

REPORT ON A CONSTITUTIONAL CONVENTION  
AND  
INITIAL LEGISLATIVE PROGRAM  
FOR THE FUTURE MARIANAS COMMONWEALTH

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This paper will present potentially useful information dealing with two areas currently under consideration by the Ad-Hoc Preparatory Committee on Transition in the Marianas, the Constitutional Convention and Initial Legislative Program.

By references to previous constitutional conventions, I will explore the steps and elements, particularly in the areas of staff assistance and research, important to conducting a successful constitutional convention.

Secondly, I will attempt to discuss the methods of planning for an initial legislative program and the research required for such an effort in the future Marianas Commonwealth. However, the political situation in the Marianas is unique thereby making analogy difficult.

In the preparation of this paper, I have relied heavily on studies published by the National Municipal League and the Council of State Governments as well as the proceedings of the First Constitutional Convention of Guam

1969-1970. The latter illustrates frequently what not to do, and may thereby be helpful in a negative way.

# I. Constitutional Convention

The decision has been made to hold a constitutional convention in the Marianas Islands. We are therefore not faced with the question of whether or not this approach is desirable. We are faced with how to accomplish this end in a manner which will benefit the people of the Marianas. One of the considerations -- indeed the primary objective of this paper -- is to try and approximate costs by pointing to previous constitutional conventions. For example, the fact that \$135,000 was required to complete Guam's First Constitutional Convention is interesting because in certain ways Guam's situation is similar to that of the Marianas. On the other hand, Guam's population is more than five times that of the Marianas and is located on one island, making the comparison a less effective one if population size and distribution are factors. In any case, three factors will greatly influence the cost of any constitutional convention -- preparation including research, staffing and duration.

## Preparatory Research

During the period 1966-72, constitutional conventions were held in 12 states. Special ad hoc preparatory

bodies were created in 7 of the 12 states to do advance research, prepare and publish relevant studies, submit substantive proposals, arrange for staff and facilities and perform other essential services. As a point of reference, the Recommended Phase I Budget suggests \$50,000 for "Studies and Planning" for the Marianas Constitutional Convention. The Ad-Hoc Committee in its Draft Report of 3/14/74 suggests that the MPSC or a "Special Planning or Preparatory Committee of the District Legislature" should guide this effort with "all appropriate assistance" to be provided by the "Secretariat." The Report recommends how this "Secretariat" should be staffed and suggests that funds should be provided by the United States Government through the Trust Territory Government.

The Constitutional Convention  
Preparatory Commission

There is a great variety in the nature, size and professional expertise of such groups.<sup>1/</sup> However, they do possess certain common characteristics. Their members are usually appointed by the governor alone or with participation by legislative leaders or assemblies and their research has been typically of a factual, background nature designed to provide information essential for informed

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<sup>1/</sup> See Appendix A.

basic decision-making and action. In size, they have ranged from 3 on the Arkansas Constitutional Convention Advisory Committee to 27 on the Maryland Constitutional Convention. The Constitutional Convention Preparatory Commission can be a study or a preparatory body or both. In most cases they employed a staff and some sought the assistance of law professors, political scientists and other experts. Funds required by the preparatory body are needed for three basic purposes: a) to secure a competent staff, b) to carry out its research and c) to publish its findings. The following examples will serve to illustrate how different states made use of the Constitutional Preparatory Commission:

Missouri - 1943 Missouri's Governor appointed the Statewide Committee for the Revision of the Missouri Constitution. In cooperation with the University of Missouri, which assumed sponsorship and coordination for the preparatory research work, the Committee published a number of pamphlets dealing with substantive topics of constitutional reform. These pamphlets varied in length from 16 to 105 printed pages. Unique among these publications was an "Organizational Manual" based on earlier constitutional conventions in Missouri and on the New York Convention of 1938. Included was a brief essay on "The Organization and Procedure of a Convention" prepared in 1919 by the Illinois

Legislative Reference Bureau. Its significance lies in its unique emphasis on the importance of the committee on style and drafting.

Alaska - 1955-56 Alaska's preparatory body, the Alaska Statehood Committee contracted with the Public Administration Service which prepared 12 mimeographed studies bound in three volumes. These studies ran from 21 to 84 pages and bore the following titles:

1. The State Constitution Within the American Political System;
2. Civil Rights and Liberties;
3. The Alaskan Constitution and the State Patrimony;
4. Suffrage and Elections;
5. The Legislative Department;
6. The Executive Department;
7. The Judicial Department;
8. The Constitution and Local Government;
9. State Finance;
10. Legal Structure and Apportionment;
11. Constitutional Amendment and Revision;
12. Initiative, Referendum and Recall.

