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LAW OFFICES OF  
**MICRONESIAN LEGAL SERVICES CORPORATION**  
ATTORNEYS AND MICRONESIAN COUNSELORS  
CABLE ADDRESS: MICROLEX

CENTRAL OFFICE  
POST OFFICE BOX 826  
SAIPAN, MARIANA ISLANDS 96950  
TELEPHONE 6228, 6471, 6472

PALAU OFFICE  
POST OFFICE BOX 57  
KOROR, PALAU  
WESTERN CAROLINE ISLANDS 96940

PONAPE OFFICE  
POST OFFICE BOX 129  
KOLONIA, PONAPE  
EASTERN CAROLINE ISLANDS 96941

MARSHALLS OFFICE  
POST OFFICE BOX 376  
MAJURO  
MARSHALL ISLANDS 96960

MARIANAS OFFICE  
POST OFFICE BOX 826  
SAIPAN, MARIANA ISLANDS 96950  
TELEPHONE 6243

TRUK OFFICE  
POST OFFICE BOX D  
MOEN, TRUK  
EASTERN CAROLINE ISLANDS 96942

YAP OFFICE  
POST OFFICE BOX 206  
COLONIA, YAP  
WESTERN CAROLINE ISLANDS 96943

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DEPUTY DIRECTOR

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REPLY VIA AIR MAIL TO **Marianas Office**

February 21, 1974

The Honorable Sasauo Haruo  
Chairman  
Committee on Resources and Development  
House of Representatives  
Congress of Micronesia  
Saipan, Mariana Islands 96950

Dear Mr. Chairman:

This letter is in response to your request that Micronesian Legal Services Corporation provide comments to House Joint Resolution No. 88, which demands that the United States "forthwith terminate the moratorium on homesteading and on the leasing of so-called public land on Tinian Island, Mariana Islands District, Trust Territory of the Pacific Islands."

We are honored by your request and shall in this letter attempt to state our view of the moratorium as we believe it affects our clients on Tinian. The writer of this letter, as an attorney in the Marianas Office of Micronesian Legal Services Corporation, has been making routine field trips to Tinian since last fall. Several individuals on Tinian have requested our office to assist them in their attempts to obtain agricultural homesteads on Tinian. In investigating this problem on behalf of our clients, we have gathered certain information and reached certain conclusions which we hope will prove helpful to your Committee's study of Resolution No. 88.

I. SOME BACKGROUND TO THE TINIAN LAND PROBLEM

To understand the effect of the moratorium, I believe it is helpful to consider the background of the land problem on Tinian. At the outset, we wish to note that there is at the present time a serious land shortage among the people of Tinian, even though the island has an abundant amount of "public" land. The figures we have obtained indicate that, as of June 1973, of the 25,146 acres of land on Tinian, only 1,270 acres are in private hands. (See Exhibit A

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attached hereto.) The remainder of the land is either "public" or contained in the military retention area. In other words, only about 5% of the total land area of Tinian is actually owned by the people.

Why does this incongruous situation exist 16 years after the commencement of a government program to provide land to landless Micronesians (the homestead program)? I can think of only two possible explanations. The first is that the government never actually intended the homestead program to operate fully on Tinian. Under this view, the government distributed a small amount of land on Tinian via its homestead program to camouflage its real motive of retaining the great bulk of land on Tinian for possible future uses of its own or, arguably, the United States military.

The other explanation is that the homestead program on Tinian has failed due to governmental incompetence. Although recent events, such as the moratorium, may lend some currency to the first explanation, I have nevertheless adopted the latter explanation as a working assumption. I have done so primarily because the homestead program has not worked well on Saipan either; it does not appear that Tinian has been singled out for special treatment. In any event, the serious breach of trust implicit in the first explanation should not be attributed to the government without more evidence than is available at this time.

