



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
WASHINGTON, D. C. 20370

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IN REPLY REFER TO

JAG:104.1:RWG:cff  
Ser: 8918  
5 December 1974

(R)  
(RBMSW)

TTP1

MEMORANDUM FOR MR. SYDNEY GOLDSMITH, OASD(ISA) FMRA

Subj: Draft Orders of Secretary of Interior to Transfer Trust Territory  
Public Lands to Territories

Ref: (a) Your memo of 4 December 1974 with Draft Orders attached

1. In accordance with reference (a) the following comments are offered on the subject orders. Comments shall be offered on both orders; however, considering the long history of differences of opinion between the district representatives in the Congress of Micronesia and the U.S. Government over the modalities of this transfer, it is recommended that the longer version be chosen. It is feared that, given the degree of discretion inherent in the short version, the district legislatures would enact varying forms of implementing legislation which would either be totally unacceptable or pose agonizing and politically difficult decisions as to whether or not the U.S. Government could live with each district's version.

2. Short Version, Part II. Legislative Authority.

Recommendation: In line 1 substitute "each" for "any". In line 4 insert "within its district," after "1973,".

Reason: More precise language.

3. Longer Version.

a. Part I. Purpose.

Recommendation: In lines 3 and 7 substitute "each" for "any". In line 10 substitute "appropriate" for "desired".

Reason: More precise language and reduces the uncurbed discretion permitted by "desired".

b. Part II. Definitions. (4).

Recommendation: In line 13 after "property" add the words "with the powers and duties specified in Part III."

Reason: To limit "legal entities" to those bodies constructed with the powers and duties set forth in Part III. Without this addition there would be some uncertainty whether a "legal entity" created by a district legislature to receive title to public lands but not endowed with the precise rights and duties set forth in Part III would be included within the term "legal entity" as it is used in later sections of this order.

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c. Part III. Authority of District Legislatures.

(1) Recommendation: In subparagraph (1) in line 16 insert "single" before "legal", and insert "for the district" after "entity".

Reason: To insure that only one legal entity is created in each district. This will simplify subsequent negotiations for land since it will not be necessary to deal with multiple entities for parcels extending into several jurisdictions.

(11) Recommendation: In subparagraph (4) line 7 insert "private" before "land".

Reason: To insure that a district legal entity cannot exercise the power of eminent domain over those public lands retained by the central government.

d. Part V. Reservations.

(1) Recommendation: In subparagraph (1) lines 4 and 5 delete "for use".

Reason: Parallel construction with subparagraph (2).

(11) Recommendation: In subparagraph (2) line 10 delete "respective" and insert "a" before "determination".

Reason: Parallel construction with subparagraph (1).

e. Part VI. Limitations.

(1) Recommendation: In line 20 change "enact" to "have enacted".

Reason: Grammar.

(11) Recommendation: In lines 17 and 18 insert "by a district legal entity" after "receipt" and delete that phrase where it presently appears. In line 20 place a comma after "entity".

Reason: Clarity.

f. Part VIII. Amendments to Trust Territory Code. (2).

(1) Recommendation: In line 19 of subparagraph (1) and line 5 of subparagraph (2), under the definition of eminent domain, place brackets around "this Order".

Reason: When these changes are actually made to the Trust Territory Code, a legal identification of the Secretarial Order must be made.

(ii) Recommendation: In line 6 of the definition of eminent domain delete "private".

Reason: Those public lands transferred to district legal entities probably will not become "private" property. This recommendation will enable the central government at some future time to exercise the power of eminent domain over property held by a district legal entity.

*for Maj Gehring*

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