



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

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Mike Smith
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Dear Mr. Carey:

AUG 15 1967

In connection with the executive session of your subcommittee on Wednesday, July 26, and in response to an informal inquiry from your committee staff, we asked our Solicitor's Office for its views on the question of whether there would be any legal impediment to the appointment of a Micronesian member or members to any Trust Territory status commission that might be created, assuming that the legislation relative to the commission is silent on the point.

After considerable discussion with members of the Solicitor's Office, we have concluded that it is possible to proceed in a manner which would not involve any prohibition to the appointment of a Micronesian member or members to the status commission. As a general proposition, however, there is a prohibition to the employment of aliens in the Federal service subject to three specified exceptions. That prohibition is generally found in one of the annual appropriation acts of the Congress. That language does not prohibit the employment of aliens per se but does require that no part of any appropriation shall be used to pay the compensation of any officer or employee of the Government of the United States whose post of duty is in the continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of the act who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date, (3) is a person who owes allegiance to the United States, or (4) is an alien from Poland or the Baltic countries lawfully admitted to the United States for permanent residence. Exceptions to this general rule include the employment of nationals of those countries allied with the United States in the current defense effort, and to the temporary employment of translators or the temporary employment in the field service as a result of emergencies.

We are also advised that as a general proposition, appointment to a Presidential Commission is construed as Federal employment even though the service is temporary, intermittent, and not salaried per se.

It is the expressed view of our attorneys that in the light of the foregoing prohibition, and in the absence of any other provision of law, the payment of compensation to an alien Micronesian to serve on

✓ Mr. Charles Johnson

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a Presidential Commission to study the status of Micronesia would not be authorized, since, in their opinion, the exceptions specified are not sufficient to comprehend such employment. This conclusion is based, of course, upon the assumption that the appropriation which would be made to fund the study commission would be made in such a way that it would be subject to the general rule already expressed. It assumes also that at the time the appropriation is made, there will be in a then current appropriation act the necessary language to perpetuate the general prohibition. An alternative method of proceeding is available, however, which we believe would produce a different conclusion from that just stated.

Since the prohibition we have referred to has its genesis in the annual appropriation acts, we suggest that at such time as an appropriation for the funding of a study commission is sought there could be included in that request language exempting this particular employment from that general prohibition. This approach would resolve any question concerning the legality of compensating (and thus appointing) Micronesian members, while retaining what we believe to be the necessary freedom to determine, under the circumstances and considerations prevailing at the time, the propriety and extent of Micronesian participation as members of the commission.

We are sorry that the variables and unknowns inherent in the question we have considered precludes a more definitive answer. If we can be of further assistance to you, or provide you with additional information in connection with this matter, please let us know.

Sincerely yours,

(30) Harry H. Andersen

Assistant Secretary of the Interior

Hon. Hugh L. Carey
Chairman, Subcommittee on Territorial
and Insular Affairs
House of Representatives
Washington, D. C. 20515