

October 3, 1974

MEMORANDUM FOR THE MARIANAS POLITICAL STATUS COMMISSION FILE

SUBJECT: Limitations on the plenary authority of the United States with respect to the Marianas

This memorandum summarizes the attempts which have been made in various drafts of the status agreement to articulate a limitation on the otherwise plenary authority of the United States with respect to the Marianas under the U.S. Constitution, Article IV, Section III, Clause 2.

United States Covenant:

Title II: "The Commonwealth will govern itself pursuant to a Constitution of its own adoption as set forth in the attached Articles . . . and in accordance with this Covenant, applicable provisions of the United States Constitution, and applicable federal law."

Title VI: "The United States may enact legislation effective within the Northern Mariana Islands except as otherwise specified in this Covenant. (The legislative powers of the United States will be exercised with strict regard for the preservation of internal self-government in the Northern Mariana Islands.)"

Article I, Section 102: "In the exercise of its powers the United States will be guided by its traditional respect for local self-government. The United States may enact legislation effective within the Commonwealth with the exception that the fundamental provisions of this Covenant, listed as follows, may be modified only with the consent of the government of the Northern Mariana Islands: [list]."

Article II, Section 201 (December); Article III, Section 301 (May): "The people of the Northern Mariana Islands will form a government pursuant to a Constitution of their own adoption, as provided in this Covenant."

United States 9/30/74 draft of Title I

Section 103: "The people of the Commonwealth shall have the right to govern themselves with respect to local affairs in accordance with a Constitution of their own adoption."

Section 104: "The United States may enact, in accordance with its constitutional processes, legislation

effective with the Northern Marianas, provided that the fundamental provisions of this Agreement, listed as follows, may be modified only with the consent of the Government of the United States and the Government of the Commonwealth: [list]. In the exercise of its powers the United States will be guided by its traditional respect for local self-government."

JFL 1/19/74 Draft

Section 104: "The Commonwealth of the Mariana Islands shall, according to the Constitution of the Commonwealth, have exclusive authority in all matters of local application, except that such authority shall not be exercised in a manner inconsistent with this Commonwealth Agreement or with applicable provisions of the United States Constitution."

Section 106(a): "The United States may enact federal legislation effective within the Commonwealth of the Mariana Islands except as otherwise provided in this Commonwealth Agreement."

Section 106(c): "In the exercise of its legislative authority under the Commonwealth Agreement, the United States shall maintain strict regard for the right of local self-government retained by the people of the Commonwealth of the Mariana Islands."

MPSC May Commonwealth Agreement

Section 204(a): "The people of the Commonwealth of the Mariana Islands shall govern themselves in accordance with a constitution of their own adoption."

Section 205(a): "The authority of the Commonwealth of the Mariana Islands shall extend to all matters of local concern"

Section 207(a): "Except as otherwise provided in this Commonwealth Agreement, the United States, in accordance with Article IV, Section 3, Clause 2 of the Constitution of the United States, may make legislation applicable within the Commonwealth of the Mariana Islands, except that legislation which the United States could not make applicable within the several States may be made applicable within the Commonwealth only if such legislation specifically provides that it shall be applicable within the Commonwealth of the Mariana Islands and if, taking into account the right of self-government retained

by the people of the Commonwealth, there is a compelling national interest in the application of such legislation within the Commonwealth."

MPSC September Draft

Section 104: "The people of the Commonwealth shall have and shall retain the right of local self-government and shall govern themselves with respect to local affairs in accordance with a Constitution of their own adoption."

Section 105: [Identical to Section 207(a) of MPSC May Draft.]

Section 303(a): "The Constitution shall establish the manner in which the people of the Northern Mariana Islands will govern themselves with respect to local affairs."

MSH Draft 8/23/74

Section 104(a): "Consistent with the right of local self-government of the people of the Commonwealth, the United States may enact federal legislation effective within the Commonwealth."

[In other respects identical to MPSC September Draft.]

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