

AdeGraffenried:8-7-74:kkc

MEMCON: U.S./MPSC LAWYERS GROUP

Participants

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Date:

6 August 1974, 10:00 A.M., J.M. Wilson's office

JW - COM extended to 9 AUG (Friday)

Salii amendments

1. apply ^{compact to} all districts unless 2/3 in district disapprove; ^{changed a dist. request} ^{from 3/4 request} ^{votes a} ^{request} ^{to vote}
2. Traditional ^{status} ^{US} ^{entitled to vote}
3. Pleb w/ CONCON ref @ same time

HW - Saw dispatch where Salii notes no pleb. until '77

JW - This is because of linking ^{these} 2 topics; HICOM ^{has a} note this ^{approach} unacceptable and will req. ^{wire a} veto.

- Also ² new Bills ^{relative to} CONCON

^{one} Marshall] that ^{ref} ^{vote} CONCON election ^{issue of} the products.
^{one} Palau	

HW - Understand Ad Hoc Rep ^{is} to be ^{official} part of record; does US have copy?

JW - Not yet, is being printed, ^{also} awaiting E. Pangelinan transcript.

HW - Members MPSC would like copy.

JW - On sep. administration

- in past we talked about MDL action, ^{from} US point of view, MDL

resolution might contain following

1) ~~request~~ ^{request} from MDL to US, as admin auth

2) ~~req. ad auth~~ ^{to} sep. Mar admin from other dist. of TTPI,

including:

- sep. of executive function ~~further activity~~ *L. France*
- non-part. of MD in COM *+*
- request COM relieved further repr over MD affairs
- sep. financial support
- fair share TTPI common prop.
- non-part. in Mar. in CONCON
- relocat. of capital from Saipan

On timing, sep. adm should take effect "as soon as poss." as determined by USG in consult with MDL and dist. leadership.

This provides max. flex.

HW - Chairman has asked for a draft, we will prepare along these lines; MDL may want hearings due to importance of subject. This ought to be treated sep. from public lands issue; had thought to treat these 2 together. Had thought TTPI not take action to return land without consultation with district legal entities and dist. entities.

JW - For your info only, US has notified leadership that if COM not act appropriate

then USG is prepared to act by executive action *to transfer public lands* *request of district as*

HW - Matter *for Marinas* is complex due to fact there is no public corp. law structure. So is slow and deliberate matter.

JW - U.S. execut. action would be simple; eg. have Sec. Int. order HICOM to effect policy statement as each dist. undertakes approp. action.

HW - U.S. thought about kinds of assistance and legislation the dist. will need under Phase I and sep. admin.

JW - HICOM has asked TTPI staff to undertake review of what sep. adm. of Marianas required in Ex. side of the house.

HW - Who is looking at legislative side?

JW - No one.

on public lands legislation

HW - Dist. Legis. doesn't have any assistance; realize is a part of self-government but don't want Marianas to make important mistakes in undertaking respon. of self-government/

JW - In talking with E.P. realize that these issues ^{from 1970} would be examined before Phase I.

HW - Perhaps ^{MPSC} ~~rest~~ ought to consid. creating a commission to examine w/USG what steps are needed ^{for legislative action under separate administration}

JW - Is OK with US, you may want to know we

~~HW~~ (Have asked OMB to clear funds request for Phase I.

HW - Would these monies be made available to Marianas before signing ^{agreement?} ~~agmt?~~

JW - ^{Actual} ~~Approp.~~ of funds would be condition^{ed} upon signing of ^{the} ~~an~~ agreement.

Item 6 - AGENDA

MH - We had some issues remaining in ^{item} 5. ~~the special exceptions~~; could we start here? ^{Perhaps with US District court proposal?}

JW - ^{Yes.} The US Dist. court proposal hasn't changed from original proposal; extending jurisd. Dist. court of Guam and renaming it as W. court of Pacific.

MH - Not have sep. judge?

JW - No

HW - US covenant doesn't indicate this.

JW - Yes it does; covenant is intended to reflect this original stance.

Is simple language.

MH - In Guam, the court is not a US Dist. Court in sense ^{that} ~~of~~ PR courts were federal courts, although PR courts were not Art. ^{III} ~~III~~ courts.

HM - ^{US} Code created a court ^{for Guam} and gave it jurisd. over ~~some~~ federal matters and some

^{local} ~~jurisd.~~ ^{over} is extremely elastic approach by giving it jurisd. over such local matters as Guam government wants it to have.

