



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

June 25, 1970

Dear Mr. Carey:

On June 4 at the briefing before your subcommittee on the future political status of the Trust Territory of the Pacific Islands, a question was posed by the Honorable Sam Steiger as to the constitutionality of the land tenure provisions contained in Section 381 (g) of the proposed constitutional convention bill for Micronesia.

We enclose a copy of a legal opinion expressed by the Associate Solicitor, Territories, Wildlife and Claims, U.S. Department of the Interior, which attests affirmatively to the constitutionality of the provision.

Sincerely yours,

(Sgd.) Harrison Loesch

Assistant Secretary of the Interior

Hon. Hugh L. Carey
House of Representatives
Washington, D.C. 20515

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

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Memorandum

To: Director, Office of Territories
From: Associate Solicitor, Territories, Wildlife and Claims
Subject: Request for Legal Opinion by House Interior Committee

You have, in effect, requested an opinion on the constitutionality of the land tenure provisions contained in Section 381(g) of the proposed Constitutional Convention Bill for Micronesia. This section provides in pertinent part:

...[N]o privately or communally owned real property, use rights or interest in such property in Micronesia may be sold, transferred, alienated or leased for a term in excess of ten years to non-residents, [or] corporations owned by non-residents...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 residence in the geographical area where the real property is located for that purpose in accordance with the laws of Micronesia.

The basic question involved is whether this section violates the constitutional prohibition against discrimination on account of race, creed, color, or national origin in the sale or transfer of property.

Since the requirements of Section 381(g) regarding the sale or transfer of land in Micronesia relate only to such sales or transfers to non-residents of Micronesia, they in no way offend the constitutional prohibitions against discrimination on account of race, creed, color, or national origin.

Section 381(g) is designed to provide a solution to a most difficult and unusual land problem by giving the Micronesians some deliberate control over the disposition of their lands to non-residents.

As the Hon. Patsy T. Mink noted last December 9 when she inserted into the Congressional Record at page E10487 an essay by Frank E. Midkiff entitled "The Pacific Islanders and Their Lands":

Ownership of land is the very basis of the community and peer relationship in the trust territory. It is, therefore, vital that we do absolutely the least necessary to disturb this factor in their social relationship.

Mr. Midkiff's essay is well worth reading. From it we can distill two essential points. First, ownership of land is the backbone of the economic and cultural society of the Micronesians, and second, they should be allowed to protect themselves in their ^{1/} tenure from improvident loss of land through alienation or otherwise. To substantiate his thesis Mr. Midkiff deals at considerable length with what happened to the Hawaiian natives as a result of improvident sales of their lands to non-Hawaiians - the so-called Malihinis or newcomers. The situation became so bad that Congress enacted the Hawaiian Homes Commission Act, 1920, in an effort to provide some relief. Under this Act, generally speaking, the so-called public lands of Hawaii were set aside as Hawaiian home lands for preferential use of the Hawaiian natives. When Hawaii was admitted to the Union in 1959 the Hawaiian Homes Commission Act, 1920, became a part of the Hawaiian Constitution, in accordance with the provisions of the Hawaii Statehood Act, P.L. 86-3. The Hawaiian Homes Commission Act, 1920, of course, is designed, in part at least, to provide a remedy for the problem after it had occurred.

Section 381(g), on the other hand, is designed as a way possibly to prevent the situation from occurring in the first place, thus avoiding the need later on for congressional legislation similar to the Hawaiian Homes Commission Act, 1920. Under Section 381(g) the affected Micronesians may determine for themselves whether a proposed sale or transfer to a non-resident of communal or privately owned lands in Micronesia would result in undue damage to the complex socio-economic structure that evolves out of and depends upon rights in land. In this context Section 381(g) is justified as a reasonable, necessary and proper subject of legislation.

Since the Hawaiian Homes Commission Act, 1920, was required by the terms of the Hawaiian Statehood Act to be incorporated into the Constitution of Hawaii and since the President found that the terms of that Act had been complied with and on August 21, 1959 proclaimed Hawaii a State of the Union, we believe there would be no constitutional

^{1/} See also, Report of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands, 1970, pp. 37-43.

limitation to the President making a finding pursuant to section 103 of the proposed Constitutional Convention Bill for Micronesia, that a Micronesian constitution which incorporated provisions similar to those contained in section 381(g), was not contrary to the provisions of the bill or the Constitution of the United States.

C. Brewster Chapman, Jr.

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