

April 4, 1974

Working File
Preliminary
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MEMORANDUM

TO: Mr. Willens

FROM: R. Kelley

RE: Marianas - Applicability of Federal Laws Under the
Guam Formula

My memorandum of March 26 listed the titles and chapters of the U.S. Code which I proposed to analyze under the Guam formula. As we discussed, my memoranda on the various Code titles were to be written to serve as appendices to a cover memorandum to the client.

Attached for your review and comment is a draft of the first such appendix that I have prepared. The draft analyzes the pertinent chapters of Title 15 of the U.S. Code (Commerce and Trade) under the Guam formula. Except for the chapters dealing with the Small Business Administration, the chapters analyzed consist of regulatory legislation. I have limited my analysis to the words of the statutes; I have not researched the federal regulations or case law. If the form and substance of the attached draft are satisfactory, I will go forward along the same lines to prepare memoranda on the other Code titles listed in my memorandum of March 26.

With respect to federal financial assistance legislation, Jim Leonard has asked Fran Mahoney of his office to supply me by Monday, April 8, with a list of the federal grant programs that

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Leonard's people believe constitute the ideal package of federal aid legislation for the Marianas. I will check this list against the Code chapters that I propose to analyze to insure that my analysis covers the legislation in the Leonard package.

With respect to such federal grant and financial assistance legislation, it is my tentative thought that the Guam formula may have to be refined to reach the result we want. Where there is a set-aside formula for Guam that is lower than that prescribed for the several States, we may win too much by having the Marianas treated as a State. For example, the Act for Older Americans has a set-aside formula of one-half of one percent for the several States, and one-fourth of one percent for Guam, the Virgin Islands, and the TTPI. If the Marianas were treated like a State, its 15,000 people would be on a par with the States for purposes of the amounts distributed under the set-aside formula, while the territories with larger populations would not. The U.S. team may accept the formula for application to federal aid legislation out of ignorance of such effects, but it is unlikely that Congress would fail to observe these implications.

We may also want to write in a specific provision stating that for the local "matching" share in federal programs, the federal program administrator will have broad discretion to waive the local matching requirement and increase the federal share to cover the local amount that has been waived. There is a precedent for this in the case of the Indian tribes and the Alaskan Eskimos under the Law Enforcement Administration Act. 42 U.S.C. § 3731(c).

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Alternatively, we may wish to specifically provide that the Marianas will not be subject to the matching requirements for a certain number of years. As my analysis of the other Code titles proceeds, I will continue to test these problems.

cc: Mike Helfer

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TITLE 15: COMMERCE AND TRADE

This memorandum discusses the major provisions of Title 15 (Commerce and Trade) of the United States Code that may be pertinent to the Marianas. These provisions are (1) the antitrust and trade competition laws, (2) securities legislation, (3) aid to small business provisions, (4) regulation of insurance, (5) regulation of flammable fabrics, (6) motor vehicle safety legislation, (7) fair packaging and labeling legislation, (8) legislation for the special packaging for the protection of children, (9) consumer credit provisions, and (10) regulation of interstate land sales.

1. Antitrust and Trade Competition Laws

These laws comprise the Sherman Act, the Clayton Act, and the Federal Trade Commission Act.

The Sherman Act, 15 U.S.C. § 1-7, prohibits contracts and combinations in restraint of trade and commerce. The Clayton Act, 15 U.S.C. § 12-27, makes illegal discriminations in price or in the granting of rebates, commissions or services in commerce. The Clayton Act also forbids the acquisition by a corporation of another corporation where the effect of such acquisition "may be to substantially lessen competition, or tend to create a monopoly." 15 U.S.C. § 18. The Federal Trade Commission Act, 15 U.S.C. § 41-58, makes unlawful the use of unfair methods of competition in commerce,

the use of unfair and deceptive acts and practices in commerce, and the dissemination of false advertisements.

These three statutes apply to Guam differently than they do to the States. With respect to Guam, the three statutes govern intra-territorial activity. With respect to the states, only interstate activity is within the scope of these statutes. Thus, the Sherman Act outlaws restraints of trade or commerce "in any Territory of the United States," 15 U.S.C. § 3, but for the states the Sherman Act only outlaws restraints of trade or commerce "among the several states." 15 U.S.C. § 1 (emphasis supplied). Similarly, the Clayton Act regulates intra-territorial activity since "commerce" is defined in that Act as trade or commerce "within . . . any Territory, or any insular possession . . . of the United States." 15 U.S.C. § 12 (emphasis supplied). Intra-state activity, on the other hand, is not covered by the Clayton Act, since with respect to the states "commerce" is more narrowly defined to mean trade or commerce "among the several States." Id. The Federal Trade Commission Act defines commerce in terms identical to the Clayton Act, i.e., "among the several states" and "in any territory." 15 U.S.C. § 44 (emphasis supplied).

