



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

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Mr. Martin P. Mangan
Deputy High Commissioner
Trust Territory of the
Pacific Islands
Saipan, Mariana Islands 96950

*Declassified in
accord with E.O. 12356
H.D. Lashmuth
9/16/85*

20 December 1968

Dear Mr. Mangan:

I am grateful to you for your letter of December 13, and your preceding radiograms, which were not too cryptic at all, and which were in fact very useful. Your letter arrived in good time for our December 16 gathering with Defense representatives on this subject, and was thus in every way helpful.

In general I would say that I understand your misgivings, concur in your suggestions for modifications, and appreciate your appraisals of the effects of certain of the provisions. In short, your letter is splendidly responsive to our needs. I do, however, have more needs as of now, on three general subjects (land tenure, nationality status, and numbers of options), and I'd be grateful for whatever you can say on these subjects. I recognize that on all three the issue is one of best guesses, not facts, and we would view your reactions therefore as precisely that. Of course we also realize that the Trust Territory situation is so dynamic that a good guess today may be wholly invalid six months hence. All of which is to say that we'd hold you to nothing, but would welcome your best judgment as of this time.

1. First, as to the land tenure problem, I'm increasingly fearful that the entire political future question may ultimately turn on what is done on the land question. At the same time, I'm also increasingly persuaded that we may have no maneuvering room at all on the subject. While we don't have anything approaching a definitive answer to the question, I rather think that if we get one it will be this: if the Trust Territory associates with the United States in any manner or form, that is, if U.S. sovereignty extends over the Trust Territory and its people are at least nationals of the U.S. (which latter consequence is an inevitable result of the extension of sovereignty), then as a Constitutional matter there can be no discrimination permitted in laws pertaining to land alienation and land tenure. I rather think that is now the state of the law, and

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that if the question were put hypothetically to the Attorney General, he would say so. I also suspect that this would be the conclusion reached in any court in the land in which the question arose. All of which is to say that my own best guess at the moment is that, regardless of what we attempt to do by statute to perpetuate any or all of the current, admittedly discriminatory Micronesian land laws, we would probably not succeed.

We can be fairly sure of one lesser legal consequence. As of this time, we have an informal (written but unsigned) legal opinion telling us that the Samoan land laws violate the recent Federal Civil Rights legislation, which legislation is expressly applicable to American Samoa. While this is relevant, and maybe even persuasive (since I can't imagine the U.S. Congress at this point in time permitting an exemption to Samoa so as to allow it to continue a kind of reverse discrimination), it does not of course answer the question whether the Congress could, if it chose to do so, exempt Samoa (or potentially the Trust Territory). As stated above, my own guess is that it could not. The Fourteenth Amendment, which is the key here, has long been held to apply to unincorporated (and impliedly unorganized) territories. If that is true, then as a Constitutional premise, we must accept the fact that in an area which is a part of the United States, even if the Congress were to choose to permit peculiar land alienation arrangements not otherwise acceptable in the States, it could not as a Constitutional matter do so.

In short, I doubt that the creation of a lesser, unorganized, political structure in Micronesia would permit the continuation of the current land laws. I think that, no matter what status we consider for Micronesia, so long as it is a part of the United States, organized or not, incorporated or not, the Fourteenth Amendment would apply and free land alienation would be required.

If these conclusions are correct, my question to you then is: Will Micronesians have such strong fears that their land will be lost to them as to cause them to vote against association with the United States? Have I an exaggerated notion as to the importance of the land element in their thinking? If the Districts vary, as I believe they do, with the Marshalls holding the strongest views as to the importance of retaining all interests in land in Micronesian hands, how roughly do the other Districts feel on this question? Can you give me a reaction on a District-by-District basis?

You will remember that in 1949 and 1950 when the Guam Organic Act was before the Congress, the Committees considered a proposal, contained I believe in the Executive Communication, which would have protected Guamanians in holding on to their land. It was rejected then in Committee as of dubious legality. I don't recall ever hearing of any subsequent Guam unhappiness over this result. Could we hope for similar acceptance by the bulk of the Micronesians, by the date of the plebiscite?

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2. As to nationality, I have never felt any kind of a fix on Micronesian views as to becoming U.S. citizens v. U.S. nationals. I do know that the Saipanese, perhaps for the questionable reasons cited in your letter, have expressed strong views as to the desirability of U.S. citizenship. I suppose few Micronesians know the difference between the two statuses (if there be such a word), and in this they would hardly differ from almost every American. But if you can say anything as to your best guess as to their feeling, I'd find it welcome and useful information.

3. As to the number of options, the October 15 draft presents two: for or against association with the United States. Our previous thinking has generally embraced a third, namely sovereign independence. We have been including the third partly because we believe it desirable, and surely State believes it essential, for U.N. purposes, and partly because it seems decent to permit of this choice. At the same time, I have myself grown nervous about it, fearing that increasingly the voters might find it appealing, and fearing too that, unless the United States can squarely say that you'll get it if you vote for it, it's really not fair to put the question. (Some of my colleagues feel equally strongly that too many questions will only lead to an indecisive vote with, perhaps, a useless plurality.) It really is for others in other Departments to answer the hard question of what we would do if the Micronesians did, by a plurality, choose independence. I have informally heard both possible answers. The important consideration, though, it seems to me, is how we would answer the Micronesians who would surely ask the questions. I really think they must be given a straightforward answer. If they can be told that they'll have it if they show by their plebiscite vote that they want it, then Interior ought not to hesitate to include it. If they cannot be given this answer, I think we may be correctly accused of deception.

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At the same time, I do recognize that there is some independence sentiment; that it will grow; and that our UN problems would be acute if this were not measured.

Apart from welcoming your comments on the above, I would now ask you the impossible question of how you think the Micronesians would vote if they had two options or three. For this purpose, I'd guess you had better assume that there is no land-protection provision. Assume further U.S. Congressional hearings on the proposal in the Trust Territory, a decent interval for plebiscite education, and a plebiscite in 1971. You can assume whatever you prefer in terms of nationality. Otherwise assume that Title II of the October 15 draft represents the United States' offer. On all of these assumptions:

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- (a) If the Micronesians were asked to vote for or against association with the United States, what percentage of those who vote would vote for? What percentage against?
- (b) If they were asked to vote for association with the United States, for sovereign independence, or for a continuation of their current status, how would the vote divide?

I need not say again how helpful it would be to us to have your judgment on all of these questions. But I will add again that there are no demerits in store for a bad guesser (at least not yet, though it may come to that). We must begin somewhere, and I hereby press you because you answer your mail so well.

Merry Christmas.

Sincerely yours,

(Sgd.) Mrs. Ruth G. Van Cleve

Mrs. Ruth G. Van Cleve
Director

cc: Cdr Kuhn

*This letter
was never
answered by
MONGAN.*

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