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

March 11, 1969

Col. and Mrs. Edward A. Wilcox
527 Reeves Road
Marine Corps Air Station, Kaneohe Bay
FPO, San Francisco, California 96615

Dear Colonel and Mrs. Wilcox:

Thank you for your letter of March 1. I wish time permitted me to comment on the enclosures to your letter, but my tenure is limited to a matter of days, and possibly hours, and I thus cannot indulge myself to that extent.

I do feel constrained, however, to correct one misstatement -- not perhaps a very serious one, but a lawyer cannot let pass the comments on the Rongelap settlement, beginning at the bottom of page 7. For what it is worth, the Rongelap settlement was not the result of court action. Efforts were made to litigate it, but in each case the plaintiffs rather quickly lost their cases on jurisdictional grounds. The settlement ultimately reached was a result of legislation, drafted in the Executive Branch and presented by us to the Congress. We worked very hard to obtain enactment. The bill, signed in August of 1964, authorized $950,000 (all of which was soon thereafter appropriated and paid to the Rongelapese, of which there were 82 affected individuals), and the statute provides that the sum was authorized because "the Congress hereby assumes compassionate responsibility to compensate inhabitants in the Rongelap Atoll... for radiation exposures". It might be argued that this settlement was both too little and too late. In fact I've not heard it alleged that the sum was ungenerous, although the statement attached to your letter seems to imply that. I readily admit that it ought not to have taken 10 years to effect a settlement. My chief point, however, is that the Executive and Legislative Branches cooperated in effecting a settlement.

As for your further questions on eminent domain, indeed it is possible for the Government of the Trust Territory to acquire land (for itself, or for the Government of the United States) without the consent of the people of the Trust Territory, and without the consent of the Congress of Micronesia. But this is not unusual. As elsewhere in the American political system, a Trust Territory statute exists which gives to the Government of the Trust Territory the power to condemn. Indeed, if the people (or owners) consented to the acquisition, condemnation would be unnecessary -- the land could be acquired by a voluntary sale by the owner and purchase by the Government. Governments of the States and territories are able to acquire land by condemnation without ratification of their legislative bodies, and indeed do so almost constantly.

They proceed on the basis of their general condemnation statutes. That is what the Trust Territory Government has done. The troublesome factor here is that the Trust Territory statute derives from the era prior to the creation of the Congress of Micronesia, and hence it was originally an Executive promulgation. But it is nonetheless wholly valid as a matter of law, and in my own judgment, it is an entirely respectable law, parallel to those that exist in American political subdivisions.

Of course I appreciate the particular importance which Micronesians attach to land, and I am very well aware of the special concerns which many of them feel these days about military intentions. In recognition of these factors, I have suggested to the Government of the Trust Territory some possible areas of compromise, so as to accommodate as fully as feasible the views of the Congress of Micronesia. But my own view is that the power of eminent domain is one of such crucial importance to any government (and in fact the power goes back at least to the Romans), that I do not think the Government of the Trust Territory can afford to jeopardize it. No government can function without it, or with the power so compromised and eroded as to be without value.

You ask what "public use" means, and in the Trust Territory context, it can mean either Federal or Trust Territory Government use.

As for Senate Joint Resolution 45, it did not require the High Commissioner's approval or disapproval, because, as a resolution, it constitutes only an expression of opinion by the legislative branch. Accordingly, the High Commissioner did not veto it. My own view as to its substance is that the Trusteeship Agreement does not require revision to permit the kind of condemnation law the Congress of Micronesia seeks. I am not passing on the wisdom of such law, but only noting that it could lawfully be enacted without, in my judgment (and such judgment is also held by the State Department) violating the Trusteeship Agreement. In short, I could not myself endorse the resolution because I believe it seeks an unnecessary act.

I regret that our correspondence on this subject must draw to a close. I am sure, however, that the Office of Territories will be glad to continue it, if you have further questions.

Sincerely yours,

Mrs. Ruth G. Van Cleve
Director

VanCleve:emw
3/11/69

406