MH - MPSC approach does not differ too much in this latter approach. Was deemed desirable to have separate fed. dist. ct. for Marianas with MDL auth to give jurisd. over local matters as it seems appropr

JW - reason for dual court was there wouldn't be enough federal cases to warrant separate court for Marianas.

MH - Court reorganization in Guam giving more jurisd from fed. courts to local courts was due to tremendous back log in fed. cts.

JW - We need to examine this then. We felt local court wouldn't have suff. work load. ~~We will examine~~

MH - If we have fed laws apply under interim formula vastly ^{expanded legal} ~~expanded~~ issues ^{will} ~~will~~ ^{come} before local Marianas ct.

JW - Yes, but only have 15,000 pop.

HM - _____

HW - US Dist Ct, Guam not created pursuant to Constit. (Art III) and is a special court, we feel that while we might not have an Art. III court at first, would want later.

JW - Fed. court could act as ct. of appeals for local cases.

MH - In Guam, court gives ^{acts} as both ct. of orig. jurisd. and ct. of appeals.

JW - We have no great difficulty with this.

MH - If we intend to give ^{criminal} ~~legis~~ auth. to vest this ct with local jurisdiction then status agreement should explain issue in more depth.

HM - ^{draft} US ~~law~~ addresses this . . .

HW - but this doesn't satisfy technical requirements to meet our needs.

JW - Have no prob. w/giving fed court such jurisdiction over local matters as local legis. determines. We can accept this approach.

HW - Now advising clients to take something less than an Art. III court. New draft is shorted and specifically commits US to estab. sep. federal court for Marianas and a judge appointed. ^{No} need to have sep. judges for Guam and Marianas, however.

HW - We also feel that quality ^{judicial system} of and high standards of federal judiciary would be healthy for Marianas as it grows. Is needed for the future, at least.

HM - We can examine former organic acts for language.

JW - We will also examine new MPSC language.

HW - Timing ^{is an} issue, ^{we feel the court} should be created same ~~as~~ time fed laws extended.

JW - True, need court to interpret fed. laws. ^{lets go on to} Social Security issue. ~~that~~

US draft says it would rebate Soc. Sec. taxes.

MH - yes, both drafts same on this point.

MH - 2 issues involved

(1) existing TTPI Soc. Sec. laws ^{relative to Marianas} folding into US Soc. Sec system;

need U.S. experts to tell us how to do it.

(2) ^{which is} BAIDS tax, ^{US tax} which supports Soc. Sec. trust funds should be phased.

into Marianas system. Eco. consult feels that ^{because} employee deduction tax is now

at 2% (1% by employee 1% by employer) and US is 10% tax ^{deduction there} would be too big a

jolt; ^{MPSC} so wants phase-in over 10 yr. period, ^{requirement is} want a phase in of 1% increase

a year ^{until the 2 are equal.}

JW - How is Guam handled? suppose it was phased in at five years organic act

MH - Informal contacts with Soc. Sec. Admin. note that loss to US system would be minimal.

JW - Would have to talk to USC first.

MH - Covenant language would be broad, leave specifics to experts to implement.

HW - We know how USC feels about spec. treatment on Jones Act, and ^{are aware of the} fact that

some exceptions ^{are} made for other territories.

MH - ^{Jones Act} not now apply to TTPI and ^{this has} no particular adverse affect on Guam.

JW - Yes, but not a real test. If we want to exclude Marianas should talk to Won Pat to get Guam excluded also.

JW - ^{there will be} \$20 m for Tinian - just for docks, dredging. ^{So sleeping will be nice and}

MH - fish processing industry planned; A. Samoa has success ^{in fisheries} because it is

exempted from Jones Act and special tariff treatment ^{less} for fisheries products.

Frankly, MPSC wants exemption from Jones Act because

We
MH - ~~So~~ want to promote fishing industry for Marianas in same manner.

We'll examine this.
JW - On customs/duties (Item 6) no reason to make exceptions for Marianas from Guam treatment. Have agreed that we would try to get ^{GATT} special treatment under ~~GATT~~.

MH - US draft does treat Marianas differently from Guam; as drafted, Guam can restrict imports from Marianas because it doesn't have same restrictions.

AS - US const. explicit in prohib^{ing the} states (and territories) from imposing import duties on goods from another state (territory) without USC consent.

MH - no firm legal conclusion on this, *I am* ^{presenting} only this issue.

We
AS - Could provide ^{explicit} indication that goods from Marianas would be same treatment as Guam.

We
MH - Could provide ^{explicit treatment} for free trade between US/Marianas whether ^{the goods are} within/without trade territory.

trade
JW - Prefer to treat like Guam, without any exceptions; too much detail will result in problem ^{with} USC.