Assuming the second explanation is correct, what then is the incompetence which has led to the failure of the homestead program on Tinian? To conclude briefly, our investigation has indicated that the problem springs from the duality of the government in insisting on one hand that land must be surveyed before it is homesteaded, and failing on the other hand to survey the land. If our information is correct, no new land on Tinian has been surveyed for agricultural homesteads since the late 1960's, and consequently no new permits have been issued since that time. This explains the backlog of the 83 agricultural homestead applications that were outstanding on May 8, 1973 (the date the moratorium was imposed).

In any event, the homestead program on Tinian has been a failure, and the predictable results of this failure are becoming painfully clear. For example, the farmers of Tinian are increasing successfully in marketing large quantities of produce in the Guam and Saipan markets. However, other residents of Tinian who wish to farm the fertile soil of Tinian are precluded from so doing solely because their long-standing applications for agricultural homesteads have not been granted. Thus these people are suffering an immediate economic loss which must be attributed to the failure of the homestead program. And since there were, at latest count, 106 outstanding agricultural homestead applications, the total economic loss to the island of

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Tinian must be quite substantial. This situation hardly seems consistent with the oft stated goal of economic self-sufficiency for the people of Micronesia.

In order to provide some relief from this situation, our office has requested the High Commissioner to grant short-term agricultural leases to the people of Tinian. (See Exhibit B attached hereto). We are still awaiting a response to this request.

## II. WHY THE MORATORIUM?

With this background of the land problems in Tinian in mind, I will turn to the moratorium itself. The first question in my mind concerning the moratorium is this: since no new agricultural homestead permits have been granted on Tinian for several years, why did the government go to the trouble of imposing the moratorium on agricultural homesteads in the first place? I have been tempted to think that it is simply an example of governmental incompetence, i.e., that none of the responsible officials were even aware that the homestead program was inoperative on Tinian and that a moratorium was therefore unnecessary. However, since the government, in its letter to this Committee of February 11, 1974, did make a claim to conscious motivation in imposing the moratorium, I will assume that the government did have a reason for imposing the moratorium. This, of course, raises the question: exactly what is this reason?

House Joint Resolution No. 88 states that the reason is to hold down "the fair market value of land on Tinian so that the United States military could acquire the land it wished at a fraction of the real value of the land." I must respectfully disagree with this conclusion. As Mr. Wyman Zachary noted in his letter of February 11, 1974, land values do not decline when land is in short supply as is presently the case in Tinian. Thus I fail to see how the moratorium will drive land values down. On the other hand, I cannot agree that the reasons stated in Mr. Zachary's letter represent the true motivations of the government in imposing the moratorium.

According to Mr. Zachary, one of the prime concerns of the government is to prevent land speculation by those "individuals [who] will attempt to obtain 'homesteads' which they never intend to farm or to occupy, but only to acquire in order to obtain a quick profit by speculation...." Here Mr. Zachary is necessarily referring to that group of individuals who have applied for agricultural homesteads since the United States announced its desire to obtain land on Tinian (May 8, 1973). Since this is a serious charge which concerns specific individuals it must be answered. Apparently Mr. Zachary is not familiar with 67 T.T.C. §209 which provides that unmaturred rights under a homestead permit may not be "sold, assigned,

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leased, transferred or encumbered." See also Romolor v. Igisaiar, 4 T.T.R. 105 (Marianas District 1968) (holding that an agreement for the sale of land held under an unmatured homestead permit is void). Mr. Zachary also apparently overlooked the provisions of 67 T.T.C. §208 which provides that the government cannot issue a deed of conveyance to the homesteader until he has occupied the land for 3 years, and "has complied with all laws, rules and regulations appertaining to homesteads...." And even then the government is allowed an additional 2 years to make the conveyance. 67 T.T.C. §208. So it takes at least 3 years and possibly 5 years before the homesteader can sell his land. Finally, the rules and regulations themselves require the homesteader to farm the land, and inspections are provided to assure that the homesteader is complying with all requirements. In light of all this, it is difficult to believe that the government is actually concerned that "numerous individuals" will obtain homesteads, not to farm them, but rather to obtain a "quick profit by speculation." It is indeed unfortunate that this accusation is thrown at those 23 individuals on Tinian who have applied for agricultural homesteads since the imposition of the moratorium without any factual basis for the accusation.

