

UNITED STATES GOVERNMENT

Memorandum

TO : Ross J. Pritchard, FE

DATE: MAY 6 1966

FROM : A. F. Essaye, GC ASE

SUBJECT: Authority to Assign Volunteers to the Trust Territory of the Pacific Islands

I. Summary and Conclusion

As you know, in a January 19, 1962, memorandum from Mr. Roger S. Kuhn, GC, to Mr. Warren Wiggins, PDO, this office concluded that the Peace Corps had authority to assign Volunteers to the Trust Territory of the Pacific Islands. Subsequently, however, the Congress enacted legislation which raises issues as to the Peace Corps' continued authority in this regard. This legislation is (1) section 603(a)(2) of the Economic Opportunity Act of 1964, 78 Stat. 508, 42 U.S.C. 2943(a)(2) (1964) which authorizes the assignment of VISTA Volunteers to the Trust Territory, and (2) section 1 of P.L. 88-487, 78 Stat. 601, 48 U.S.C. 1681(b) (1964), which authorizes heads of agencies to extend scientific, technical or other assistance to the Trust Territories subject to a \$150,000 limitation on non-reimbursable assistance during each fiscal year.

The purpose of this memorandum is to review our prior opinion in the light of these subsequent statutes. Our conclusion is that the Peace Corps still retains unlimited authority to assign Volunteers to the Trust Territory.

II. Prior Peace Corps and Congressional Consideration of A Trust Territory Program

(a) Opinions of this Office

As indicated above, in a January 19, 1962, memorandum, this office concluded that the Peace Corps had authority to assign Volunteers to the Trust Territories. This conclusion was based on the following points. Section 5(a) of the Peace Corps Act provides that the President may enroll Volunteers for service "abroad". Sections 25(a) and (b) of the Act define "abroad" as any area outside of "the several States and territories and the District of Columbia". In an August 4, 1961, position paper submitted to the Senate Foreign Relations Committee the Executive



42
22-430569

Branch stated that "the word territories is included in the definition [of 'United States']...to avoid the implication that Volunteers might be assigned to the territories of the United States." The Trust Territory is not a "territory of the United States."

That opinion also considered the problems raised by a proviso in the Interior Department Appropriation Act of 1954, which had been codified as 48 U.S.C. 1686, and which required the specific approval of Congress prior to the initiation of any new activity in the Trust Territory. The opinion concluded that this proviso was intended only to apply to Department of Interior activities, and that it was not permanent legislation and therefore should not have been codified. Subsequently, this office took up the issue of the codification of this provision with Mr. Charles Zinn, Law Revision Counsel to the House Committee on the Judiciary. As recorded in two memoranda written by me on May 27 and 29, 1963, Mr. Zinn agreed that codification of this provision had been inappropriate. As a result, this provision has been deleted from the United States Code. See 1964 edition of 48 U.S.C.

However, section 1684 of Title 48 also appears relevant and was not discussed in Mr. Kuhn's memorandum. This section provides as follows:

"After June 30, 1954, no funds appropriated by any Act and no funds which are available or which may become available from any source whatever shall be used for administration of the Trust Territory of the Pacific Islands, except as may be specifically authorized by law."

This provision was enacted in the Interior Department Appropriation Acts of 1952 and 1953. However, it was not reenacted in subsequent appropriation acts, and there is a substantial issue as to the appropriateness of its continued existence as permanent law. However, in the opinion of the Law Revision Counsel, provisions having an introductory clause such as "After June 30, 1954" may not be removed from codification unless specifically repealed. In any case, the assignment of Peace Corps Volunteers to the Trust Territory would not appear to be for the "administration" of that area.

(b) Congressional Consideration

The Peace Corps Congressional Presentation for 1963 contained, on pages 84 and 85, a description of a planned Peace Corps program in the Trust Territories. This program was initially to consist of 63

Volunteers and 3 Volunteer Leaders who would work in the fields of education and community development, and who would go into training in the summer of 1963. This Congressional Presentation was transmitted to the Congress in February, 1962. Its description of the Trust Territory program was apparently noticed by Representative Passman who, on March 8, 1962, wrote the Director of the Peace Corps as follows:

"In view of the fact that United States financial assistance to the Trust Territory is very near the maximum specified by law and the further question as to whether the Peace Corps should be diverting its resources to an area already being provided for by another agency of the Federal Government, I am of the firm opinion that this particular project should not proceed on any basis until the Committee has had an opportunity to review it. Since the hearings on your 1963 Budget are now scheduled for March 22, a short delay of approximately two weeks should not materially affect the project, if it meets with the Committee's approval."