MH - Need to specifically state Marianas be "outside" customs territory of US.

JW - OK as long as state "like Guam", lets leave to our drafters.

AS - MPSC §608/609 incorp lang contained in earlier j. communiques. *We* Should not make specif. ref. to GATT.

JW - Should be able to find lang. to supercede this and be broad enough to meet issue.

What
HW - ^{about} clarity on excise taxes.

MH - MPSC 610 - ^{this} is consistent with Guam.

AS - Why ^{does} MPSC want?

We
HW - Have in past, scrap iron ^{tax} for example.

JW - No problem, only need more simple language.

HM - MPSC draft is too specific to ^{the} point it omits special benefits and exemptions permitted for Guam, e.g., 1 gallon liquor and tourist exemption.

HW - We can agree to find language to include these benefits.

MH - MPSC §611 has no comparable US approach. Language requiring consistency w/US foreign obligations protects US

JW - No prob., Marianas have that auth anyway

HM - Problem is word "exclusive".

JW - can have AdeG check out with Treasury. If USC saw fit to impose excise taxes in all territories, this might prohibit US action in Marianas.

MH - Marianas did not intend to prohibit imposition of excise taxes that were applied uniformly. ONLY want to protect local authority to raise taxes.

HW - Yes, but we didn't do this; we will reexamine our language to see if we can meet our concerns.

MH - ^{as regards, on} §605 MPSC ^{no taxation of USG property.} ^{2 reasons: (1) ^{at} earlier meeting.} about 1 1/2 years ago US said language was OK.

(2) some ^{contract} laws ~~that~~ say some contractors ^{for USG} couldn't be taxed; US version didn't incorporate prior legal interpretations ^{to this effect.}

JW - Substantively, we have no problems; we can find mutually agreeable language. ^{as regards} appears to be term ^{of art} ~~part~~.

MH - US 503(b) ^{no comparable MPSC provision.} limitations on local indebtedness. ^{We have} (10%)

HM - VI recently given auth ^{city} to appeal debt limitation clause ^(10%) but US follows original approach in other territories (VI & Guam)

HW - Issue is: Does this provide an unnec. safeguard? Interested in knowing how this 10% limit ^{on local bonds} affected local economic situation Guam. Is it a meaningful restraint?

JW - AdeG can contact Treasury on this.

HW - ^{We} Would prefer to have a limitation in time rather than absolute limit. ^{on limit}

JW - We can give it some thought.

HW - Prefer to postpone 6(d) Internal Revenue until Thursday

MH - How would USC committees handle the ^{status} agreement?

JW - Can't say; alot depends on Bolling Report. Many prefer to keep this under Interior Committee although we have to go to approp. committee for the money matter.

MH - (Have them ^a simultaneous ^{review} or a re-referral of the agreement?

JW ^{we} Also have problem of change of Congressmen and ^{Council} ~~its~~ staff, but there are people interested in the agreement regardless of the Bolling Report.

HW - OK; moving on, how do we handle finance.

JW - As regards the carryover; if carryover is too large ^{there will be} a difficult problem ⁱⁿ ~~no~~ getting moneis from Congress, as regards "transferability", there would already be great deal flex. ⁱⁿ on legislature ^{to allocate} ~~to approp.~~ its own monies. And, we can always change agreement if US approach doesn't work. ^{No} ~~Some~~ question ^{on whether funds would be held in Marianas if not obligated and "carried-over".}

HW - No specific language in our draft.

JW - Some sensitivity since we just fought this out with JCFS.

MH - US don't want to give full amt; but use standard treasury "draw-down" procedure?

JW - Correct.

MH - MPSC wanted a check for full amount at first of year. But this seems out now.

JW - Yes; under current approach, US treasury makes out check to territory as the funds are obligated. Funds are obligated when ^{contracts} ~~are~~ signed and funds distributed according to terms of ^{contract} ~~of~~. No problem ^{so far} in states and territories.

MH - Accountability process affected by this approach?

JW - No- is done as an "ex post" audit after all funds spent. Another issue is that US felt that best to address all items of US support in one area, rather than spreading around over agreement. Wanted man ^{the street} ~~instruct~~ to be able to total ^{amount of US monies} up in one step.

HW - MPSC felt dollar amounts wouldn't be put into agreement and that US support would be addressed by subject.

JW - ~~other points~~ ^{No, as to}

~~the~~ formula for rebate of taxes; US using ^{same} ~~some~~ formula for Guam and VI; ^{some what.}
MPSC changed, US wanted to tell USC that this was treated the same as Guam.

MH - ^{ok} We will reexamine.