Mr. Zachary does offer other justifications for the moratorium in his letter. Reasons No. 1, 3, 4, 5 and 6 all deal with the fact that future land uses on Tinian are uncertain at this time, that the people of Tinian may "elect" to move their village, that unnecessary relocations should be avoided, and that generally the land should be left in the "public" domain so as to "afford the actual permanent residents of Tinian the greatest number of alternatives to plan their future in an orderly, efficient, permanent manner." In other words, we are told that the government is acting in the interests of the people of Tinian. This raises an immediate question: why have the people of Tinian never, even to this day, been consulted on this matter? Why, indeed, did the High Commissioner deem it unnecessary to offer any public justification whatsoever for the moratorium until his press release of December 14, 1973, over 7 months after the moratorium had been imposed? And how can the government honestly claim that it is acting in the best interests of the people of Tinian when it would be hard-pressed to find a single "actual permanent resident of Tinian" who approves of the moratorium? It would be a laughing matter to ask what sort of "public support" the moratorium has received on Tinian. It is very discouraging to see the government adopt such a paternalistic, colonialist attitude to a group of people who are theoretically working towards self-determination.

When a government justifies an action by claiming it is acting in the best interests of the people while the people unanimously condemn the action in question, one suspects that the government may not be acting in the best interests of the people at all. This

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is borne out by analysis of the government's stated justifications in paragraphs no. 1, 3, 4, 5, and 6 of its letter. It must be remembered that we are dealing only with a very limited number of people (23 at latest count) who have applied for agricultural homesteads since the moratorium. (The number of potential future applicants is limited by the fact that there are only about 800 residents of Tinian, of which a large portion are too young or too old to homestead. Of the remainder, many have already received homesteads). Are these few people really going to create a "land rush" so enormous that it will jeopardize future planning and/or village relocation on the island of Tinian? If everyone of the present 23 applications were granted, only 276 acres (at 12 acres per homestead) would be taken from a public domain of 23,876 acres! Furthermore, the new agricultural homesteads could be located on the southern part of Tinian outside the area the military wishes to obtain, or for that matter, in whatever area that the government intends to utilize for those 83 people whose homestead applications are not affected by the moratorium. In light of these considerations, it is difficult to believe that the government could actually be concerned about the adverse affects of a "land rush" on Tinian.

In conclusion, it is seen that none of the government's after-the-fact justifications for the moratorium are believable. This, of course, returns us to the original basic question: why did the government impose the moratorium?

I believe a strong hint as to the true reason may be found in the High Commissioner's press release of December 14, 1973. Therein it was stated:

With regard to the homesteading program on Tinian, the Trust Territory Government, with the full concurrence of Ambassador Williams, determined that it would not be in the best interests of the future of the Mariana Islands to grant any new homestead permits on the Island of Tinian after May 8, 1973, which was the date on which Ambassador Williams and his delegation revealed publicly the United States desires for land acquisition on Tinian. (emphasis added).

This statement makes it clear that there is a casual relationship between the moratorium and the "United States desires for land acquisition on Tinian." But what is the relationship?

I believe a fair reading of the law of Eminent Domain demonstrates that even an unmatured homestead permit would be a compensable property interest. Thus, if the United States wished to obtain land on Tinian, it would have to compensate either by cash or a land exchange program all those people who held either matured or

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unmatured homestead permits in the area it wished to take. Therefore it would be in the financial interest of the United States to minimize the number of homestead permit holders on Tinian and I have concluded that this is the reason for the moratorium. Thus the Trust Territory government has acted not in the interests of the people of Tinian nor in the interests of the people of the Marianas, but rather in the financial interest of the United States military.

I believe this conclusion is consistent with both the fact that no public justification was given for the moratorium until months after it was imposed, and with the fact that the belated justifications are unpersuasive as discussed above. This conclusion is also consistent with the fact that the moratorium was imposed by the Trust Territory government with the concurrence of Ambassador Williams, but without the concurrence or even knowledge of the people of Tinian. Finally, I believe this conclusion is consistent with plain common sense.