However, the Trust Territory program was not discussed in the ensuing House Committee on Appropriations hearing (nor in any other Peace Corps hearings). And the Peace Corps placed in the record of that hearing a statement listing programs which had been postponed indefinitely or turned down, which list included the Trust Territory. See Hearings on Foreign Operations Appropriations for 1963 Before A Subcommittee of the House Committee on Appropriations, 87th Cong., 2d Sess. 744 (1962).

There appears to have been no subsequent presentation to the Congress of a Trust Territory program by the Peace Corps.

III. Section 603(a)(2) of the Economic Opportunity Act of 1964

Section 603(a)(2) of the Economic Opportunity Act of 1964, as amended, authorizes the Director of the Office of Economic Opportunity to recruit, select, train and:

"in cooperation with other Federal, State, or local agencies involved, assign volunteers to work (A) in meeting the health, education, welfare, or related needs of Indians living on reservations, migratory workers and their families, or of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands; (B) in the care and rehabilitation of the mentally ill or mentally retarded under treatment at nonprofit mental health or mental

retardation facilities assisted in their construction or operation by Federal funds; and (C) in connection with programs or activities authorized, supported, or of a character eligible for assistance under this Act."
(Emphasis added.)

The legislative history of the specific inclusion of the Trust Territory in this provision is very limited. Section 603(a)(2) is based in part on section 16(a) of the proposed National Service Corps Act which was considered but not enacted by the Congress in 1963. That section expressly provided for the provision of National Service Corps Volunteers to, among other places, the Trust Territory. And testimony was given by the Secretary of Interior in hearings on the proposed National Service Corps Act with respect to the need for volunteers in the Trust Territory. See Hearings on S. 1321 Before the Subcommittee on the National Service Corps of the Senate Committee on Labor and Public Welfare, 88th Cong., 1st Sess. 35 (1963) and Hearings on H.R. 5625 Before the Special Subcommittee on Labor of the House Committee on Education and Labor, 88th Cong., 1st Sess. 61 (1963). While not alluding directly to the Peace Corps, the Secretary's testimony implied that Peace Corps assistance for the Trust Territory was not available.

With respect to section 603(a)(2) itself, the only legislative history relating to the Trust Territory again consists of statements by officials of the Department of Interior. The prepared statement of the Secretary of Interior on the Economic Opportunity Act contains the following:

"There are also large opportunities for volunteer service in the Pacific insular possessions of the U. S. (Guam, American Samoa, etc.) and in the Pacific Trust Territory administered by our Government under U. N. trusteeship."

Hearings Before the Subcommittee on the War on Poverty program of the House Committee on Education and Labor, 88th Cong., 2d Sess. 348 (1964).

The same statement appears in the Report of the Department of Interior on S. 2642, the Senate bill. See Hearings Before the Select Committee on Poverty of the Senate Committee on Labor and Public Welfare, 88th Cong., 2d Sess. 50 (1964).

It should also be noted that the Trust Territory is expressly eligible to receive assistance under other provisions of the Economic Opportunity Act.

The issue raised by the enactment of section 603(a)(2) of the Economic Opportunity Act is whether its specific conferral of authority on the Director of the Office of Economic Opportunity to provide Volunteers to the Trust Territory in effect repeals the Peace Corps' more general authority to do so. The provisions of the Economic Opportunity Act relating to Volunteers can fairly be said to be in pari materia with the Peace Corps Act, i.e. they relate to the same matter. And under general rules of statutory construction, a specific statute in pari materia with a general statute is deemed to be controlling. See, e.g., Sutherland, 2 Statutory Construction Sec. 5110 (3d ed. 1943); 35 Decs. Comp. Gen. 349, 350 (1955); 35 Decs. Comp. Gen. 48, 49-50 (1955); 31 Ops. Atty. Gen. 577, 586 (1913). However, this rule of construction is fully applicable only where the two statutes in question are in conflict. For instance in 35 Decs. Comp. Gen. 48, supra, a general pay statute increased military salaries but provided that this increase could not be considered in computing pay for retired military personnel. The Comptroller General determined that this statute did not override an earlier statute which specifically provided that certain retired Navy Admirals would receive the same pay as Admirals serving on active duty.

Thus, where, as in this case, there is no actual conflict between the statutes in question, the issue would appear to become whether or not the Congress in enacting the later statute evidenced an implied intent to repeal the earlier one. It is another basic rule of statutory construction that repeals by implication are not favored. See, e.g., 35 Decs. Comp. Gen. 349 (1955), 31 Ops. Atty. Gen. 577, 586 (1913) and authorities cited therein. At the same time, the Attorney General has stated that:

"even where two acts are not, in express terms, repugnant, yet, if the latter (sic) act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act". 28 Op. Atty. Gen. 70, 74 (1909).

