

Draft: 1/21/70
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*Trust Territories
X Vol - Pol. Activities*

MEMORANDUM

TO: Melvin Mirkin, EAP
THRU: Marc Leland, GC
FROM: Wendell Mew, GC
SUBJECT: Free speech in Micronesia

You requested advice on the following questions:

1. Is a Peace Corps country director empowered to terminate a Volunteer who voices disapproval of American policy when that policy directly affects the country in which he is stationed?

Answer: Yes, but affirmative answers should be found to any of the three questions discussed below. MS 292 must be complied with strictly, and ^{the} a case well documented.

Discussion

In considering your first question, the question which we should consider naturally is how is the Volunteer voicing his disapproval? Is he publishing his views, and if so, where are they being published? Is he utilizing other forms of communication, radio, TV? Is he writing letters to different people and institutions, and if so, to whom? Is he participating in public demonstrations, and if so, has he violated local criminal laws? (Trust Territory Code §§ 426 (Disturbing the Peace); 428 (Riot). The answers to these questions and the facts surrounding

the incident will determine whether a Peace Corps country director is empowered to terminate the volunteers.

Let's assume that a Volunteer has publicly expressed disapproval of American policies, those of Congress, Department of the Interior, the High Commissioner, and Peace Corps.

It has been established that a Peace Corps Volunteer possesses first amendment rights outside the United States, Murray v. Blatchford, et al, (Dec. 24, 1969). Section 1 of the Trust Territory Code states, "No law shall be enacted in the Trust Territory respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the people peaceably to assemble, and to petition the government for a redress of grievances." Section 22 of the Trust Territory Code states, "The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent now so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Trust Territory in cases which they apply,..." Generally, we cannot terminate a Volunteer solely on the basis of his expression. The questions which must be considered and which are generally interrelated before terminating ^a this Micronesian Volunteer are:

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a. Does his expression reduce his effectiveness as a Volunteer?

If it does, the country director must show how his expression reduces his effectiveness as a Volunteer. For example, his expression may have reduced his credibility in the eyes of the host citizens or those with whom he works, or may have generated hostility or unreceptiveness toward him and other Volunteers. If the country director determines that the Volunteer's effectiveness has been reduced, he should consider this the reason for terminating the Volunteer, and inform the Volunteer in writing of the reasons for termination. *We encourage a healthy dialogue with the volunteer before term* (MS 292 must be strictly complied with, and the case ~~be~~ well documented.)

b. Does his expression affect Peace Corps programs?

Again the country director must analyze the Volunteer's expression in relation to the host citizens reaction to determine whether Peace Corps programs have been affected and how.

c. Does the expression affect host country politics?

In Micronesia, we may have a choice in determining who we consider to be the host government. Is it the U.S. Congress, the President of the U.S., the Department of Interior, the High Commissioner, or the Congress of Micronesia? Ideally we should be concerned primarily with whether the Volunteer's expression affected our relations with the Congress of Micronesia and the host people. However, since the U.S. Government holds the

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(See e.g. Secretarial Order 2918,
4 34 Fed. Res. 27 (1969); 48 U.S.C. § 1681)

purse strings and possesses dictatorial powers over Micronesia, we may affect the welfare of the host people if we do not adhere to the demands of our own institutions, agencies, and/or the High Commissioner. And/or we will be involved in a political fight if one of our American institutions, agencies, and/or the High Commissioner request^{because of} the termination of a Volunteer ^{over} an embarrassing publication, and we determine that the publication has not affected Peace Corps programs in relation to the host people and the Congress of Micronesia, and we wish to protect the Volunteer's right to speak freely. I don't know whether we would win in such a case, but we can try to prevent an incident like this from happening.

Inform Micronesian Volunteers in orientation of the delicate political situation in Micronesia. Admit that the U.S. has breached its fiduciary responsibility over the Trust Territories; *In other words, we haven't done as well as we could be doing.* Prognosticate the fact that U.S. may stockpile nuclear weapons in the Trust Territories. ~~In other words,~~ Begin a dialogue on the emotional issues and keep communication channels open throughout the Volunteer service. Hopefully this would eliminate some potentially embarrassing incidents.

Additionally, section 734 of the Trust Territory Code provides that, "All animals and plants or parts thereof, including seeds, fruits, vegetables, cuttings, etc., entering ^{wild} the Trust Territory or transported within the Trust Territory

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are subject to inspection by Agricultural Quarantine Inspectors and may be refused entry into or movement within the Trust Territory if they are known to be, or are suspected of being, infected or infested with disease or pests. In addition, all aircraft and vessels entering the Trust Territory, or moving within the Trust Territory, or their cargoes including baggage, ship's stores and ballast, are subject to inspection by Agricultural Quarantine Inspectors for the purpose of enforcing the controls, quarantines, and regulations, except that such inspectors of U.S. military aircraft and vessels shall be subject to existent military security regulations. It shall be unlawful for anyone to interfere with or to refuse to submit to the above mentioned inspections. (As amended by Executive Order No. 58, dated June 5, 1956.)" Volunteers should be warned about transporting marijuana seeds into the Trust Territory.

2. Does the High Commissioner of the Trust Territory of the Pacific or any officer serving-over or under him have the power to declare an American citizen persona non grata (or the equivalent) and order him out of the territory?

