, whereas, pursuant to Order No. 2812, the High Commissioner had heretofore been required to obtain prior Secretarial approval of laws and amendments promulgated by him which represented an important change in policy, he is now required by section 3 to obtain prior approval of all laws and amendments which he intends to promulgate. We believe that the promulgation of new laws and amendments is so important a function as to merit this treatment. Further, we believe this change is desirable in view of the increased attention which the Trust Territory is receiving from the United Nations and the Federal Government. While we are giving serious consideration to the problem of providing for a legislative body in the Trust Territory in the very near future, one does not now exist and total legislative authority is still vested in the High Commissioner. A situation of this nature, while workable, and not wrong per se, does not lend itself to close scrutiny by persons who are often less than friendly to our programs since it seems to provide for unlimited power in one man, and is clearly inconsistent with our policies of representative government. Until such time as a separate and independent legislative body can be established, we believe it is essential, in view of ever increasing scrutiny and criticism, that the system be modified to dilute that apparent power and to place the role of the Department in a somewhat more meaningful perspective. I am sure that you will agree that generally critics of a government or form of government very frequently assail the laws of the community and the method by which such laws come into being. Order No. 2658 provides for similar but less restrictive treatment for regulations in that regulations shall require prior approval only in the event that they represent an important change in policy. Since regulations are issued pursuant to law and limited by the terms of the statute which they implement, it is thus feasible to treat them in this less restrictive fashion.

Section 3 of the Order is an entirely new section pertaining to legislative authority. It was this section in the old order which was believed to have been made obsolete by the passage of time since it

continued interim regulations looking towards the prompt enactment of organic legislation for the Trust Territory and did not specifically delegate legislative authority. The new section clearly provides for the legislative authority of the High Commissioner and the terms under which it is to be exercised, including the prior approval noted above. It does for instance, we believe, make clear the authority of the High Commissioner to delegate legislative authority as in the case of community charters and district congresses.

The remaining few changes are in the nature of editorial changes and the deletion of obsolete material.

We would be less than candid if we did not allude briefly to the concern of the incumbent with at least the change respecting the appointment of the High Commissioner. This Order in no way affects the status of the incumbent, rather, by virtue of section 6, that status is protected. At my press conference on February 28, I made a statement to that effect. However, we would also note that there are certain material employment benefits available to a Secretarial appointee which are not available to a Presidential appointee. These benefits have to do with the accrual of leave and entitlement to travel in connection with home leave. We have brought these matters to the attention of the incumbent and if he should decide to avail himself of these benefits through resignation and reappointment, we have offered to accommodate him.

I hope that the foregoing adequately responds to your inquiry. However, should you believe that additional information would be useful please let me know.

Sincerely yours,

/s/ Stewart L. Udall
Secretary of the Interior

Honorable Wayne N. Aspinall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D. C.