Also, the concept of implied repeal has been upheld on a number of occasions with respect to appropriation acts. For example, in 20 Decs. Comp. Gen. 272, 276 (1940), the Comptroller General determined that a specific appropriation of \$590,000 for the construction of a new wing on the Navy Department Building, which was contained in the First Supplemental Civil Functions Appropriation Act of 1941, precluded the Navy Department from using their general appropriation to build a more expensive wing even though the general appropriation might otherwise have been available. Similarly in 38 Decs. Comp. Gen. 758 (1959), a general appropriation to the General Services Administration for the repair of Federal buildings was determined to be unavailable where the appropriation of an agency occupying a building specifically authorized repairs by the tenant.

While the above decisions are of course relevant to this case, they do not appear determinative. The purposes of the Economic Opportunity Act and the Peace Corps Act are not the same, and it is quite conceivable that Congress could have intended that both VISTA and the Peace Corps should be able to operate in the Trust Territory. The Economic Opportunity Act has as its stated purpose "to mobilize the human and financial resources of the Nation to combat poverty in the United States". The purposes of the Peace Corps Act are "to promote world peace and friendship" through providing Volunteers "to help the peoples of [other] countries and areas in meeting their needs for trained manpower, and to help promote a better understanding of the American people on the part of the peoples served, and a better understanding of other peoples on the part of the American people." And certainly international and foreign policy considerations have played a very substantial part in the current concern of the United States with respect to the development of the Trust Territories. It should also be noted that VISTA has never assigned Volunteers to the Trust Territory and has no present intent to do so.

—In addition, the legislative history of section 603(a)(2) of the Economic Opportunity Act contains no suggestion of Congressional intent to restrict or replace the authority of the Peace Corps. The statements of the Secretary of Interior do seem to imply that Peace Corps assistance is not available to the Trust Territory, but these statements do not form a basis for implying that Congress intended to preclude the Peace Corps from being able to supply such assistance if the Peace Corps determined this to be an appropriate program priority.

Finally, it should be noted that the cases which have been found in which the Comptroller General has concluded that one statute has impliedly repealed another have involved appropriation acts. And the more specific nature of appropriation acts would indicate that they might more readily be considered repealed by implication than authorization acts.

In sum, it is our opinion that the Peace Corps' authority to assign Volunteers to the Trust Territory has not been repealed by implication by enactment of section 603(a)(2) of the Economic Opportunity Act.

IV. Section 1 of Public Law 88-487

In addition to enactment of the Economic Opportunity Act, another law enacted in 1964 raises issues as to the Peace Corps' authority to assign Volunteers to the Trust Territory. This is section 1 of P. L. 88-487, 78 Stat. 601 (1964), which amended section 1 of the Act of June 30, 1954, 68 Stat. 330, 48 U.S.C. 1681 (1964). This latter statute relates to

47

continuance of the civil administration of the Trust Territory by persons designated by the President of the United States. Section 1 of P.L. 88-487 added the following subsection (b):

"The head of any department, corporation, or other agency of the executive branch of the Government may, upon the request of the Secretary of the Interior, extend to the Trust Territory of the Pacific Islands, with or without reimbursement, scientific, technical, and other assistance under any program administered by such agency, or extend to the Trust Territory any Federal program administered by such agency, if the assistance or program will promote the welfare of the Trust Territory, notwithstanding any provision of law under which the Trust Territory may otherwise be eligible for the assistance or program: Provided, That the Secretary of the Interior shall not request assistance pursuant to this subsection that involves, in the aggregate, an estimated nonreimbursable cost in any one fiscal year in excess of \$150,000: ~~Provided further, That the cost of any program~~ extended to the Trust Territory under this subsection shall be reimbursable out of appropriations authorized and made for the government of the Trust Territory pursuant to section 2 of this Act, as amended. The provisions of this subsection shall not apply to financial assistance under a grant-in-aid program."

While this provision authorizes certain assistance for the Trust Territory, it also sets a per fiscal year limit of \$150,000 on such assistance on a non-reimbursable basis. However, an examination of the legislative history of the provision indicates that (1) the type of assistance contemplated thereunder would not encompass the assignment of Peace Corps Volunteers, and (2) the provision was intended to remove existing bars to assistance, whereas Peace Corps Volunteers could have been assigned to the Trust Territory prior to the enactment thereof.