Answer: Yes, but we could prevent this action possibly by discussing the matter with the High Commissioner; Director, Office of Territories; Assistant Secretary, Public Land Management, Department of Interior; Secretary of the Interior.

Discussion
The Memorandum of Agreement between the High Commissioner of the Trust Territory of the Pacific Islands and the Director

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of the Peace Corps concerning Peace Corps operations in the Trust Territory sets forth the guidelines for Peace Corps programs in Micronesia. The third paragraph of that agreement states, "It is further recognized that the Peace Corps, as part of the total U.S. effort in the Trust Territory, must operate under the authority of the High Commissioner. The Peace Corps will give full consideration to the will of the Micronesian people as expressed through their legislative bodies."

Paragraph No. 2 states, "In recognition of the High Commissioner's responsibility for administration and coordination of all government activities in the Trust Territory, the Peace Corps will obtain prior consent of the High Commissioner with respect to: (a) the number of Volunteers to be assigned to the Trust Territory; (b) the assignment within the Trust Territory of such Volunteers and the timing of their arrival; (c) the type of services to be performed by the Volunteers..." Additionally, paragraph No. 3 of the agreement states, "Should any occasion arise in which the High Commissioner concludes that the continuing presence in the Trust Territory of any Volunteer or any Peace Corps staff member is not to the benefit of the Trust Territory, the Peace Corps agrees that it will direct such Volunteer or staff member to leave the Trust Territory promptly. Should such Volunteer or staff member fail to leave the Trust Territory promptly, the Peace Corps agrees that it will terminate the service

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of such Volunteer or staff member." (see also Trust Territory Code § 36). The foregoing provisions place us within the authority of the High Commissioner and afford the High Commissioner authority without any limitations to order the departure of any Volunteer or Peace Corps staff member whose presence he determines to be of no benefit to the Trust Territory. It is ^{not} likely, however, that any expulsion under this paragraph would occur without involving some consultation with the Peace Corps Director in the Trust Territory and/or Peace Corps/Washington. Nevertheless, the authority exists in the agreement, and I find no limitations. Naturally, if we disagree with the High Commissioner's determination, we may be able to discuss this dispute with ~~the~~ (Department of Interior, ~~specifically~~ the Director, Office of Territories, and their Solicitor. ⁴ Under our present operating agreement, Peace Corps Volunteers and staff members are not required to apply for entry permits which allow individuals to remain in the Trust Territory beyond 30 days. If a Volunteer or a staff member were to apply for an entry permit, the High Commissioner could easily refuse an individual an entry permit if he finds upon substantial evidence "that the entry of the applicant would not be in the best interests of the Trust Territory", Trust Territory Code § 668(k). Another ground for denying or revoking an entry permit would be addiction to or unlawful trafficking in drugs. Public Law No. 4-26 defines "drug" as "any drug, excluding

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alcoholic beverages, containing any quantity of a substance which significantly affects or alters consciousness, the ability to think, critical judgment, motivation, mood, psychomotor coordination or sensory perception and is substantially involved in drug abuse or has substantial potential for such involvement. Such abuse shall be deemed to exist when drugs are used for their psychotoxic effects alone, and not as therapeutic media prescribed or recommended in the course of medical treatment, or when they are obtained through illicit channels."

Additionally § 670 states,

"Permits to enter the Trust Territory may be revoked or renewal of such permits refused by the High Commissioner at any time upon a finding that: (a) the continued presence of the permit holder in the Trust Territory is not in the best interests of the Trust Territory;"

Section 671 allows an applicant who is denied an entry permit to appeal to the Secretary of the Interior. Section 680 states,

"Whosoever, not being a citizen or legal resident of the Trust Territory of the Pacific Islands, shall unlawfully enter or attempt to enter the Trust Territory of the Pacific Islands, or, having lawfully entered and

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remained wilfully and unlawfully after expiration or revocation of entry authorization, or who shall violate by act or omission any provision of this Chapter, or regulations issued pursuant thereto, shall be guilty of a felony and upon conviction thereof shall be imprisoned for a period of not more than two (2) years or fined not more than five hundred dollars (\$500), or both. In lieu of the foregoing, or in addition thereto, whosoever shall unlawfully enter the Trust Territory or, having lawfully entered, wilfully and unlawfully remains after expiration or revocation of an entry permit, shall be subject to deportation upon application by the High Commissioner to, and hearing before the High Court of the Trust Territory."

A June 16, 1969 memorandum from the Director, Office of Territories through the Assistant Secretary, Public Land Management to the Secretary of the Interior, concerning a case in which the High Commissioner denied an entry permit to a former Peace Corps Volunteer stated, "Free entry of Americans into the Trust Territory is not a legal or constitutional right. The basic obligation of the United States is the promotion of the well-being of the Micronesians in accordance with several commitments undertaken in the Trusteeship agreement."

In any situation where the High Commissioner wishes to expel a Peace Corps Volunteer or a staff member, we are likely

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to be involved in discussions with the High Commissioner,
Director, Office of Territories, perhaps the Assistant Secretary
for Public Land Management, and/or the Secretary of the Interior.

Clearance: Marc Leland _____

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