JW - On accountability, question of whether we addressing all the funds or only a part.

MH - references are different, and MPSC would like to exclude funds for fair market value, loans and federal programs.

JW - USC would probably agree to exclude f. mkt value but would want GAO on all fed. programs and Phase I & II monies.

MH - the report should address only the direct ^{amounts} funds provided, and ~~the~~ federal programs will be audit separately by terms of the act.

JW - We can work something out.

AS - MPSC 805(d) speaks to US "standard of living" and US draft is more broad.

Hasn't MPSC withdrawn from this?

MH - MPSC hasn't withdrawn as regards a specific dollar obligation for financial assistance.

AS - Sol Silver (US Eco. Advisor) ^{was} under the view that standard ^e referred to in MPSC ^{draft} is too broad due to various and diverse levels of standards of living. ^{in draft}

JW - I wonder whether we need this at all.

HW - We have tried to bridge the gap. We will review, our client felt that this long term goal was reasonable US commitment. MPSC recognizes practical problems

HW - Maybe JW approach is good, maybe not.

JW - Problem is not insurmountable. We can find language to pick up the essence.

^{Does} HW - ^{7 years} US have views on review clause?

JW - ^{all} financial assistance will no doubt continue, ^{we} but have so many imponderables at this stage that we can't be more definitive. No problem with containing

language that US finance ^{entire} beyond 1st ^{five} years, ^{but} ^{we} ^{can} ^{enter} ^{into} ^{an} ^{agreement}

HW - ^{what} happens if Phase II begins in the middle of a fiscal year. This is a tech. problem MPSC felt ought to be addressed.

JW - Phase II should start at beginning of fiscal year.

HW - On consumer index, ^{any} OMB result?

JW - OMB ^{has} not yet answer ^{at} except to say Guam not too accurate; ^{was} too high, ^{some} too low, ^{others}

OMB has proposed ^{that} a dept. commerce expert look at problem, ^{the} which OMSN rejected ^{as} as too time consuming. US ^{will} go ahead with Guam Price Index unless ^{they} can respond ^{quickly}.

HW - ^{is} Continuing resolution approach ^{included} to insure USC acts? ^{is} ^{included} ⁱⁿ ^{the} ^{bill}

JW - Multiyear appropriations ^{might} take care of this.

MH - MPSC doesn't want gap in funding, ^{so} funds would continue at same level unless USC acted.

HW - We will review, may want to couch language in ^{other} terms of ^{ambiguity}

HW - ^{is} Problem of consultation and periodic review, ^{is} is complex, ^{and} should be addressed later. MPSC puts ⁱⁿ in certain standards for reevaluation of US financial assistance

to occur before 1st ⁵ years run out. This brings us to fed. programs. MPSC has no language other than application of laws section. ^{did} ^{of} ^{the} ^{amending} ^{sec} ^{it} ^{need}?

JW - Real problem here is programs which may apply to 1 other territory, but not all. So we need to see which of these MPSC would like applied that is not covered under general formula. We have discussed some under MPSC exceptions sections.

MH - Public Health Service Act is important. Apply to all territories except Guam.

JW - No problem there.

MH - Others are:

- 1 Consudl farmers asst act being reviewed in light of US loans provision *which is*
- 2 fed crop insurance *act which is* being reviewed in light *it isn't* appropriate for

Marianas. Also looking at surplus prop act (not apply to Guam) which permits
USG to give surplus property away may be wanted. Won Pat is trying to change
so may just wait.

JW - foreign assist act does apply to Guam and TTPI and they do get surplus
property under this at a reduced purchase. *but can't get benefits of both*

MH - ^{US} §602(a)(3) ^{and} fed prog. language may raise ^{conflict}.

JW - Shouldn't conflict; we can cross reference.

HW - Some fed. programs require costs ^{we don't} so want to exclude these from the "free".

language.

HM - there are a # of statutes, Coastal Zone Management Act, saying fed. grant fund:
can't be used as "matching" funds. MPSC would like to use these as matching
funds to get more federal programs.

JW - How ^{is} problem is this?

AS - May want to limit ^a this permission to a set number of years.

AdeG - Problem is USC, which has been reluctant to give both fed grants and
programs, ^{as matching funds} and then permit fed grants to be used ^{to double} federal programs.

JW - AdeG should check with Brewster on this.

MH - USC doesn't understand, these federal monies are for use of local government
as it wants to use.

AdeG - Understand, but need to examine.

*JW - well, their concludes as agenda until next meeting
be it at same time.*

*JW - we will have meeting to take up this agenda
at that time.*

JW - fine.