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Trust Territory

MAR 23 1966

Mr. John M. Patton  
Director of Budget and Finance  
Trust Territory of the Pacific Islands  
Saipan, Mariana Islands

Dear Mr. Patton:

Before you left Washington, you sent me a note (a copy of which I enclose, in case you've no copy of it) attached to Judge Kinnare's decision in Civil Action No. 119, which concerned a suit against the Trust Territory Government. It has taken me until now properly to read and reflect upon these two papers, and it seems to me that it might be wise to write you my reflections concerning them.

There seem to be two questions implicit in your note and/or the opinion: (1) whether the Government of the Trust Territory is an agency of the United States, or whether it has some separate legal existence; and (2) whether funds appropriated by the Congress for the Trust Territory are Federal appropriated funds.

As to the first question, we have taken a rather pragmatic position through the years as to the status of the Government of the Trust Territory, but we have consistently said that the Trust Territory is not a Federal agency in the usual sense of that term. We have generally analogized it to the organized territorial governments (which we in turn analogize to the State governments), pointing out that it has the usual attributes of an independent government (such as a tripartite division of powers); that the bulk of its employees are not regarded as Federal employees; that the bulk of its funds are not Federally appropriated funds, but instead are grant funds (more on this below); that most statutes which restrict Federal agencies in certain ways (such as procurement by advertisement, under the Federal Property Act and the Federal Procurement Regulations, and the Buy American restrictions on foreign purchases) are not as a matter of law applicable to the Government of the Trust Territory. I could go on, but suffice it to say that all of the foregoing earmarks are ones which apply equally to the governments (past and present) of the organized territories.

They also, of course, apply to the Government of American Samoa, and we have since gotten involved from time to time in the independent-agency question. We first did so, as I recall, in the early 1950's in connection with proposed legislation calling upon the Navy Department to convey certain Federal property in Samoa to

the Government of American Samoa. It was argued, both within the Executive Branch and on the Hill, that the Government of American Samoa was merely an extension of the Department of the Interior, and as such not really any different from the standard Federal agency. (As such, a conveyance of land might have been accomplished under existing law.) We argued the contrary, and in due course prevailed (a bill of the above sort was passed), basing our arguments upon the kind of considerations set out above. We noted that the Government of Samoa had certainly, as a practical matter, been treated very differently by the Congress from, say, the National Park Service; we of course admitted that it is a creation of the Executive Branch (having been created in a way very similar to the Trust Territory); but we nonetheless argued that it exists (we called it a *de facto* government) and that it has been accorded the same general treatment as Congress accords the Governments of (then) Alaska and Guam. As I have said, in a kind of recognition of reality, even though the usual rules don't seem to mesh with that reality, we succeeded in persuading all necessary parties that the Government of Samoa is different from a standard Federal agency and in fact has enough independent existence to hold title to property in its own name.

All of the same could be said of the Trust Territory, and in fact we have said this, so far as I know always successfully, when the question has arisen.

Of course, at the same time we have been quite willing to nibble away when the stakes were high enough. Again in the early 1950's, I managed to compose an opinion, ultimately signed by the Solicitor, which held that, while the Governments of the Trust Territory and Samoa were not Federal agencies in the usual sense of the term (or words of like effect), they nonetheless bore such a "close relationship" to the Federal establishment, that it was (and is) proper for the Secretary of the Interior to obtain property for them without reimbursement under 48 U.S.C., section 1685. This took some doing (and we reached a contrary result in the cases of Alaska, Hawaii, Guam, and the Virgin Islands), but that is what I meant when I said we'd been pragmatic. We've also tried to persuade the Labor Department to regard the Federal Employees' Compensation Act as applicable to Federal employees in the Trust Territory, but on this we've failed, largely because the Labor Department says, in effect, that if the Trust Territory Government has the *de facto* existence you people at Interior ascribe to it, then its employees aren't the kind of Federal employees of Federal agencies our law is designed to cover.

(I might, if the need were to arise and the time be available, recommend all of the foregoing, by a variety of mental gymnastics, but I cannot be sure the need is not now upon us.)

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As to the second question, as to the status of funds appropriated by the Congress for the Trust Territory, I can perhaps best react by sending you copies of four letters, two of which are Comptroller's decisions. These are our letter of April 17, 1957, to the Comptroller; the response of June 11, 1957 (B-131569); our letter of September 5, 1957 to the Comptroller; and the response of September 23, 1957 (B-133696). I think the first three of these, particularly, will set out some information as to the status of the bulk of Trust Territory funds as grants. (If the style of the Interior letters sound familiar, I can only say that it ought to!) Additionally, as you of course know, the appropriation acts themselves refer to grants for the Trust Territory (and Samoa).

The question which Mr. Milner discussed with Mr. Austin is the question of the need or desirability of perpetuating a small portion of Trust Territory funds in the "appropriated funds" category. None of us has been able to remember or find out just why, in the case of both the Trust Territory and Samoa, the practice developed of segregating an amount (for chief executive, judicial, and certain associated salaries) for appropriated funds, and leaving everything else for grant funds. There's at least no obvious logic implicit in this. We will pursue the point one of these days.

Given more time, this letter would be both shorter and more coherent. I hope, however, that it has given you some fuel for the historic (and I hope correct) answers to these questions.

Sincerely yours,

(Sgd.) Mrs. Ruth G. Van Cleve

Ruth G. Van Cleve  
Director

Enclosures  
cc: High Commissioner

VanCleve:amw  
3/22/66