

AdeGraffenried:8-7-74:kkc

MEMCON: U.S./MPSC LAWYERS GROUP

02
4,5

Participants

J.M. Wilson
H. Marcuse
A. Surena
A. de Graffenried

H. Willens
M. Helfer

872-6000

Date:

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

JW - COM extended to 9 AUG (Friday)

Salii amendments

apply all districts unless 2/3 in district disapprove;

D'ge from 3/4 request.

Pleb w/ CONCON ref @ same time

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

JW - This is because of linking 2 topics; HICOM note this unacceptable and req. veto.

- Also new Bills

Marshall }
Palau } re vote CONCON

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

JW - Not yet, is being printed, awaiting E. Pangelinan transcript.

HW - Members MPSC would like copy

JW - On sep. admin.

in past we talked about MDL action from US point of view, MDL resolution might contain following

1) request from MDL to US, as admin auth

2) req. ad auth to sep. Mar admin from other dist. of TTPI.

including:

06-416535

- sep. of executive function further activity
- non-part. of MD in COM
- request COM relieved further repn 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 approp., then USG is prepared to act by executive action.

HW - Matter 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.

06 - 416536

HW - Dist. Legisl. 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 would be examined before Phase I.

HW - Perhaps resd. ought to consid. creating a commission to examine w/USG what steps are needed.

JW - Is OK

JW - Have asked OMB to clear funds request for Phase I.

HW - Would these monies be made available to Marianas before signing agmt?

JW - Approp. of fund would be conditions upon signing of agreement.

Item 6 - AGENDA

MH - We had some issues remaining in 5 the special exceptions; could we start here?

JW - 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 of PR courts were fed courts, although PR courts were not Art III courts.

HM - Code created a court and gave it jurisd. over some federal matters and some local jurisd; 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 approp,

06-415537

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 expared issues
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 as both ct. of orig. jurisd. and ct. of appeals.

JW - We have no great difficulty with this.

MH - If we intend to give M. ligo. auth to vest this ct with local jurisdiction
then status agreement should explain issue in more depth.

HM - US land 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 matter
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 qualify 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 on issue should be created same as ct time fed laws extended

JW - True, need court to interpret fed. laws. Social Security issue. "next 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 folding into US Soc. Sec system; need U.S. experts to tell us how to do it.

(2) DAIDS tax US tax which supports Soc. Sec. trust funds should be phased into Marianas system. Eco. consult feels that _____ is now at 2% (1% by employee 1% by employer) and US is 10% tax would be too big a jolt, so wants phase in over 10 yr. period want a phase in of 1% increase a year.

JW - How is Guam handled? suppose it was phased in at _____

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 Jone Act, and fact that some exceptions made for other territories.

MH - not now apply to TTPI and 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 - \$20 m for Tinian - just for docks, dredging.

MH - fish processing industry planned; A. Samoa has success because it is exempted from Jones Act and special tariff treatment

06-416539

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

JW - On customs/duties (Item 6) no reason to make exceptions for Marianas from Guam treatment. Have agreed that we would try to get 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 states (and territories) from imposing import duties on goods from another state (territory) without USC consent

MH - no firm legal conclusion on this _____ only this issue.

AS - Could provide indication that goods from Marianas would be same treatment as Guam.

MH - Could provide for free trade between US/Marianas whether within/without trade territory.

JW - Prefer to treat like Guam without any exceptions; too much detail will result in problem on 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. Should not make specif. ref. to GATT.

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

HW - ? about clarity on excise taxes.

MH - MPSC 610 - is consistent with Guam.

AS - Why MPSC want?

HW - Have in past, scrap iron for example.

JW - No problem, only need more simpler language.

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

06-416540

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 - §605 MPSC - no taxation of USG property. 2 reasons (1) @ earlier meeting about 1 1/2 years ago US said language was OK.

(2) some K laws that say some contractors couldn't be taxed; US version didn't incorporate prior legal interpretations

JW - Substantively, we have no problems; we can find mutually agreeable language appears to be term apart.

MH - US 503(b) - limitations on local indebtedness no comparable MPSC provision

HM - VI recently given auth to appeal debt limitation clause but US follows original approach in other territories (VI & Guam)

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

JW - AdeG can contact Treasury on this.

HW - Would prefer to have a limitation in time rather than absolute limit.

JW - We can give it some thought.

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

06-416541

MH - MPSC 606 and US version on bonds is virtually identical.

JW - OK

JW - lets move on to item 7 Financial Provisions; no question that US provisions when approved by USC will constitute commitment by USG and USC. Chairman of Committee says it would also constitute an authorization. Hill says it is not constrained to go for a five year approp. or that _____ would insist on a separate approp. bill to approp. necessary funds. We will check further.

JW - Another issue is whether approval of agreement by a Joint Resolution would constitute an authorization or whether USC would enact a special bill to implement the agreement and in that bill contain provisions for auth. of funds. New budget act will have some impact, as yet undetermined.

HM - Wonder if can have anything except a year by year approp. under the bill.

MH - Review of act doesn't appear to restrain miltibudget acts; back door contracting by federal agencies is primarily focus; MPSC feels that a multi-year appropriation is best and consistent for self-government; MPSC doesn't want to come back each year to justify monies, USC interjects itw own policies at those hearings. Thus USC would attempt to influence local matters by use of purse strings.

JW - Agree, but USC approval is our major interest and if MPSC can get multi-year approp. is fine. But problem is USC approval and Congresswoman Hansen is leaving USC.

HW - Would prefer to go to USC this way (multi-year appropriation). If US believes that it can't agree then MPSC can't agree to the status relationship. MPSC can't keep on falling off key issues essential to its interests. We know US executive is sympathetic to our approach.

JW - We just want to know how strongly MPSC feels on this issue

06-416542

MH - How would USC committees handle the 8 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 then simultaneous or a re-referral of the agreement?

JW - Also have problem of change of Congressmen and 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 a difficult problem no getting moneis from Congress, as regards "transferability", there would already be great deal flex. on legislature to approp. its own monies. And, we can always change agreement if US approach doesn't work. 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 K are signed and funds distributed according to terms of K. No problem in states and territry.

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 instruct to be able to total up in one step.

06-416543

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

JW - other points

- (1) formula for rebate of taxes; US using some formula for Guam and VI, MPSC changed US wanted to tell USC that this was treated the same as Guam.

MH - 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, _____

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 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) under the view that standard referred to in MPSC is too broad due to various and diverse levels of standards of living.

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.

06-418544

^{Del?}
HW - US have views on review clause.

JW - financial assistance will no doubt continue 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

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

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

HW - On consumer index, ^{what has been} OMB result?

JW - OMB not yet answer except to say Guam ^{index} not too accurate; too high, too low ^{in some items}

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

HW - ^{we used a} Continuing resolution approach ^{in our draft} included to insure USC acts.

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 _____

HW - Problem of consultation and periodic review is complex should be addressed later. MPSC puts 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.

JW - Real problem here is programs which may apply to 1 other territory, but not ^{to} 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 Consdul farmers asst act being reviewed in light of US loans provision

2 fed crop insurance 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 - §602(a)(3) fed prog. language may raise conflict.

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

HW - Some fed. programs require costs so want to exclude these from the "free" language.

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

JW - How ↑ problem is this?

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

AdeG - Problem is USC, which has been reluctant to give both fed grants and programs 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.