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April 10, 1974

MEMORANDUM FOR HOWARD WILLENS

SUBJECT: Micronesian Constitutional Convention Bill

There is attached for your information a copy of the Micronesian Constitutional Convention bill, which has recently been signed into law by the High Commissioner. As you will see, the convention will consist of 60 delegates, 48 of whom will be voting delegates. The voting delegates are distributed as follows: Marianas, 5; Marshalls, 10; Palau, 6; Ponape, 10; Truk, 13; Yap, 4. As elsewhere, all but one of the voting delegates from the Marianas will be popularly elected; the remaining voting delegate from each district will be selected from among the members of the district's congressional delegation. One of the two Marianas non-voting delegates will be selected by the district legislature; the other, by the district administrator. In other districts the non-voting delegates will be selected by the traditional chiefs. The election for delegates will be held on June 4, 1974; nomination papers must be submitted 20 days earlier, on May 15. The election will be non-partisan. Vacancies in elected delegate positions will be filled by the candidate who had the next highest number of votes in the election; vacancies in other positions will be filled in the manner provided for the original selection.

A pre-convention committee, composed of one representative from each district's delegation to the convention, and the President of the Senate of the Congress of Micronesia, will select the date on which the convention will convene. According to section 6(1) the convention "shall convene in Saipan, Marianas Islands District and shall continue in session for not longer than ninety (90) calendar days." Section 6(4) provides

"that no question shall be decided affirmatively by the convention except by the affirmative votes of not less than three-fourths of the

delegates entitled to vote in the convention, a quorum being present; and that no voting except in person shall be permitted; and that abstentions shall not be counted as a vote cast in determining the results of any question."

There being 48 voting delegates to the convention, a minimum of 36 will be necessary to take any affirmative action.

Section 8 of the bill describes the duties of the constitutional convention as follows:

"The Convention shall draft a Constitution for the future government of the state of Micronesia. Such Constitution shall make adequate provision for the exercise of legislative, judicial, and executive functions, and shall guarantee to all the citizens of Micronesia a form of government which permits the free democratic expression of their views. It shall provide for an effective date, and shall require approval by a popular referendum as specified in this act. When said Constitution shall be drafted as aforesaid, the Convention shall notify the High Commissioner that it has completed its deliberations. Upon receipt of such notification, the High Commissioner shall transmit a copy of the Constitution adopted by the convention to the Congress of Micronesia, and shall call a referendum on the Constitution, authority for which is hereby granted to the High Commissioner, subject to the provisions of Section 11 of this act." (emphasis supplied)

Section 11 concerns manner in which the referendum shall be conducted, and provides the form of the referendum ballot. Section 11 (2) provides that "the referendum shall be held on a date the High Commissioner shall specify."

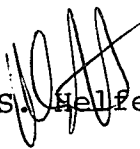
You have previously asked how we might advise the client to protect its interests in the face of the upcoming convention. There are a number of alternatives:

- (1) We could urge the district legislature to pass a resolution stating that the Marianas will not participate. It is reported in the papers that such a resolution has been introduced in the Marshalls.
- (2) Though the time is very short, the district legislature could insist on a referendum on whether to participate; if participation is popularly rejected, then there would be no reason to send delegates.
- (3) Still another approach would be to do nothing, and anticipate that either the convention will produce no agreement in 90 days, or that, even if there is an agreement, the High Commissioner will be able to schedule the referendum on the constitution in a way which does not interfere with the consideration of our status agreement.
- (4) Yet another alternative is to turn the present round of negotiations into a discussion of a separate administration for the Marianas. The MPSC charter is arguably broad enough to cover this topic. The separate administration agreement could include the withdrawal of Marianas delegates from the convention; the whole package would be put to a popular vote.

I don't particularly like any of these, except perhaps the last. The best course, it seems to me, is to assure that the Marianas delegates to the convention will insist that the constitution recognize the right of self-determination of each district. This should also be in the interests of the Marshalls (which wants a separate status), and of Palau (which wants a loose confederation). Since only 13 votes are needed to prevent any action in the convention, it should not be impossible for the Marianas to prevent the approval of a constitution which does not contain a clause like this.

The MPSC could assure itself that the Marianas delegates to the convention are united in support of a self-determination clause in several ways. The MPSC itself could support candidates who support a self-determination clause, for example. Perhaps a better way, however, would be for the district legislature to pass a resolution supporting such a clause. If other district legislatures did the same thing, then the pressure to include such a clause in the constitution would become very great.

The drafting of such a clause is not a particularly easy matter, and, if you decide to pass this suggestion along to the Chairman, you will have to consider whether it is properly within the scope of our work for the MPSC to assist in the drafting. But if not us, who?

  
Michael S. Helfer