

01
2

E. R.
Box 68
CARB
S
96950

February 15, 1974

The Honorable Andon Amaraich
Chairman, Committee on Judiciary &
Governmental Operations
Senate
Congress of Micronesia
Saipan, Mariana Islands 96950

Dear Mr. Chairman:

Pursuant to your request for comment on Senate Bill No. 245, a Bill for an Act, "To allow the transfer and conveyance of certain public lands from the Government of the Trust Territory of the Pacific Islands to legal entities in each of the six districts; to empower the High Commissioner to effectuate such transfers and conveyances; to prescribe certain limitations, reservations, and conditions to such transfers and conveyances; and for other purposes" and on Senate Bill No. 296 (the administration bill of the same scope and intent), the following opinion is submitted.

Although the Attorney General is the primary witness all work on both bills has been a joint enterprise of the Attorney General's Office and of the Division of Lands and Surveys, Department of Resources and Development. The following opinion is therefore mutual and conjoint and the witnesses appearing appear as a body to assist your committee in any possible manner.

On November 2, 1973, the United States Government issued a policy statement regarding the transfer of public lands to the various districts of the Government of the Trust Territory. This policy statement was in response to a Micronesian request, endorsed by the Joint Committee on Future Status.

It would appear all basic and fundamental issues agreed upon by both delegations in Washington have been resolved by mutual accord.

Hopefully, this Congress will pass this necessary implementing legislation so that public lands can be transferred expeditiously without further time consuming negotiations.

07-25

The administration bill as presented (Senate Bill No. 296) represents the joint efforts of numerous members of the staff of the High Commissioner and of personnel of the Office of Territorial Affairs. We feel that it accurately translates the November 2, 1973, Policy Statement of the United States Government into a proposed legislative codification of the agreements reached by the Office of Micronesian Status Negotiations and the Joint Committee on Future Status of the Congress of Micronesia.

What is now Senate Bill No. 296 is the original draft submitted to Mr. Carpenter with amendments to incorporate the input of the Office of Territorial Affairs. You will note that the basic format and content of the two bills are the same. There are, however, some basic variances between the two. Some of the more major variances are:

1. Section 3,(3), of Senate Bill No. 245 does not exclude Military Retention Land from public lands to be returned. *OK*

2. Section 4,(1),(c), of Senate Bill No. 245 allows district legislatures to establish legal entities which may, themselves, establish procedures of "general" applicability. *may be favorable*

3. Under Senate Bill No. 245 no express power is conferred upon an entity to make contracts for future U.S. Military needs pursuant to status negotiations. *OK*

4. Section 5 of Senate Bill No. 245 vests income from lands to be returned in districts beginning with the effective date of passage of the bill and not with the transfer of the land. *give up*

5. Section 6(4), of Senate Bill No. 245 provides alternatives relative to future U.S. Military needs. Mr. Carpenter's cover letter for the legislation negates this inclusion and states that such needs have already been met through status negotiations. *favorable*

6. The introductory language of Section 7 has been substantively changed in Senate Bill No. 245. *they require district to legislate*

7. Section 8 of Senate Bill No. 245 requires transfer within 60 days following district legislation and within 60 days following cessation of need by the T.T.P.I., as to lands originally retained. *they use "unreasonable" - OK*

8. Section 9,(3), of Senate Bill No. 245 amends 57 T.T.C. 11101 to permit new entities to hold land. *Fixed - Sec 3(4)*

9. Section 10 of Senate Bill No. 245 is a broad deviation. It mandates ① that the Chief, Lands and Surveys complete the cadaster program as respects public lands and that any district land management office shall, upon request ② perform its functions under the direction of the new entity.

① Note that their bill says be CAN'T

② Why not?

They take away land Comm

They take away Land Management → means we need to run

10. Section 11 of Senate Bill No. 245 implies that if a dispute arises between the High Commissioner and an entity that the matter shall be settled in court. It appears to limit the discretion of the High Commissioner inherent in the administration bill.

YOU BET!

It would appear that the variations of Senate Bill No. 245 from Senate Bill No. 296 are "contra-agreement variances" or "extra-agreement variances" from what was discussed and agreed upon by both delegations in Washington.

Succinctly, administration policy is:

- (1) Discretion must rest in the High Commissioner in implementing and effectuating the provisions of the Policy Statement.
- (2) Receiving entities must be empowered to enter contracts agreed upon by status negotiations.
- (3) There is no need to include either of the alternatives appearing in Section 6, (4), of Senate Bill No. 245, as status negotiations have resolved this matter.
- (4) United States Government Military Retention Lands are not included in the definition of "public lands."

We are here to aid this Committee by all possible means. Time for this Congress to act upon this most important matter is short. Let us then cooperatively enter into a working session that will effect the terms of the agreement reached by both delegations reflected in the Policy Statement.

Sincerely yours,

for Mamoru Nakamura
Richard I. Miyamoto
 Attorney General

cc: President, Senate
 SA/LA
 SA/DA
 D/PA
 C/LLD

07127