Hawaii - 1950 In 1947, the Territorial Legislature of Hawaii created the Hawaii Statehood Commission to promote

the cause of statehood. This Commission then appointed a State Constitutional Committee, subcommittees of which were assigned specific subjects for study and eventual incorporation in a state constitution. During 1947 and 1948, the Legislative Reference Bureau of the Hawaii Territorial Legislature furnished background materials for these subcommittees. Upon the passage of an act in 1949 authorizing a Constitutional Convention for Hawaii, the separate studies were brought up to date and incorporated into a 396-page reference manual for the use of the convention delegates.<sup>1/</sup> Copies were also made available to legislators and to the general public.

New York - 1938 New York's was the most thoroughly prepared of all recent conventions.<sup>2/</sup> The Governor appointed the Constitutional Convention Committee composed of 52 members all of whom were distinguished for public service. In the Fall of 1937, six working subcommittees were formed, each aided by a research staff. Each worked on specific subjects likely to be considered by the Convention. Subsequently, each subcommittee published a volume incorporating

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1/ The Manual was published with financial assistance from the Hawaii Statehood Commission and the Secretary of the Territory.

2/ F. P. Grad, The Drafting of State Constitutions: Working Papers for a Manual (1967), last section, p. 12.

its research. In addition, five general reference volumes, including a compilation of all the state constitutions, were published by the Constitutional Convention Committee. A Twelfth volume consisted of a general index to all the other volumes. This collection formed an entire Constitutional reference library using almost two feet of shelf space. The cost was \$65,000 and total preparation time was less than one year. All preparatory research was completed by the time the Convention met.<sup>1/</sup>

Michigan - 1961-62 Michigan's Convention serves as a well-documented illustration of the organization and development of drafting and research services both before and during a constitutional convention. In 1960, the Governor appointed a 7-man Constitutional Reform Study Commission whose staff was drawn mainly from universities. Its duty was to delineate and describe major issues and areas for constitutional change. In December of 1960, the committee issued its preliminary report covering the following areas: 1) apportionment, 2) the legislative, executive and judicial branches of the government, 3) local government and 4) fiscal affairs. This same group plus four other persons then formed the Constitutional Convention Planning Committee

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<sup>1/</sup> Mr. Grad notes that the size and form of these materials made them difficult for many delegates to assimilate, a point worth remembering in the case of the Marianas.

whose purpose it was to develop a program for convention preparation, public education and legislation needed for the proper selection and functioning of a constituent assembly. Its final report was issued in February 1961 with further analysis of the problems discussed by its predecessor with the addition of education and corporations.

Immediately following approval of the convention by the people, the Governor created six citizen advisory committees instructed to canvas the areas of major constitutional reform and make specific recommendations. These were to function as sub-committees of the Constitutional Planning Committee launched the previous December. In June of 1961, the Constitutional Convention Preparatory Commission was set up by the executive. This eighteen-member board vigorously pushed preparatory activities. The Commission appointed three men to direct research.<sup>1/</sup> The Secretary of State was given charge of readying physical facilities and the Lansing Civic Center was chosen as the site of the Convention. At this point the executive sought \$100,000 from the legislature to finance the preparatory research and arrangements. The legislature's response was

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1/ William H. Combs, Staff Director, Dean of University Services at Michigan State; Charles W. Joiner, Associate Director, Professor and Associate Dean of the University of Michigan Law School; and Alfred H. Kelly, Chairman of the History Department, Wayne State University.



to create a joint legislative committee, having a budget of \$5,000. With no money coming from the legislature, the Governor asked the Kellogg Foundation for a subsidy. This private group donated \$85,000 to the cause of preparing for the Constitutional Convention.

The Preparatory Commission's Staff submitted its report to the full Commission in October of 1961. By this time 18 study topics had been identified and assigned to various scholars. In all, seventeen papers were given to the Convention.

Rules, Staffing, Library and  
Other Preparatory Commission Activities

Of all the constitutional commissions set up in recent years for the expressed purpose of preparing for a constitutional convention, the Michigan experience of 1961 again provides the most detailed account of its other preparatory activities.

For example, the Commission drafted a set of rules of procedure which were later adopted, with only minor changes, by the Convention itself. This would appear to be a practical example for the Marianas Convention to follow.

The Commission arranged housekeeping chores from printing and reporting to providing each delegate with his own notebook. An extremely important accomplishment was

the assembling of a library. The Commission also provided each delegate with annotated copies of the constitutions of Michigan and the United States along with a selection of studies, especially the useful materials prepared by the Citizens Research Council of Michigan and publications of the National Municipal League's State Constitutional Studies Project.