I have considered the government's motivation in enacting the moratorium in some detail not simply to suggest a solution to the mystery. I believe it is important to know the government's motivation in order to understand the present effect of the moratorium on the people of Tinian, and, even more importantly, to predict the future course of the government with respect to public land on Tinian. I will now turn to these matters.

### III. EFFECTS OF THE MORATORIUM

If indeed the reason for the moratorium is to permit the United States to obtain land on Tinian at the least possible cost, then certain other matters can be examined in this light. For example, the government has stated that the moratorium is only "temporary." I do not believe the government is being honest on this point. If the object of the moratorium is to reduce United States land costs on Tinian, the moratorium will then be extended until the United States has taken the land it needs. There is no reason why the moratorium would be terminated before that time; to do so would be to defeat the very purpose of the moratorium. I hope that the government proves me wrong on this point, but in the meanwhile I believe it should be assumed that the government is not telling the truth when it says the moratorium is merely "temporary."

In other words, it now appears that the government intends to stop additional people on Tinian from obtaining land until such time as the United States has satisfied its land desires there. What, then, will be the effect of this on the people of Tinian?

If this question is phrased in the light most favorable to the government, it becomes: what is wrong with stopping residents of Tinian from obtaining agricultural homesteads for a mere \$10.00 when, after all, they may be able to turn around and "resell" their homesteads for a great deal more to the United States military? Certainly it would have made for more honest debate if the government would have justified the moratorium in these terms. However, the government can hardly afford such honesty since, after all, it is not the role of the Trust Territory government under the United Nations Charter to minimize the expenses of United States military land acquisition in the Trust Territory. But even if we ignore this conflict and concede the right of the Trust Territory government to act in the interests of the United States military, the moratorium is still an unjust and unwise action. This can be seen in the basic evil effect of the moratorium: if the United States compensates only those people who own land on Tinian at the time of its land acquisition, those people who have been precluded from obtaining land because of the moratorium will be left with neither land nor money through no fault of their own. The sporadic operation of the homestead program on Tinian has created an arbitrary and unequal land distribution situation, and the Trust Territory government should now be working to remedy this unjust situation rather than compounding it by the imposition of a moratorium. In other words, it is highly important that the land problem on Tinian be solved before the United States military arrives. Otherwise the people of Tinian may be permanently locked into the arbitrary and unfair land distribution situation that has been created for them by the Trust Territory government.

The moratorium demonstrates that the government is willing to use unjust means to accomplish its ends. If we look at the moratorium in this perspective, we can well ask what else the government may do to prevent the people of Tinian from acquiring land. One sobering fact should be considered in this context. The government states that those 83 agricultural homestead applications submitted prior to May 8, 1973, "are being processed." What does this mean in the real world? Does somebody need to tell the government that these applications have been "being processed" for several years now? I previously concluded that this problem is due to government incompetence in failing to survey the land; however, in the future, the government's failure to survey land on Tinian could become its means of keeping the land in its own hands. At the hearing in front of this Committee on February 11, 1974, Mr. Zachary stated that \$300,000 had become available for surveying this year, and that some \$3,000,000 would become available next year. We are aware that surveys are needed virtually everywhere in Micronesia, but for Tinian it is now or never. If those landless people now on Tinian do not receive their land soon, they will simply have nothing to

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exchange or receive compensation for when the United States military arrives on Tinian. Until the government commits itself to a survey on Tinian, its statement that the 83 agricultural homestead applications "are being processed" is nothing but a cruel deception. Thus I would suggest that Resolution No. 88 be broadened to include a demand that the government immediately commit itself to a survey of land on Tinian so that all meritorious agricultural homestead applications may be granted forthwith. This, of course, should include all applicants, whether they applied before the moratorium or after.

In conclusion, we wish to emphasize our support for the intent of House Resolution No. 88. Hopefully this Resolution can be the first step in solving the pressing land problems of the people of Tinian.

Very truly yours,



Bill R. Mann  
Attorney at Law  
Micronesian Legal Services Corporation  
P. O. Box 826  
Saipan, Mariana Islands 96950

Attachments

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