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

01
2

Declassified in accord with
E.O. 12356
H. DeLoach 9/16/85

~~CONFIDENTIAL~~

FEB 19 1969

Hon. William R. Norwood
High Commissioner
Trust Territory of the Pacific Islands
Saipan, Mariana Islands 96950

Dear Mr. Norwood:

This refers to our previous correspondence concerning eminent domain legislation, particularly to my letter to you of December 31, 1968, with which I enclosed a copy of the State Department's letter to me of December 4 and my response to State of December 31. Enclosed for your information is a copy of State's reply of January 16.

We infer that the eminent domain bill was not acted upon during the January session of the Congress of Micronesia. Accordingly, we have a welcome period in which the matter may be studied further. I hope it may be possible during the months before next July for you and your associates to confer with Amata Kabua, among others, to see if some kind of meeting of the minds on this subject is possible. I realize that it may not be possible. Clearly the power to condemn land for public purposes is one of the most essential powers of any government. Clearly, too, the attitude of some Micronesian leaders toward land acquisitions by the Government in the Trust Territory is approaching one of very great hostility.

Our concern is that it seems likely that some months hence the Secretary of the Interior may be required to turn to this matter. If the Kabua 1968 bill is passed over your veto, and again vetoed, the matter will be before the Secretary. We have already advised Secretary Hickel of this prospect. If that occurs, we would expect to recommend that he uphold your veto. At that time, we would also want him, if possible, to offer some helpful comments on the subject.

Obviously it would be vastly preferable if the matter did not come to Washington at all, and if you were able to work out a solution at the local level in timely fashion. To that end I would offer some comments, each of which is essentially a question.

1. I think it is clear to all of us here, in all of the interested Departments, that we cannot live with the legislative veto provision of section 1306 of the Kabua bill. It constitutes a clear violation of the separation of powers. (In this connection, you would find useful the opinions of the Attorney General of the United States at 41 A.G. 230 and 300. I commend these to your Attorney General as useful not only in

500

T-1950/69

03-413314

eminent domain matters, but also in connection with your recent problems with the scholarship bill.) Additionally, as a practical matter section 1306 would certainly delay for many months, and in some cases preclude, land acquisitions for military purposes in the Trust Territory.

But is there a means by which the Congress of Micronesia can become involved in land acquisitions, perhaps by according it some kind of voice with no vote? At the Federal level, the military is now living with a "layover" provision, found at 10 U. S. C. 2662. Before that, it lived with a "come into agreement" provision, until it was found unconstitutional (see the opinions cited above). Undoubtedly the military would prefer no legislative involvement at all, at either the Federal or Trust Territory level, in land acquisitions for military purposes. But I think we should consider the possibility of a layover provision for the Trust Territory, if this would be useful in meeting the point of view of the Congress of Micronesia.

The basic question is whether, if the Congress of Micronesia is notified of a proposed acquisition, if it objects to it, and if the acquisition is consummated anyway, such a provision would help or hinder executive-legislative relationships in the Trust Territory. If it would hinder them, then there may be no room for compromise here. As a practical matter, I understand that the military does not follow through on real property transactions when, following notice under 10 U.S.C. 2662, significant Hill opposition arises. Thus, though the statute gives no veto to the Committees or to the U. S. Congress, Defense behaves as though it does. (Federal agencies generally behave this way, in the face of lay-over statutes. Interior would not contemplate a territorial submerged lands conveyance if the Committees to which it must by statute give notice were to object, even informally.) I suppose that the Executive Branch of the Trust Territory Government could not possibly pay this kind of deference to the views of the Congress of Micronesia, if Federal military acquisitions were at stake. Further, perhaps we can be sure that the Congress of Micronesia, unlike the U. S. Congress, would be likely to object to almost every land acquisition. If so, such a notice arrangement may in the long run be far worse than nothing.

The short question is, what room do you see for Congress of Micronesia involvement in Trust Territory land acquisitions?

2. We very much appreciated having Mr. Craley's letter of January 24, to which he attached the 1967 and 1968 versions of the Executive-branch-eminent-domain-bill. We note that the bills take rather different forms, and that the 1967 version appears to be more likely to appeal to the Congress of Micronesia. I know it did not appeal sufficiently to permit its adoption, but it looks as though

it was drafted with a special eye toward special Trust Territory problems. The admirably drafted 1968 version, on the other hand, appears suitable for any area under the U. S. flag, where land does not take on special meaning. What prompted your submission of the 1968 version, with its generally more unbending provisions, rather than the resubmission last summer of the earlier 1967 version?

3. We have noted with particular interest the 1967 provisions to which attention was called in the covering letter to the Congress of Micronesia of June 1, 1967 (signed by Mr. Shoecraft for you). That letter reads in part:

> "Several of the original features have been retained, such as (a) mandatory negotiations with the owners prior to Court action, (b) reversion to private ownership if the land ceases to be used for public use, and (c) that the prior owners would have first priority to homestead the land."

So far as we can see, all of these provisions are absent from the 1968 version. Why were they dropped? And would inclusion of them have had any ameliorating effect on the Congress?

The provisions described in (a) is a rather usual one in land condemnation statutes in the States. While (b) and (c) are not, and while I feel sure any Federal agency would prefer that they not be included, they do seem to give recognition to the particular Micronesian attitude toward land. Mr. Kabua's bill, as you know, contains a version of (b) and (c), one which you have stated to be unworkable, and we would agree. But might he not move toward your 1967 provision on this subject, if he thought it was the most he could obtain?

I think we must undertake conversations and communications at all levels on this subject -- between you and the Congress of Micronesia, between you and us, among us and the other interested agencies. We would hope that you could use the next four months to develop a legislative vehicle that might pass muster in the Congress of Micronesia, so as to avoid the need for further vetoes by either you or the Secretary. This may not be possible, but we hope you will try. We will be glad to help.

Sincerely yours,

(Sgd.) Mrs. Ruth G. Van Cleve

Mrs. Ruth G. Van Cleve
Director

cc: Elizabeth Brown
Cmdr. Kuhn