



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

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IN REPLY REFER TO:

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Honorable Roger C. Cramton
Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, D. C. 20530

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Dear Mr. Cramton:

Two questions have arisen. One concerns the power and authority of the Congress of Micronesia and the other the rights of the peoples of the several districts of the Trust Territory of the Pacific Islands.

The first question is: Can the Congress of Micronesia enact legislation which is effective in only five of the six administrative districts? Specifically, can the Congress of Micronesia enact legislation calling for a constitutional convention in all districts except the Marianas?

It is our opinion that the power and authority of the Congress of Micronesia which is derived from Secretarial Order 2918 would not permit such legislation. Secretarial Order 2918, as amended, creates a government to conduct the affairs of the Trust Territory of the Pacific Islands and in effect adopts sections 1 through 12 of the Code of the Trust Territory. This is so because the legislative authority given to the Congress of Micronesia does not extend to legislation inconsistent with those sections or titles. The system of government thus established is closely akin to the Federal-State system of the United States. There are six administrative districts; each one with its own legislature much the same as in our several states. These legislative bodies (local government) have power to enact laws which will extend to the whole of their respective administrative districts. This authority is subordinate, however, to territory-wide laws. See, generally, Title 3 of TTC. By the same token the power and responsibility of the general or "federal" government extends only to matters of territory-wide concern. See, 2 TTC § 1(1).

cc: Mr. Harry H. Almond

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Thus, since the question postulates legislation of territory-wide concern which would be operative in less than the whole territory, we believe that it would not be within the present power of the Congress to enact.

An amendment to Secretarial Order 2918 could provide the power to the Congress of Micronesia if that is deemed advisable.

The second question is: May the Marianas District, without specific authority from the Congress of Micronesia, hold separate discussions with the United States Government concerning a closer future political relationship with the U.S. than that which is envisioned by the Micronesian Joint Committee on Future Status for the other five districts?

It has been asserted that since the Joint Committee was established by a Joint Resolution of the Congress of Micronesia for the purpose of negotiating a future political status for the whole of Micronesia, the several districts are precluded from conducting separate status talks.

Without discussing whether or not a joint resolution of the Congress of Micronesia would have the same binding effect as an act of the legislature, we are of the opinion that the Joint Resolution could not have the effect asserted for it.

The legislative power of the Congress of Micronesia extends to all rightful subjects of legislation which are not inconsistent with, among other things, treaties or international agreements of the United States. The Trusteeship Agreement under which the territory is administered is an international agreement of the United States. The United States is required by this agreement to "foster the development of such political institutions [note the plural] 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..."

To hold that the ethnically and culturally different peoples of one geographically identifiable district (the Marianas) could not freely express their wishes to (negotiate with) the administering authority concerning the development of a political institution

(future political relationship) suited to them, though differing from some other form of political institution desired by the other districts, would be tantamount to denying them the rights guaranteed to them under an international agreement of the United States. The Congress of Micronesia is prohibited from doing this.

The Department of State has informally concurred in the views expressed herein. However, we feel it necessary to have your review and approval of these views before they may be presented as a United States Government position in connection with the conduct by it of negotiations leading to a future political status for the peoples of the Trust Territory of the Pacific Islands.

Sincerely yours,



Solicitor

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