Under the Guam formula, the antitrust and trade competition laws discussed above would be applied to the

Marianas as they are applied to the several states. Consequently, activity within the Marianas not affecting interstate or inter-territorial commerce would not come within the structures of these laws under the Guam formula.

2. Securities Legislation

Federal law relating to the issuance and regulation of various securities is contained in Chapters 2A through 2D of Title 15. These chapters reach transactions which involve the use of the mails or facilities of interstate commerce, and they contemplate state regulation of related intrastate activities. Under these chapters, Guam is treated in a manner no different from the several states. For example, the term "interstate commerce" in the Securities Act of 1933, which provides for the registration with the Securities and Exchange Commission of new issues of securities, is defined as "trade or commerce . . . among the several states or between . . . any Territory of the United States and any state or other Territory . . ." 15 U.S.C. 77b(7). Guam is included within the definition of a Territory in the Securities Act of 1933, since that Act defines Territory to include "the insular possessions of the United States." 15 U.S.C. 77(b)(6).

In general, Chapters 2A through 2D of Title 15 provide for (1) registration with the Securities and Exchange

Commission and regulation of disclosures in connection with the distribution of new issues of securities; (2) the requirement that bond issues of substantial size be subject to certain prescribed requirements as to the indenture provisions and qualifications of the indenture trustee; (3) the registration and regulation of securities exchanges and of persons who act as brokers and dealers in nonexchange securities transactions; (4) regulation of holding companies with subsidiaries engaged in the gas and electric utility business; (5) regulation of investment companies; and (6) registration of those who act as investment advisers.

Apart from enforcement activities of the Securities and Exchange Commission, the statutes afford civil remedies for fraud and related injuries to investors, which are in addition to remedies at common law or under any local, State or Territorial statute.

As stated above, these chapters apply uniformly to Guam and the States. There does not appear any need for the Marianas to request an exception to the application of these chapters.

3. Aid to Small Business

Chapters 14A and 14B of Title 15, 15 U.S.C. §§ 631-639, provide for a variety of lending and assistance programs to small business. These programs are administered by the Small Business Administration.

The definition of the term "United States" in Chapter 14A and the definition of the term "State" in Chapter 14B include the "territories and possessions of the United States." 15 U.S.C. §§ 633, 662(4). Small business concerns in Guam, therefore, are eligible for the programs of assistance in Chapters 14A and 14B on the same basis as are such concerns in the several States.^{*/} Consequently, under the Guam formula, small business concerns in the Marianas would be eligible for this assistance in the same manner as small businesses in the States.^{**/}

4. Regulation of Insurance

Chapter 20 of Title 15, 15 U.S.C. §§ 1011-1015, reflects a congressionally-declared policy that the continued regulation and taxation by the states of the insurance business is in the public interest. This Chapter provides that no Act of Congress shall be construed to impair or invalidate state laws taxing or regulating the insurance business unless such Act specifically relates to the insurance business. 15 U.S.C. § 1012.

Chapter 20 specifically includes Guam in the definition of the term "State." 15 U.S.C. § 1015.

^{*/} The Small Business Administration has a field office in Agana, Guam. Small Business Administration, SBA Business Loans (January 1974).

^{**/} The Trust Territory of the Pacific Islands is specifically included in the definition of the term "United States" in Chapter 14A, 15 U.S.C. § b33. However, the term "State" in Chapter 14 B does not specifically name the Trust Territory, but rather defines "State" to include "the territories and possessions of the United States."

5. Regulation of Flammable Fabrics

Chapter 25 of Title 15 prohibits the manufacture for sale in "commerce," or the transport, sale or offering for sale in "commerce" of any fabric or product which fails to meet the standards for flammability set by the Secretary of Commerce. 15 U.S.C. § 1192. The Federal Trade Commission is charged with enforcement of the provisions of Chapter 25.

The term "commerce" is defined to include commerce "in any territory of the United States," or "between any such territory and another." 15 U.S.C. § 1191(b). The term "territory" is defined as including "the insular possessions of the United States and also any territory of the United States." 15 U.S.C. § 1191(c). While Chapter 20 thus regulates intra-territorial commerce, with respect to the states it reaches only interstate commerce, since commerce is defined with respect to the states as "commerce among the several states. or with foreign nations." 15 U.S.C. § 1191(b).

Consequently, under the Guam formula, the Marianas would be treated as a state for purposes of Chapter 20, and intra-territorial activity would not be covered under that Chapter's provisions.

6. Motor Vehicle Safety Legislation

Chapter 38 of Title 15 empowers the Secretary of Transportation to set safety standards for motor vehicles. The Chapter prohibits the offer for sale, or sale in inter-

state commerce of any motor vehicle or item of motor vehicle equipment that does not conform to the applicable standards. 15 U.S.C. § 1397(a)(1). However, this prohibition does not reach used vehicles or equipment, i.e., transactions "after the first purchase . . . in good faith for purposes other than resale." 15 U.S.C. § 1397(b)(1).

