

Attachment 8 ⁰²/₅



TRUST TERRITORY OF THE PACIFIC ISLANDS
OFFICE OF THE HIGH COMMISSIONER
SAIPAN, MARIANA ISLANDS 96950

CABLE ADDRESS
NICOTY SAIPAN

Legal opinion - Mariana

Marianas
File - TPI-11e
(1977)

August 29, 1972

The Honorable Bailey Oiter
Chairman, Committee on Ways and Means
The Senate, Congress of Micronesia
Kolonja, Ponape, Eastern Caroline Islands 96941

Dear Mr. Chairman:

On Wednesday, August 23, 1972, this office was orally requested to submit to the Senate Committee on Ways and Means a written opinion on the following questions:

1. Can the Mariana Islands District of the Trust Territory of the Pacific Islands negotiate separately with the Government of the United States for a future political status differing from that of the other five remaining districts?
2. May the Mariana Islands District of the Trust Territory of the Pacific Islands, by an act of the Congress of Micronesia, elect to be excluded from participation in a constitutional convention to draft a constitution for the future government of Micronesia?
3. If such exclusion is unlawful, what sanctions might be imposed against the Mariana Islands District, or its officials, should it or its officials not participate in such a constitutional convention?
4. If such exclusion is unlawful, what are the legal consequences for the Mariana Islands District with respect to its future political status should it participate in such a constitutional convention?
5. Our answer to the first question is in the affirmative.

The law governing the Trust Territory of the Pacific Islands includes, among other things, the Trusteeship Agreement for the Former Japanese Mandated Islands between the Government

of the United States and the Security Council of the United Nations, approved by both parties in 1947 (1 TTC at 101 (1); Calvo v. Trust Territory (1969), 4 TTR 506, 514).

Article 3 of the Trusteeship Agreement provides in part:

"In discharging its obligations under Article 76 (b) of the Charter [of the United Nations], the administering authority [Government of the United States] shall:

1. Foster the development of such political institutions as are suited to the Trust Territory and shall promote the development of the inhabitants of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned;" (underscoring added)

The Administering authority is required by Article 4 of the Trusteeship Agreement to act in accordance with the Charter of the United Nations. Article 73 of the Charter imposes upon every administering authority of a trust territory the obligation to:

"b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;" (underscoring added)

Further, Article 76 (b) of the Charter states that one of the basic objectives of the United Nations Trusteeship system is to:

"b. to promote the political, economic, social, and educational advancement of the inhabitants of the Trust Territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;" (underscoring added)

These parts of the law of the Trust Territory of the Pacific Islands place upon the United States the affirmative duty to develop self-government or independence under a form of government suitable to the particular circumstances of the Trust Territory and its peoples. The peoples themselves have the right to freely express their wishes in this regard, and the United States must recognize and accommodate those wishes. The use of the plural in reference to peoples within each Trust Territory clearly contemplates the possibility of a variety of political aspirations and developments by the people within different parts of the Trust Territory.

The people of the Mariana Islands District have, through their leaders and their legislators, and by their exercise of their franchise, indicated their desire to have very close ties with the United States differing from that of the other districts and have sought separate negotiations for the determination of their status.

Accordingly, it is the opinion of this office that separate negotiations between the Mariana Islands District and the Government of the United States regarding the future political status of that district are legally proper.

B. Our answer to the second question is in the negative.

The Trust Territory Bill of Rights contains the fundamental rights that must be guaranteed to all persons in the Trust Territory as required by Article 76 (c) of the Charter of the United Nations and Article 7 of the Trusteeship Agreement. Among these fundamental rights are included due process of law (1 TTC § 4) and equal protection of laws (1 TTC § 7).

There are no precise definitions of the phrases "due process of law" and "equal protection of the laws", in recognition of the inherent difficulty of exact delimitation of a concept that can be applicable to a wide variety of circumstances (16 Am Jur 2d, "Constitutional Law", §§ 486 and 545). Fundamentally, however, "due process of law" protects private rights from a denial of reasonable and fair legal process, whether judicial, administrative or in some other manner (16 Am Jur 2d, "Constitutional Law", § 546). "Equal protection of the laws" essentially guarantees that all

persons will be treated alike under like circumstances, with respect to rights and privileges on the one hand, and liabilities and obligations on the other. (16 Am Jur 2d, "Constitutional Law", §§ 487-488). These concepts are clearly part of the law of the Trust Territory (Ichiro vs. Bismark (1953), 1 TTR 57, 60-61; Mesechol vs. Trust Territory (1959), 2 TTR 84, 87-90).

If any administrative district of the Trust Territory is excluded by legislation from participation in a constitutional convention pertaining to the future government of Micronesia, then certainly the citizens of that district, particularly any citizen who in fact shares the political aspirations of the remaining districts, are being denied the opportunity to be heard, a basic aspect of due process of law (see Ichiro vs. Bismark, supra, 61), and are being treated in a significantly different and unequal manner than the citizens of districts which are authorized to participate.

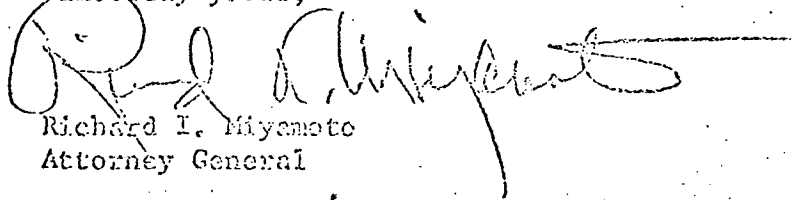
Therefore, it is our view that no district can be excluded by legislation from participation in any Micronesian constitutional convention so long as that district is a part of the political organization as it is now constituted under Department of Interior Order No. 2918, as amended, and Titles 2, 3 and 4 of the Trust Territory Code, unless that Order is amended to permit such exclusion or the constitutional convention bill authorizes each district to hold, whether mandatory or not, a plebiscite of its peoples to determine whether or not their district should participate.

C. Regarding the third question, it is impossible to reach any certain legal conclusion flowing from the failure of any administrative district to participate in a constitutional convention concerning the future governmental organization of Micronesia until the provisions of the constitutional convention act which is enacted are known and at what point in the process provided by such legislation the failure occurs. However, in general, public officials can be required by court order through a petition for and issuance of a writ of mandamus, or some similar judicial process, to compel performance of their duties and functions (see 52 Am Jur 2d, "Mandamus" generally). The exact applicability of such a writ would depend on the position of the official who failed to act, the discretionary or mandatory nature of the unexercised duty and other such circumstances. It

would seem likely, nonetheless, that a citizen of such a district would have standing to sue such an official and obtain an order compelling performance of his duties.

D. The fourth question is likewise not susceptible to legal conclusions of certainty without dealing with a specific set of circumstances involving participation in such a constitutional convention. However, it is our opinion that, generally speaking, based upon the history of events in the Mariana Islands District, participation in such a constitutional convention would not have any legal effect with respect to the desire of the Mariana Islands District to negotiate separately for a different form of political status.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Richard I. Miyamoto", with a long horizontal flourish extending to the right.

Richard I. Miyamoto
Attorney General