

April 16, 1973

MEMORANDUM TO MESSRS. WILLENS, LAPIN AND CARTER

Re: Guam - Land Alienation in Legislative
History of the 1950 Organic Act

In an effort to determine whether or not there were land alienation or special privileges clauses suggested for inclusion in the 1950 Guam Organic Act, I discovered one provision in H.R. 7273, the principal bill which ultimately became the 1950 Act. There was brief debate on deleting the clause.

Section 5(n) of H.R. 7273, a portion of the proposed Bill of Rights, reads:

"No discrimination shall be made in Guam against any person on account of race, sex, language, or religion, nor shall the equal protection of the laws be denied: Provided, That the Legislature of Guam may enact such legislation as may be necessary to protect the lands and business enterprises of persons of Guamanian ancestry, and nothing in this act shall be construed to deny to the Legislature this authority."

According to Senate Report No. 2109, hearings were held before the Subcommittee of the Senate Committee on Interior and Insular Affairs to consider S. 1892 and its companion bill H.R. 7273.^{*/} Based on matters brought out

^{*/} It is not known if these are the same hearings as those containing the debate involving Senator Clinton Anderson.

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in these hearings, certain amendments were made to the bill. One of these amendments deletes the aforementioned clause.

In hearings held on April 19, 1950, discussion took place on Section 5(n). The debate centered around Senator Clinton Anderson, Mr. León-Guerrero and Mr. Won Pat. A portion of the debate follows:

Sen. Anderson: What is the purpose of that? (Sec. 5(n)) That is to say, that no Japanese...or no Hawaiian can...go into business or no person from the mainland may own any store or own any land...? ...if the legislature wants to provide that only Guamanians can conduct business in Guam, only a native-born Guamanian can do it. The legislature can pass such a law; is that right?

Mr. León-Guerrero: It does sound discriminatory.

(Mr. Won Pat tried to justify the language.)

Mr. Won Pat: I believe that particular phrase within the meaning of the constitution is not truly American...if you were to extend us these privileges, we do not mean to be discriminatory. I believe that this was largely phrased from the standpoint of paternalism, that is, to protect the native inhabitants from exploitation.

Sen. Anderson: There is a provisions [sic] in the laws of Mexico that protects native-born citizens...and make it somewhat difficult for nationals of other countries to acquire real estate in Mexico. Now if that is the purpose of this, it ought to be stated frankly so we will know what we are passing upon. If that is not the purpose of this, then something else must be the reason...I think it might even apply to business.

Mr. Leon-Guerrero: ...due to the shattered economy of the island...we felt that a certain period of time limitation would be justifiable under the circumstances. That is, about the land problem. ...we have submitted a proposed organic act, ...that for a certain time limitation after the passage of this act restrictions be made, not to native Guamanians, but the bona fide resident of Guam, and a bona fide resident of Guam needs not be a native-born Guamanian... I pass the buck on the business.

Sen. Anderson: "May enact such legislation..." Now, if that is not a clear statement of intent to bar everybody but Guamanians from business, I do not know how much clearer you could put it.

Mr. Won Pat: ...there are quite a number of businessmen from the mainland over there...In spite of the fact that the present agency, I mean government agency, for the island of Guam has the same policy that is just an inadvertence. I am in full accord that that provision should be stricken out of there.* /

Apparently, the only other reference to this limitation is found in a letter dated May 3, 1949 from J. A. Krug, Secretary of the Interior, to the President of the Senate supporting the inclusion of Section 5(n) as " ... essential in order that the local people may be protected against economic exploitation."^{**/} Secretary Krug does not elaborate further on his reasons for supporting the proviso.

* / Hearings on S. 1892 and H.R. 7273 Before the Subcommittee of the Senate Committee on Interior and Insular Affairs, 81st Cong., 2d. Sess., at 46-52 (1950).

** / S. Rep. No. 2109, 81st Cong., 2d. Sess., 7 (1950).

Senate Report No. 2109 states as the reason for deleting the proviso in Section 5(n) that "...it appears to authorize discriminatory, un-American laws which would penalize persons of non-Guamanian ancestry. Such a proviso would be contrary to American principles of equality."^{*/}

(The House Report No. 1677 preceded the debate which deleted the clause.)

Nancy Schuh

cc: Grant Morris

^{*/} Id. at 5.