While Chapter 38 is applicable to Guam by virtue of Guam's inclusion in the definition of the term "state," intra-Guam transactions are not covered by the Chapter. Interstate commerce is defined solely as "commerce between any place or a State and any place in another State, or between places in the same State through another State." 15 U.S.C. § 1391(8)(9).

Since neither used vehicle and equipment nor intra-territorial activities transactions are covered by the chapter, it does not appear that the applicability of Chapter 38 presents any special problems for the Marianas.

7. Fair Packaging and Labeling

Chapter 39 prohibits the distribution in "commerce" of any consumer commodity whose package or label does not conform to federal packaging and labeling standards. 15 U.S.C. § 1452.

The term "commerce" is defined to include interstate and inter-territorial commerce, and "commerce within any territory or possession of the United States not organized with a legislative body." 15 U.S.C. § 1459(e). Since the Marianas will have a legislative body in its new political status, intra-Marianas activity will not be covered by Chapter 39's provisions.

Moreover, since Guam is treated in the same manner as a state under Chapter 39, i.e., only inter-territorial activity is reached, Chapter 39 will apply to the Marianas under the Guam formula in the same manner as it applies to the states.

8. Special Packaging for Protection of Children

Chapter 39A empowers the Secretary of Health, Education and Welfare to set standards for the special packaging of any household substance if he finds that special packaging is required to protect children from serious injury resulting from handling or ingesting such substance.

Chapter 39A contains no definitions regarding the scope of coverage with respect to states and territories. The term "household substance" is defined to mean "any substance which is customarily produced or distributed for sale or consumption or use, or customarily stored, by individuals in or about the household" and which is a certain type of fuel, . . . poison, drug, etc. as defined in the Chapter.

The Chapter does provide for federal preemption. Thus, "no State or political subdivision thereof" shall establish standards different from any federal standards promulgated under Chapter 39A.

It appears from the language of the Chapter that the Chapter's provisions apply to both inter- and intra-state activity. There is no reference to coverage of the territories in the Chapter. Further research is required to determine if the Chapter is applicable to Guam.

9. Consumer Credit Protection

Chapter 41 contains three subchapters dealing with, respectively, (1) disclosure to consumers of the cost of credit, (2) restrictions on garnishment, and (3) preparation and use of credit reports. Only Subchapter 1 is discussed here, as the provisions of the other subchapters do not appear pertinent to the Marianas.

Subchapter 1 empowers the Federal Reserve Board to prescribe regulations to carry out the purposes of the subchapter, which are defined as "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. §§ 1601, 1604. Administrative enforcement is lodged with a variety of federal agencies that regulate banking activities and overall enforcement responsibility is placed in the Federal Trade Commission. 15 U.S.C. § 1607.

Subchapter 1 applies to all extensions of credit and credit sales. No distinction is made between inter- or intra-state transactions, presumably because the credit system, as dependent on the federal banking system, is a subject for federal regulation. The Subchapter expressly provides that it does not affect the laws of any state relating to disclosure of information in credit transactions, except to the extent such state laws are inconsistent with the Subchapter. 15 U.S.C. § 1610. The term "State" includes "any territory or possession of the United States." 15 U.S.C. § 1602(p).

The provisions of Subchapter 1 of Chapter 41 would apply to credit transactions in the Marianas in the same manner as is applicable to transactions in the states. It does not appear that a special exception or treatment for the Marianas is necessary.

10. Interstate Land Sales

Chapter 42 makes it unlawful for any land developer to use the mails or interstate instruments of commerce to sell or lease any lot in a subdivision, unless a registration statement has been filed with the Secretary of Housing and Urban Development, and unless a property report disclosing prescribed information is furnished to a purchaser before the signing of the contract. It is also made unlawful to use any scheme to defraud in connection with the sale or lease of subdivision lots or to misrepresent any information in the registration statement or property report. 15 U.S.C. § 1703. Chapter 42 defines "subdivision" as land divided into fifty or more lots for sale or lease as part of a common promotional plan.

Chapter 42 applies to Guam, and does so in the same manner as it applies to the states. "Interstate commerce" is defined solely as "trade or commerce among the several states." 15 U.S.C. § 1701. The "territories and possessions of the United States" are included in the definition of the term "State." 15 U.S.C. § 1701(8).

It does not appear that a special exception is desirable to the application of Chapter 42 to the Marianas.

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MEMORANDUM FOR ASSOCIATES WITH MARIANAS PROJECTS

Subject: Schedule of Next Session

I have just been informed that the next session of negotiations will begin on or about May 15, 1974. Preliminary meetings with the Commission will begin on Monday, May 6. Accordingly, I will be leaving for Saipan on or about May 2.

I would like to discuss with each associate the status of his or her project and anticipate that everyone will extend themselves to the fullest extent possible to meet the above timetable.

H. P. Willens

info copies: Ms. Schuh
Mr. Mode

Ms. Kramer
Mr. Helfer
Mr. Kelley
Mr. Carter
Mr. Lake
Mr. Thompson

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