The pertinent history of this provision is as follows. P.L. 88-487 was introduced in the House as H.R. 3198 in January, 1963, by Representative O'Brien, Chairman of the Subcommittee on Territorial and Insular Affairs, House Committee on Interior and Insular Affairs. No hearings were held expressly on H.R. 3198 itself. However, in February, 1963, general hearings were held by Mr. O'Brien's subcommittee, at which the Governors of the various territories and the High Commissioner of the Trust Territory testified. The High Commissioner's testimony made only general allusion to the bill. However, the following exchange about the Peace Corps' relationship with the Trust Territory did occur:

48

"Mr. O'Brien. I have just one question that I would like to ask Mr. Goding.

"As I remember, a year ago when we were having discussions of educational needs in the trust territory, the statement was made that the average teacher there had about a third grade education. Is that correct?

"Mr. Goding. [High Commissioner, Trust Territory] I believe your recollection of what was said was correct, but I think the statement was a little off. I think the average is nearer the seventh grade.

"Mr. O'Brien. Well I raised it last year and I was advised by certain people that they didn't want to interfere with the Peace Corps, as it was then known, but I have often wondered why it wouldn't be possible, where you have a situation such as you have in the trust territory, where your average teacher has only finished the seventh grade, or whatever grade it might be, that you couldn't tap temporarily, during this transition period, this eagerness, I think, on the part of young people in Hawaii, in Guam, with a high school education, who might volunteer to go out there and fill that gap for a while.

"I don't want to get into a controversy on whether we should have a domestic Peace Corps or not, but the point is it seems to me we are going to have one and there would be one of the very first places that young people could go, feel that they were doing a job, with a certain sense of adventure and not feel they were going there for a long time but maybe a year or two.

"Don't you think that would be helpful to you there, if you could get some people like that?

"Mr. Goding. It certainly would and we have talked to the Peace Corps in connection with our overall accelerated programs, with the idea of recruiting some of their applicants. In other words, even though they may be working for our educational system, the Peace Corps might be one source of recruitment that we could turn to....

"Mr. Carver. [Then Assistant Secretary, Department of Interior] Mr. Chairman, the Secretary was a member of this Cabinet-level committee to consider the domestic Peace Corps and the one strongest representation made by our Department was that if one was set up, we wanted to be sure that the opportunity was presented for the inclusion of the Trustee Islands of the Pacific as an eligible area. By way of a frame of reference, we also discussed the possibility of what you might call the regular Peace Corps going in there. So that discussion is being carried on by the Secretary.

* * * * *

"Mr. Paiewonsky. [Governor, Virgin Islands] Mr. Chairman, may I say one thing, that with regard to the Peace Corps we have a project in the Virgin Islands now of the Peace Corps. It is a training project. ~~They are training to build schools for the Republic of Gabon, in Africa. They are building two schools now in the training period. We are supplying the materials and they are supplying the labor and know-how and getting the training there at the same time. It is in connection with our junior college.~~

"Mr. O'Brien. That is great. I just want to bring it a little nearer home. We have the necessity on the one hand. I am sure that we have the untapped eagerness of the young people on the other side. If we can get them together, I think it might solve part of our problem." (Emphasis added.)
Hearings Before the House Committee on Interior and Insular Affairs, 88th Cong., 1st Sess. 160-1 (1963).

The above testimony indicates that in Representative O'Brien's view, at least, either a Peace Corps or a "domestic Peace Corps" program or both would be desirable for the Trust Territory. More pertinently, it indicates that a Peace Corps program was then under consideration for the Trust Territory, and the clear implication is that H.R. 3198 was in no way connected with or prompted by such consideration.

H.R. 3198 was reported out of Committee on July 30, 1963. The accompanying Committee report itself sheds little light on the section here in question. As to that section, the report simply states:

50.

"First, section 1 will make available to the government of the trust territory scientific or technical assistance, at the request of the Secretary of Interior, from agencies of the executive branch of the Federal Government, either with or without reimbursement. Estimated non-reimbursable costs may not exceed \$150,000 per year. Other programs of the Federal agencies may also be extended, other than grant-in-aid program, to the trust territory at the request of the Secretary of the Interior, the cost thereof to be borne by the government of the trust territory from its regular appropriations." H.R. Rep. No. 605, 88th Cong., 1st Sess. 2 (1963).