The Commission provided the names of scholars, knowledgeable in constitutional matters, who could be consulted during the Convention. Another list of names of people recommended by the Commission or by special interest groups was provided as well.

The question of staffing the Convention was undertaken by the Michigan Commission also. The Commission established an "Office of Research and Drafting" where there would be ten professionals such as lawyers, economists and political scientists who were competent researchers or accomplished draftsmen. The Michigan Convention readily recognized the need for a professional research and drafting support. The plan was to have these professionals work with various convention committees and allow the director to retain a degree of supervisory and editorial control. In lieu of a single director, the three aforementioned persons were appointed as co-directors and they and their

assistants were placed under the office of the president of the Convention.

Salaries were recommended by the Commission's staff to be higher than usual in order to acquire the best possible assistance. The three co-directors of research were the highest paid persons in the Convention, each receiving a salary of \$1,500 a month. The Michigan Convention paid all of its research and consultative nondelegate personnel, including the three directors, nearly \$90,000 for the seven-month period of the session. Since this represents just under one-third of the total expenditures for nondelegate's salaries, we may assume that close to \$200,000 was expended for this purpose alone.

Non-partisan selection of research staff was achieved by the use of civil service testing procedures. Six research assistants were hired immediately upon the appointment of the three co-directors of the Convention. Three of the researchers were lawyers and three were social and political scientists. The co-directors were also in charge of library services, whereupon they arranged for the employment of a three-man staff of librarians. The Convention also employed eight specialists in a consulting capacity.

During the Convention, this same staff performed a variety of functions which ranged from drafting to providing

individual delegates with technical information either directly or through the use of outside experts. Under Convention rules, all delegate proposals had to undergo staff review; it was apparent that the staff and the directors played a prominent part in advising the delegates on formulating their proposals and clarifying their ideas.<sup>1/</sup>

Maryland - 1967 The 1965 Maryland Constitutional Convention Commission, among its other activities, prepared an elaborate report, including a draft constitution with extensive commentary. The document provided invaluable assistance to convention delegates and even served as the basis for convention deliberation.<sup>2/</sup>

Funding of the Constitutional  
Revision Commission

Financing for constitutional commissions has come from either public funds or private grants. Most are funded publicly, and at least 36 commissions deriving all or part of their support from public funds received appropriations from the state legislature. The average funding of the 42 commissions on which financial data are available

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<sup>1/</sup> The helpful detail on the Michigan Constitutional Commission was provided in Grad, last section, pp. 43-48.

<sup>2/</sup> Thirty Years of State Constitution Making: 1938-1968 (National Municipal League, 1970), p. 40.

exceeded \$97,000. If the New York commissions are excluded, the average would become close to \$67,000. However, no attempt has been made to adjust these figures for present inflated costs, and the time period covered is thirty years. Therefore, the average funding might be closer to \$75,000 excluding New York's four commissions.<sup>1/</sup>

According to data provided by the various commissions, major expenses were for travel and personal expenses of commission members, staff salaries and expenses, printing costs and postage, and consultants' fees. Nearly all the commissions reimbursed members for travel and other expenses but few paid additional compensation.

General Data on Constitutional  
Commissions of Potential Relevance  
to the Marianas Convention

Size - The range is from 3 members on the Arkansas Constitutional Convention Advisory Commission (1968) up to the maximum of 67 on the California Citizens Legislative Advisory Commission of 1959. The average size was 20.2, with an average of 18.7 appointive members.<sup>2/</sup>

Membership - Members are either appointive or ex officio. Statutes or resolutions creating at least a

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<sup>1/</sup> For further details, see Appendix B.

<sup>2/</sup> Thirty Years of State Constitution Making: 1938-1968, p. 43.

third of the constitutional commissions required representation of the major political parties. Geographical distribution was a major factor in selection of some commissions, sometimes by requirement. For example, membership of the Kentucky (1950) and New Mexico (1963) Commissions was based on state judicial districts. Government officials and major interest groups have been well represented with the legal profession dominant.

Structure - Each of the 62 commissions in the last 30 years has been headed by a chairman. Most selected one or more officers in addition to the chairman.

Staff - Most of the commissions employed their own either on a full-time or part-time basis. A typical staff consisted of an executive director, a research assistant, at least one secretary and often a legal counsel. By contrast, the New York commissions of the late fifties each employed a counsel, associate counsel, executive director, associate director, executive assistant, office manager, administrative assistant and a clerical staff. In addition, they solicited the help of consultants from universities throughout the nation, as well as from other New York agencies.

Those bodies having no formal research staffs of their own utilized the assistance of existing research

units, such as universities and bureaus of governmental research.

