



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D. C. 20301

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13 April 1970

MEMORANDUM FOR CAPTAIN WILLIAM O. MILLER
JAGC, USN, LEGAL ADVISER
DIRECTOR, JOINT STAFF

COMMANDER EDWIN A. KUHN
USN, OSD/ISA/EA&PR

SUBJECT: Provision for the Right of Appeal to the
United States Court of Appeals - Item (v),
Page 22 - Proposed Micronesian Territorial
Act

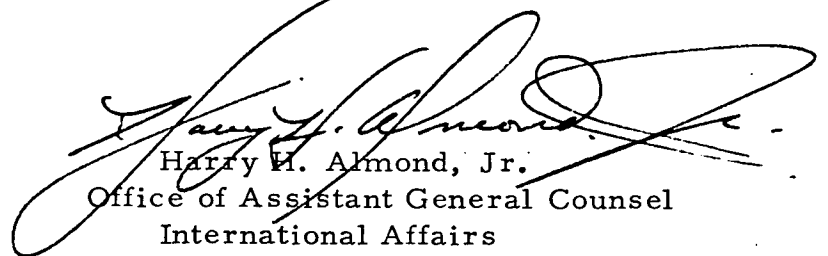
I have attached a copy of page 22, item (v), of the above Act and call attention to the discussion which I had with Mr. Brewster Chapman, Associate Solicitor of the Department of Interior, on this section. It would be noted that in the event that either the Congress of Micronesia does not take action to enable the United States to acquire property or an interest in property or that a decision has been taken by the "highest court of Micronesia" unsatisfactory to the United States, "then the United States shall have the right to appeal to the United States Court of Appeals for the Ninth Circuit" and that Court might by its own rules entertain the appeal and make a final decision (subject in turn under writ of certiorari to the United States Supreme Court.

The question arose whether the action or failure to act by the Congress of Micronesia should be subjected "to the right to appeal" to the United States Circuit Court of Appeals. It is my understanding from informal discussions with lawyers from the Department of Justice that this raises no legal issue and that the Court of Appeals though

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it may require a record for the purposes of appeal can secure that record from a master which it can appoint. It has been said however that in doing this there might be delays over the procedures that might be available through Federal District Court (which would in effect be the Court of First Instance following actions of the Congress of Micronesia or the Highest Court of Micronesia). However, it is my understanding from discussing with Mr. Chapman that such delays are not envisaged or would not be very great. For this reason, I can raise no legal objections to Item (v) as written.


Harry H. Almond, Jr.
Office of Assistant General Counsel
International Affairs

Att:
a/s

cc: Brewster Chapman, D/Interior •

bcc: Herman Marcuse, D/Justice

Herman:

My discussion with Brewster Chapman is set forth above and I was asked to put a written opinion to the persons at the heading of this memorandum. Would you kindly telephone me if you find any reason to object or comment on this memorandum, 11-79247.

H,

Mr. Niederlehner
Master Chron
Circulating
Subj: ILP-Trust Territories

instrumentality thereof insofar as they relate to land use and retention, and the Government of Micronesia takes all such land as set forth in subsection (a) above subject to such agreements; provided, however, that such retention and use will at all times be consistent with the public purposes of the United States.

(c) (i) Within three years from the effective date of this Title, the retention and use rights of the United States Government covered by subsection (b) shall terminate, unless, within that time the United States proceeds to ^{continue} [acquire,] in accordance with subsection (d) or (f) hereof, whatever rights in such lands may be considered necessary for the public purposes of the United States.

(ii) In any such acquisition, the amount to be paid for the property, or interest therein, shall be the current fair market value of the interest acquired, exclusive of any improvements made by the United States or assigns, and less any amount or amounts previously paid, gratuitously or otherwise, therefor.

(d) The United States Government, its departments and agencies, are hereby authorized to, and may acquire for public purposes in Micronesia property or any interest in property, including any temporary use, in accordance with this subsection and subsection (f). Such property, including that owned or controlled by private parties or the Government of Micronesia, may be acquired under this subsection by purchase, lease, exchange, gift, ^{the extension of existing agreements (as used in the case with these lands acquired under the provisions of subsection (b))} or otherwise under such terms and conditions as may be negotiated by the parties, subject to the limitation in subsection (g).

(e) In no event may the estate in property sought to be acquired by the United States be of a greater quantum than a fee on a conditional limitation. ^{with the exception of those lands acquired under the provisions of section 1505} The limiting event which will terminate such a fee shall be the absence for a period of five years of the use of the land for the public purposes of the United States Government. Upon termination, fee ownership in the land shall revert automatically to the person, persons or entity from whom it was acquired, or their heirs, or successors.

(f) In the event the United States is unable to acquire property or an interest in property by negotiation in accordance with subsection (d), then it may acquire property or an interest therein in accordance with the following procedure:

(i) At least one month prior to any regular session of the Congress of Micronesia, the United States may present to the Executive of Micronesia a statement describing the property in which it wishes to acquire an interest including therein the nature of the interest sought to be acquired, the public purposes for such interest, and a detailed appraisal report of the fair market value of the interest prepared by qualified independent appraisers. The Executive shall thereupon prepare and immediately submit to the Congress of Micronesia, for consideration in its regular session, a bill incorporating the statement and requiring the conveyance of the property or interest or both therein to the United States.

To assist in making this determination, such court may, in accordance with such procedures as it may by rules adopt, convene a special jury of Micronesia citizens from the geographical area in which the property is located to render an advisory verdict on the question of fair market value. The decision of the court shall be final, subject, however, to review, on appeal, by the United States Court of Appeals for the Ninth Circuit, as provided in subsection (v).

(v). In the event that the Executive does not introduce a bill as required by this subsection, or the Congress of Micronesia fails to act on a bill in the session at which it has been introduced, or it does not pass the bill, or it disagrees with the need for the acquisition by the United States of property or interest in property sought to be acquired, or in the event that the United States wishes to appeal from a final decision of the highest court of Micronesia rendered in accordance with subsection (iv), then the United States shall have the right to appeal the United States Court of Appeals for the Ninth Circuit, which shall entertain such appeal in accordance with such rules as it may prescribe and shall make a final decision, binding as to need or value, or both, and, if appropriate, the court shall order the conveyance of the property or interest in property to the United States.

(vi) An appeal may be taken to the United States Court of Appeals for the Ninth Circuit by any person whose property or

interest in property is acquired by the United States under provisions of this subsection.

(vii) Final decisions of the United States Court of Appeals for the Ninth Circuit rendered in accordance with subsections (v) and (vi) may be reviewed by the United States Supreme Court on petition for a writ of certiorari in accordance with 28 U.S.C. 2101.

(g) After the effective date of this Act, no privately or communally owned real property, use rights, or interests in such property in Micronesia may be transferred, sold, alienated or leased for a term in excess of ten years to non-residents, corporations owned or controlled by non-residents of Micronesia, or the United States Government under the provisions of subsection (d), except by descent or devise, unless such transfer, sale, alienation, gift, or lease is first approved in writing by the majority vote of a commission to be especially established from residents in the geographic area where the real property is located for that purpose in accordance with the laws of Micronesia.

TITLE IV

PROVISIONS OF A TRANSITIONAL NATURE

SEC. 401. After the effective date of TITLES III AND IV of this Act, no employees of the Government of Micronesia shall be appointed as Federal employees as long as they are employed by the Government of Micronesia; except that Federal employees in the