However, the report did include statements by Executive agencies in support of the bill. Several of these throw light on the purposes for which the authority here in question was sought. Thus, ⁱⁿ an April 26, 1963, letter to Congressman Aspinall, Chairman, House Committee on Interior and Insular Affairs, Mr. John A. Carver, Jr., Assistant Secretary of the Interior, stated:

"This [section] will eliminate existing bars to the utilization by the trust territory of facilities and competence within the Federal Government. As long as the government of the trust territory is faced with the task of executing, with limited funds, a sizeable and difficult development program, which will be observed internationally, it is most desirable, indeed vital, to make readily available to the trust territory the tremendous reservoir of technical expertise that exists in the Federal Government....We expect that this technical and other assistance will run the gambit from a few experts in any given field to assist the government of the trust territory in an advisory or supervisory capacity, to a full staff to run the particular program for the trust territory for a limited time...." (Emphasis added.)

This statement indicates that the Department of Interior was interested in securing the "technical expertise" of other Government agencies. The Peace Corps does not supply "expertise" but rather "trained manpower". And the Peace Corps has always taken the position that it is not technical assistance. See, e.g., section 638 of the Foreign Assistance Act, as amended, 77 Stat. 389, 22 U.S.C. 2398 (1964), which is premised on this concept. Mr. Carver's statement also indicates that the purpose of this provision was to overcome "existing bars" to use of the abilities and resources of other Federal Government agencies in the Trust Territory. Again, it seems clear that in 1963 no bar existed to the assignment of Peace Corps Volunteers to the Trust Territory.

The above conclusions are reinforced by the Department of State's report on this bill. An April 24, 1963, letter to Congressman Aspinall from Mr. Frederick G. Dutton, Assistant Secretary of State, states in part:

"In the first place, a key provision of the bill would, upon the request of the Secretary of Interior, make more readily available to the Trust Territory scientific, technical, and other assistance from agencies of the Executive Branch of the Federal Government. In view of the challenges of education and economic development facing the Trust Territory, the Secretary of the Interior should have the opportunity this provision affords to ask for scientific and technical experts as needed from every agency of the United States Government that, without interference with its primary role, can provide such assistance to the government of the Trust Territory. Thus, there could be open to the Territory the large reservoir of talent existing in the United States Government." (Emphasis added.)

Mr. Dutton's comments appear premised on the idea that the bill would enable Government agencies whose work may not otherwise be related to the Trust Territory to provide high level expertise to that area. And again this does not appear to be relevant to the Peace Corps. See also letter of Mr. Anthony Celebrezze, Secretary of the Department of Health, Education and Welfare, also printed in H.R. Rep. No. 605, 87th Cong., 2d Sess. (1963).

H.R. 3198 was passed by the House on August 5 without debate, except for a brief but pertinent colloquy between Representative Aspinall and Representative Ford, the essence of which is as follows:

"Mr. Ford. I am concerned as to whether or not the initiation of such a program at a relatively small amount per year is only the kickoff for an ever-expanding never-ending program as far as we are concerned.

"Mr. Aspinall. May I answer my colleague to the effect that it is not. This simply gives to the trust territory the opportunity of having certain benefits which will amount annually to approximately \$150,000 as of this time and, unless the benefits are expanded for the other areas of the United States, the amount provided in this legislation will remain constant. This also gives to the trust territory certain authority relative to the operation of ships in these waters, which authority they very badly need at the present time.

"Mr. Ford. In other words, this is not an opening wedge for a vastly expanded program in the future?"

"Mr. Aspinall. The gentleman is exactly correct."
(Emphasis added.) 109 Cong. Rec. 14069 (1963).

The bill was then referred to the Senate but was not acted on at that session. However, it was reported out of the Senate Committee on Interior and Insular Affairs on July 29, 1964. The accompanying report, S. Rep. No. 1258, 88th Cong., 1st Sess. (1964) repeated verbatim the wording of the House Report quoted supra on the section of the bill in question. It also contained the Executive branch letters quoted supra. The bill was passed by the Senate without debate on July 31, 1964, and passed again by the House on August 12, 1964, again without debate. See 110 Cong. Rec. 17537 and 19228 (1964).

In summary, it seems clear, both from the wording of section 1 of P.L. 88-487 itself and from its legislative history, that it was intended to make available to the Trust Territories scientific and technical assistance not previously available to it. By the same token, the limitation of \$150,000 contained in the amendment would appear to be applicable only to the resources made available under the authority of this provision itself. Consequently, as long as the Peace Corps assigns Volunteers to the Trust Territory on the basis of authority in the Peace Corps Act, this \$150,000 limitation is not applicable.

I am authorized to say that the Solicitor of the Interior Department concurs in this decision.

53