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August 16, 1974

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Memorandum

To: Director of Territorial Affairs  
From: C. Brewster Chapman, Jr. /s/  
Assistant Solicitor - Territories  
Division of General Law  
Subject: Gambling and Drugs - TIPI

Recently slot machines have been introduced on Saipan pursuant to a recently enacted local municipal law. The High Court also has held that the TI laws prohibiting the possession, sale or disposition of marijuana is unconstitutional. You ask what legal or administrative remedies may be available to permit corrective action. I will deal with these subjects separately.

Slot Machines

In order to be a violation of Federal criminal law, the use of slot machines would have to be in violation of the law of the State or political subdivision in which the activity is conducted. 18 USC 1955. Although this law is not applicable to the TIPI it is indicative of the sense of Congress with respect to this activity. In short, whether the use of slot machines is illegal or not depends upon local self-determination. Thus, for example, slot machines are legal in Nevada and Puerto Rico.

Slot machines are not evil per se. They do, however, provide an appeal to cupidity and a lure to improvidence which can result in nothing but losses to the user or gambler. This is so because the machines are so rigged that the "house" inevitably makes a profit, varying in percentage depending on the "rigging", and these profits can only come from the gamblers; i.e. the local inhabitants. In addition, the presence of slot machines may be some manifestation of the presence or influence of organized gambling syndicates which, in turn, could tie back into more sinister and criminal roots.

Article 6 of the Trusteeship Agreement requires the Administering Authority to protect the inhabitants against loss of their lands and resources. Would not their money be considered one of their resources? The Article also requires the Administering Authority to institute regulations to protect the inhabitants against social abuses. Cannot the use of slot machines have the potential of leading to social abuses? And if it does, must we await the actual occurrence of social abuses before taking corrective action?

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I suggest, therefore, under these provisions of the Trusteeship Agreement, the Secretary might find some justification for overturning, by appropriate Secretarial Order, the local ordinance on Saipan which now permits the use of slot machines. However, we must bear in mind that the decision to have slot machines was, ostensibly at least, a matter of local self-determination. Accordingly, we must weigh carefully the impact of the exercise by the Secretary of his "ultimate authority" on the people of the Mariana Islands. It might provide ammunition for anti-territorial status people.

I am not a Calvinist. I do not find gambling or slot machines evil per se, and I don't think the Secretary should take this stance. However, if the Secretary decides to act, and there is sufficient evidence that the out-falls of slot machines will lead to loss of resources and social abuses, he could probably act within the mandates of the Trusteeship agreement.

### Marijuana

The TT Code of Laws does not itself prohibit the possession, use or transfer of marijuana. Its prohibitions are aimed at drugs which are determined by the Director of Health Services to be within the Code's definition of "drugs". In the recent case of TIPI v. Bernades, Criminal Case No. 306-73, July 23, 1974, the trial division of the High Court knocked down this law as it related to the possession, use or transfer of marijuana only. The Court had two reasons: (1) The authority delegated to the Director of Health Services did not provide adequately definite guidelines pursuant to which he could make a determination that marijuana was a "drug", and (2) that the statutory penalty for marijuana (a drug of lesser evil) was greater than for opium [A drug of acknowledged great evil] and that this was a violation of the constitutional guarantee of equal protection of the laws. The Court did, however, find that it was within the police powers of the "state" to regulate and punish for the use, possession, etc., of marijuana.

Because of this decision concern is now expressed that, at least until next January when the Congress of Micronesia will again meet, the use possession and transfer of marijuana will not be a punishable offense in Micronesia. This concern is unfounded. The Comprehensive Drug Abuse Prevention and Control Act of 1970 extends to the Trust Territory. 21 USC 802 (24) and (26). In effect, it prohibits the possession, use or transfer of "controlled substances" and provides for stiff penalties. Sec. 21 U.S.C. 812. Although it is not altogether clear from the wording, we believe Congress intended to give the High Court jurisdiction to enjoin or prosecute violations. In any event, the District Courts in Guam and Hawaii would clearly appear to have jurisdiction over violations. See, 21 U.S.C. 882(a). Enforcement is the primary responsibility of the Attorney General and the Department of Justice. 21 U.S.C. 871 and Executive Order 11641 which established an Office for Drug Abuse Law Enforcement in the Department of Justice.

We believe the Comprehensive Drug Abuse Prevention and Control Act of 1970 provides ample authority to prevent the use, possession or transfer of marijuana in the Trust Territory.

Finally, it is to be noted that the government undoubtedly will appeal the trial court's Bernades decision, and the Appellate Division of the

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High Court may very well overturn the decision below.

We trust that the foregoing answers your inquiries. Let us know if we can be of further assistance.

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