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

FEB 6 - 1970

Memorandum

To: Assistant Secretary--Public Land Management

From: Associate Solicitor, Territories, Wildlife and Claims

TERIOR DEPT
FEB 9 1970
ASSISTANT SECRETARY P.L.M.

Subject: Calling the Trust Territory of the Pacific Islands the Commonwealth of Micronesia in connection with its future political status.

You have asked whether there would be any legal impediment to using the word "commonwealth" in arriving at an appropriate name for the Trust Territory of the Pacific Islands in connection with its future political association with the United States. Our answer is a qualified "yes".

Black's Law Dictionary gives the following definition of "commonwealth":

> The public or common weal or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government,--one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government. Sometimes it may denote the corporate entity, or the government, or a jural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government, (or nation.) In this latter sense, it is the official title of several of the United States (as Pennsylvania, Massachusetts, Virginia, and Kentucky), and would be appropriate to them all. In the former sense, the word was used to designate the English government during the protectorate of Cromwell. * * *.

The term commonwealth, when used in the context of American territorial relations, means approximately the status currently occupied by Puerto Rico. The legal consequences of commonwealth status are

unclear, but the term denotes, at a minimum, a high degree of local autonomy, under a constitution drafted and adopted by the residents of the affected area, pursuant to Congressional enabling legislation earlier approved by such residents by referendum. The constitutional relationship of the Commonwealth of Puerto Rico to the United States is open to great uncertainty, with some parties (supported by court decisions) contending that the Congress retains its plenary authority under Article IV of the Constitution to legislate for Puerto Rico, while others contend (supported by other court decisions) that because the statutes giving rise to the Commonwealth were adopted "in the nature of a compact," the Congress is not free to legislate unilaterally for Puerto Rico. As for fiscal consequences of Commonwealth status, none appear to be causally related to it. Puerto Rico's particular economic advantages (particularly the inapplicability to Puerto Rico in general of the Federal income tax laws, and the payment to Puerto Rico of taxes paid on Puerto Rican products entering the mainland) pre-date the creation of the Commonwealth, in 1952, by several decades.

Because of the unique association, in territorial parlance, of the word "commonwealth" with the political status of Puerto Rico, it is our opinion that the Trust Territory of the Pacific Islands would have to be afforded, at least, the basic indicia of self-government enjoyed by Puerto Rico in order to call it a commonwealth.

These indicia would require (1) enabling legislation by the U.S. Congress, (2) a referendum accepting same by the people of Micronesia, (3) a constitutional convention in which the people establish (4) a republican form of government and (5) a bill of rights which is consistent with the U.S. Constitution, (6) approval by the President of the proposed Constitution, and (7) acceptance of the same by the U.S. Congress.

The concept of an appointive chief executive would be incompatible with the degree of self-government necessary to qualify Micronesia as a commonwealth. This is so because under a republican form of government there must be the traditional, three independent branches, and the executive and legislative must be elected by the people. The judiciary may be appointed by the executive by and with the advice and consent of the legislative, or it may be elected.

It is my opinion that the draft Constitutional Convention bill, with minor modifications, will sufficiently meet the above requirements and will permit us to call the Trust Territory of the Pacific Islands the Commonwealth of Micronesia in connection with its future political association with the United States.

It is further my opinion that the Constitutional Convention bill as drafted avoids the problems which have given rise to much of the opposition to the Commonwealth status of Puerto Rico. The real bone of contention regarding Puerto Rico's status arises from the question of whether the enabling act, the constitution as evolved and its acceptance by the U.S. Congress created a compact between the United States and Puerto Rico which can only be modified by the bilateral action of the parties. Putting it another way, did Congress abdicate its plenary power under Article IV, Section 3, of the U.S. Constitution to make all needful rules and regulations regarding the use and disposition of the property of the United States and grant an irrevocable delegation of authority to Puerto Rico similar to a grant of statehood or independence, or did it retain its plenary power unilaterally to amend the local laws of Puerto Rico? Scholars disagree on the answer to this question. The Puerto Ricans feel they have a compact. However, a general mood against the permanent abdication of power can be culled from the remarks and inquiries of the Congressmen at the time Puerto Rico became a commonwealth.1/ Although I am inclined to agree that Congress did not abdicate its plenary authority under Article IV, Section 3, I believe the debate is really academic, because Congress, in all its history, has never enacted legislation regressive of the right of self-government once that right has been given to a territory. The movement is always to even greater powers of self-government culminating eventually in statehood. In this sense, therefore, there is a legislative ethic involved which, though Congress probably could, it undoubtedly will not violate even though it may never be able to go as far as offering statehood.

Unlike the broad authority given to Puerto Rico to establish a constitution, erect a republican form of government and to legislate locally, the draft Constitutional Convention bill, contains enough controls and guidelines to make it clear that the U.S. Congress intends to have a hand in the internal affairs of Micronesia and will not be making an irrevocable delegation of its authority under Article IV, Section 3. At the same time, the bill, using Alternative B for the Executive Power, appears to provide to the Micronesians those indicia of self-government which would permit us to call the Trust Territory of the Pacific Islands the Commonwealth of Micronesia in its future political association with the United States.

C. Brewster Chapman, Jr.

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Associate Solicitor
Territories, Wildlife and Claims

1/ Nadar, "The Commonwealth Status of Puerto Rico", Harvard Law Record December 13, 1956.