

Trust Territory

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Jerry Fallner, GC

Legal Problems as to Leasing Arrangements and Assignment of Volunteers in Connection with the Present Plans for the Establishment of a Peace Corps Training Center in the Trust Territory

The February 24, 1967 memorandum to you from Bob Burns, FC/M, entitled "Your Memo 2/17/67; Fallner Memo 2/3/67" raises the following problems for discussion.

1. The Lease of the Land in Uhot

My February 3, 1967 memorandum to you bearing the same title as this memorandum discussed the leasing authority available to the Peace Corps under section 15(d)(9) and the use of this authority for the lease of the land in Uhot. Mr. Burns's memorandum describes the proposed arrangement in the following terms:

"It looks as if the T.F. will legally hold the lease. The Peace Corps has a Memorandum of Understanding with the T.F. that calls for all leasing to be handled by the T.F. The District Administrator in Trust will probably sign the leases and then the Peace Corps and T.F. will sign a joint Memorandum of Understanding covering how the land is to be used, the duration, etc. The memo will generally cover what is in the lease between the T.F. and the people of Uhot."

In reference to my discussion Mr. Burns then concludes:

"Jerry's second point I covered earlier. If the T.F. enters into a lease with the people of Uhot on behalf of the Peace Corps, I don't think point 2 applies."

I am not certain exactly what this sentence means, but if it means that the contemplated arrangement will enable the Peace Corps to operate without regard to the limitations of the section 15(d)(9) leasing authority, the conclusion is incorrect.

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You inform us that the "Memorandum of Understanding with the Trust Territory which calls for all leasing to be handled by the T.T." has not actually been signed yet, but I assume, as Mr. Burns writes, that the Government of the Trust Territory will "legally hold" the lease in the sense that the Government of the Trust Territory will sign the lease on its own behalf rather than as an agent for the Peace Corps. Section 15(d)(9) of the Peace Corps Act would not, of course, govern such a lease.

However, Mr. Burns also states that the "Peace Corps and the Trust Territory will sign a joint Memorandum of Understanding covering how the land is to be used, the duration, etc." Although Mr. Burns describes the proposed document as a "Memorandum of Understanding" instead of a "lease" or "sub-lease," it seems clear that the document functionally will constitute a lease of the applicable premises by the Peace Corps from the Government of the Trust Territory.

As such the memorandum would be subject to the limitations of section 15(d)(9) of the Peace Corps Act. To give a concrete example of the conflict this might create, the Trust Territory might well have authority to enter into a six year lease with the people of Udot, but section 15(d)(9) would probably limit the Peace Corps to a five year term under the proposed Memorandum of Agreement.

Because of possible problems of the sort discussed above, I would urge that any proposed lease or memorandum which will bind the Peace Corps be submitted to this office for study before it is signed.

2. Use of Volunteer Lawyers

Mr. Burns' memorandum refers to the use of Volunteer Lawyers in the following terms:

"Roger, I have passed Fullmer's memo of 2/3/67 on to our lawyer, [redacted] here in Saipan. As I mentioned in an earlier report on training, our PCV lawyers are giving this leasing arrangements a pretty hard look. [redacted] is more or less representing the people of Udot, and [redacted] acting as a company lawyer, protecting our interests."

As I outlined in my February 3, 1967 memorandum, the legislative history of the Peace Corps Act makes it clear that Volunteers must do volunteer-type work which assists the peoples of the host country in meeting their needs for trained manpower, as opposed to administrative or clerical-type work which is of primary assistance to the Peace Corps staff.

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THE FREEDOM OF INFORMATION ACT, AS AMENDED IN
1974 BY PUBLIC LAW 93-502.

Having a PCV lawyer act as a "company lawyer" would appear to be a rather clear violation of this limitation on the use of Volunteers. In addition, although I may be accused of having an ulterior motive in view of my suggestion at page 2 of my February 3 memorandum that it might be necessary for someone from the General Counsel's office to visit the Trust Territory in connection with this matter, it is the General Counsel who is responsible to the Director for all matters of law arising in or involving the Peace Corps and it is impossible for him to fulfill this responsibility when legal advice is given field staff by Volunteer lawyers.

As a practical matter, this problem could probably be solved by having the Volunteer attorney involved, [redacted] confine himself to advising the Trust Territory Government instead of the Peace Corps concerning the proposed lease in Udot. Such a function would, of course, be more in keeping with the traditional functions of Volunteer lawyers who frequently advise officials of the host country government. Any legal advice required by the Peace Corps staff concerning the proposed arrangements should be sought from this office.

Another problem concerns the possible conflict of interests or appearance thereof in allowing a Volunteer attorney, PCV [redacted] to represent the people of Udot in the negotiation of the proposed lease. The conflict would arise from the Volunteer's duty to protect the people of Udot's interests, presumably by obtaining the maximum possible consideration for the use of the site, while the Volunteer is simultaneously associated with the Peace Corps, the party which will ultimately have to pay this consideration.

Although the Federal conflict of interests statutes do not apply to the Volunteers since they are not "employees" for that purpose, the spirit underlying those criminal statutes is expressed in Canon 6 of the Canons of Professional Ethics of the American Bar Association. Canon 6 states that:

"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests except by express consent to all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

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While the technical applicability of this Canon might be doubted if, for example, the Canons have not been adopted in the Trust Territory, I feel that the potential for misunderstanding inherent in such a potentially conflicting rule as that assumed by FCV [redacted] that he take the steps indicated in Canon 6 by explaining to a representative of the people of that his connection with the Peace Corps and the possibility of conflicting interests and by obtaining the express consent of that representative to his continuing to represent the people of that in this matter. Similar steps should also be taken by FCV [redacted] in undertaking to advise the Trust Territory Government in this matter, since there is a similar potential conflict of interest which would arise during the negotiation of the Memorandum of Understanding between the Trust Territory and the Peace Corps.

3. Assignments of Other Volunteers

Mr. Burns' memorandum discusses this subject and concludes:

"We have given a lot of thought to how and why we are using Volunteers in training and will continue to do so at all stages of training. We are working on the single rule that if the role of the Volunteer in training can stand the scrutiny of the individual Volunteer and Staff in terms of legitimate Volunteer activity, it can stand a tough look by Congress, if necessary."

I am sure that the use of this test is necessary and desirable, but it is not the complete answer because Volunteer assignments must nevertheless meet the standards of the Peace Corps Act as described above and in my February 3 memorandum. The two tests may not reach the same result. For example, it might seem to a Volunteer with a background in school administration and to the staff that such a Volunteer would make more of a contribution to the development of Micronesia by engaging constructively in helping the staff to administer the training center than by engaging in SML work with Micronesians. Thus, although such an assignment would seemingly be proper under the rule stated by Mr. Burns, it would not meet the standards of the Peace Corps Act. On the other hand, if the Volunteer, as in Mr. Burns' example of the Volunteer in infantry control work, is training Micronesians at the same time that he is participating in the training program, the assignment would seem to meet the standards of the Act.

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