

Remains

October 5, 1973

03

5

MEMORANDUM FOR MR. LAPIN

RE: REVIEW OF TRUST TERRITORY CODE

After having read through the Trust Territory code and over one hundred statutes of the second computer printout, the following generalizations can be made:

1. The Trust Territory and other possessions are rarely treated differently from the states in any substantive manner. ✓

2. The principle distinctions that are made between such possessions and the states are in the percentage allocation of appropriations under various grant-in-aid programs. ✓

3. The remaining distinctions are procedural in character, e.g. the High Commissioner of the Trust Territory is mentioned separately from governors of the states under the Communications Act of 1934, but his function of issuing valid identity certificates to applicants to the FCC for radio licenses is the same.

4. For the above reasons it is difficult to speak meaningfully about the constitutional application of such provisions to the states. Wherever there is a statutory maximum or minimum grant allocation that treats the

018307

Trust Territory differently, such allocation would probably be a violation of Fifth Amendment due process (e.g., *Bolling v. Sharpe*). However, since the Mariannas are apparently interested principally in regulatory statutes which almost uniformly treat the possessions as if they were collectively part of the United States or were states individually, constitutionality is rarely an issue.

5. Furthermore, often statutes which raise issues of constitutionality are most likely of little importance to a widely spread native island population of 14,000.

Despite the above reservations, I have set out the statutes according to the categories and interests that have been deemed of possible significance to the Mariannas in their negotiations:

A. Laws that apply solely in the Trust Territory

1. Micronesian Claims Act of 1971, 50 U.S.C. §§ 2018 - 2020h. The Act set up the Micronesian Claims Commission (MCC) under the Foreign Claims Settlement Commission (FCSC). The MCC consists of five members to be appointed by the Chairman of the FCSC in consultation with the Secretary of the Interior. Two of the members must be selected from a list nominated by the congress of Micronesia. The function of the MCC is to adjudicate and settle claims arising out of the Second World War, such adjudication to be made pursuant to international law and the laws of

the Trust Territory.

B. Laws that apply generally, but are uniquely applied in the Trust Territory

1. As distinguished from the Acts that follow under the major interest headings, this category would include essentially only grant provisions such as the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, 42 U.S.C. §§ 4551-93, the Older Americans Act of 1965, 42 U.S.C. §§ 3001 - 55, etc.

C. Laws that pertain to: taxes, customs, immigration, banking, labor, maritime

1. Taxes

a. Internal Revenue Code of 1954, 26 U.S.C. § 872. The provision deals with the gross income of non-resident aliens and expressly excludes from gross income of such persons interest derived from United States Bonds, series E and H, while they were residents of either the Trust Territory or the Ryuku Islands. Although the provision indicates that the Trust Territory is treated differently than a state for purposes of taxing non-resident aliens who formerly resided in the territory, it is hardly of major importance.

2. Customs

018309

3. Immigration

4. Banking

5. Labor

a. Emergency Employment Act of 1971, 42 U.S.C. §§ 4871 - 4883. Although this is a grant program that provides for financial assistance from the federal government to the states (including presently the Trust Territory) during periods of high unemployment, the Mariannas may want to consider participating.

b. Economic Opportunity Act of 1964, 42 U.S.C. §§ 2701 - 2995d. Again this Act is essentially a grant provision, but it presently funds the Job Corps and certain career training programs that might be of some value to the Mariannas. (The Trust Territory is presently included in the program under a special allocation formula and with a special protection from the requirement of swearing allegiance to the flag.)

c. Occupational Health and Safety Act of 1970, 29 U.S.C. §§ 652 - 3. The Act provides for the establishment of a commission to regulate occupational health and safety. It reaches commerce among the states (under § 652(f) the Trust Territory is treated as a state) and within the District of Columbia, other territories and possessions, but not within the Trust Territory. By reading the statute as a whole, the Trust Territory, unlike the other territories, is treated almost exactly like a state.

The Act is clearly constitutional under the commerce clause and Article IV, Section 3, clause 2 which gives Congress plenary control over the territories. There is no explanation as to why the Trust Territory is treated like a state rather than a territory, but such distinction may be of little practical value since Congress can reach almost any occupational activity within the states under the aggregation theory of the commerce power.

d. Vocational Rehabilitation Act (1968), 29 U.S.C. §41. This Act is also a grant provision, but might have some value to the Mariannas as it provides for job training of handicapped individuals. Presently the Trust Territory benefits from the Act, but under the usual differentiated allocation formula.

#### 6. Maritime

a. Merchant Marine Academy (1961), 42 U.S.C. §§ 1126b - 1. The provision concerns admission to the Merchant Marine Academy. Each state is allotted a number of admittees according to its representation in Congress, but the Secretary of Commerce, upon designation from the Secretary of the Interior, is authorized to admit four persons from the Trust Territory. Normally graduates of the Academy are entitled to positions in the merchant marine, but those from the Trust Territory must become citizens of the United States before they are accorded the same right. If such a provision were applied to a state,

it would be an unconstitutional denial of equal protection under the due process clause of the Fifth Amendment (Eolling v. Sharpe).

b. Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. § 1402. The Act, which treats the Trust Territory as if it were a state, regulates dumping of refuse in the ocean. Although it may not have much relevance for the Mariannas, it could be of potential importance to a people who probably derive their chief livelihood from the sea.

c. Functions and Powers of the Coast Guard (most recently amended 1970), 14 U.S.C. § 81. The provision confers upon the Coast Guard the authority to establish, operate and maintain aids to navigation for the protection of commerce and the armed forces. Included in the jurisdiction of the Coast Guard are all the national and territorial waters of the United States. Again, although this section may not have much relevance for island fishermen, it could be of potential importance as the Mariannas become more sophisticated in their use of navigational aids.

As a general postscript, I have the following suggestions to make about the project as a whole:

1. I can presently cover about 400 statutes a week which means that, at the earliest, I will not be through until the middle of November.

**018312**

2. Identifying all laws that treat the territories or a territory differently than the states does not seem to be a meaningful endeavor, since distinctions are rarely substantive and identification is time consuming.

I want to know of substantive distinctions

3. The six major interests appear to be incomplete. I would suggest that, at this point, both aviation and communications be added to the list. Although they might be irrelevant for the Mariannas now, both are completely subject to the commerce power of the federal government and could become a source of friction at such time as the Mariannas move into the twentieth century.

NO

4. For the above reasons I would like to assume more discretion to select only those laws that would seem to affect material interests of the Mariannas, and only point out discriminatory treatment within the statutes selected.

Gus Oliver

018313