Procedure and Work - Nearly all the commissions studied worked through committees which did the bulk of the preliminary work. The number of meetings was dictated by the commission's mandate. For example, the Kentucky Revision Commission of 1950 met over a period of six years averaging one meeting per month, or approximately 72 plenary sessions. More common were short-term commissions meeting from 3 to 15 times.

Public Hearings - The 1959 California commission held 12 public hearings. The Florida Constitution Revision Commission conducted five hearings during 1966 and distributed them geographically over the state.

Duration - Life of constitutional commissions during the last 30 years varied from less than two months in the case of Pennsylvania or at least 72 months for the Kentucky Constitutional Review Commission.

Public Relations - Most commissions employed one or more methods of informing the electorate about their work, though generally speaking, public relations work seemed to be of secondary concern. Most commonly employed were press releases. Some commissions used public hearings. Four states held public forum throughout the states: Kansas (1961), New Mexico (1963), Maine (1961) and New York (1956).

Occasionally, special sessions were held for the press or the use of the media was employed. Special mailings were used by some states, sometimes in the form of a special information sheet.

However, the chief means of educating the electorate on the issues were partial and final reports. For some commissions, they were the only effort at public relations.

Massive efforts undertaken by such groups as the League of Women Voters have attempted to focus the public attention on constitutional issues, typically with light success.<sup>1/</sup>

#### The Constitutional Convention

The enabling act - The purpose of the enabling act is to facilitate the selection of delegates and the operation of the convention. Though it need not go deeply into matters of organization, it is usually necessary unless there is a self executing provision already present in the state constitution.

The enabling act normally deals with the selection of the delegates -- their number, qualifications, basis of

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<sup>1/</sup> Considering the probable lack of knowledge of such important matters on the part of the people of the Marianas, it would seem prudent to emphasize this area.



selection,<sup>1/</sup> method of nomination and election, date of the election, administration of the election and the method of filling vacancies. The enabling act will also authorize funds in an amount adequate to finance all convention needs, including official preconvention activities. It should cover accounting practices as well.

Compensation of delegates and a schedule for the 27 constitutional convention's work round out the jurisdiction of the typical enabling act for a constitutional convention.

The delegates - The number of delegates to the 27 constitutional conventions held during the 30-year period 1938-1968 ranged from 40 in the limited conventions in Virginia to 481 in the 1938 New Hampshire unlimited body. The average number was 170. For unlimited bodies the average was 202, for limited conventions, 129.

Most delegates were elected from state representative, state senatorial or congressional districts while a few were elected at large. The New Hampshire delegates were elected by towns and city wards, thereby explaining their great number. Of the delegates to the 1950 Hawaii convention, two-thirds were from special districts and the

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<sup>1/</sup> California and New Hampshire constitutions provide that delegates shall be chosen in the same manner as members of the legislature.

remaining third were elected at large, as were all delegates to the Alaska convention. Alaska in 1955 had 55 delegates.

Delegate expenses - Delegates to all the studied conventions were allowed travel and per diem expenses, with the exception of Rhode Island delegates to the 1964-69 convention, who were reimbursed for travel expenses only. Since 1960, only in Rhode Island have delegates to unlimited conventions, the kind the Marianas will be having, who assembled for any extended period of time received no salary payment.

For example, Michigan delegates received \$1,000 a month for seven months; in Connecticut, compensation was \$2,000 for the four months' duration of the convention; the same held for Maryland as for Connecticut; interestingly, delegates to the Hawaii convention in 1968 received the same compensation as legislators -- \$2,500 plus per diem (\$32.50 for Oahu delegates, and \$45 for those from other islands) for approximately three and a half months. New York compensated its delegates \$15,000 each for less than six months' work. Officers have not typically received additional compensation.

With respect to number of delegates, over half the states leave this detail up to the legislature, to be decided in the enabling act and ultimately approved by the

voters in the referendum on the call for the convention.

The Marianas, of course, will not be conducting a convention call. Therefore, it should be kept in mind that there must be enough delegates to provide adequate representation for the major population elements -- geographic, economic and political. Yet the number must be small enough to permit sensible organization and efficient procedure. A sensible range is 40 to 100 members.

Convention Organization - There are commonly a president or chairman, one or more vice presidents or vice chairmen, and a secretary. Immediately below this level there exists a typical convention organization of administrative assistants, parliamentarians, assistant secretaries, clerks, sergeant-at-arms, etc. There may also be floor leaders.

Although informal agreement on the person to be elected president has usually been reached before the convention meets, he is usually formally elected in plenary sessions. Convention vice presidents have frequently been to represent geographic groups or other factions. Thus, in Hawaii in 1968, there were five vice presidents, two from Oahu and one from each of the neighboring islands. This might provide a useful example for the Marianas.