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United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

D-3L-T CDC 93713

JAN 14 1975

Honorable Henry M. Jackson
Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Jackson:

This is in further reply to your letter of December 19, 1974, in which you asked for a Solicitor's opinion concerning the applicability of Federal laws and regulations to officials of the executive branch of the Government of the Trust Territory of the Pacific Islands (Micronesia). We realize that there is some confusion on the subject and we are happy for the opportunity to clear the matter up.

At the outset it must be understood that Micronesia is not a territory or possession of the United States. The United States asserts no claim of sovereignty over it. Sayre, "Legal Problems Arising From the United Nations Trusteeship System" 42 Am. Jour. Intl. Law, No. 2. April 1948. In fact, it has been held to be a foreign country. Callas v. United States, 253 F. 2d 838 (2d Cir. 1958); Brunell v. United States, 77 F. Supp 68 (D.C., S.D.N.Y., 1948).

The United States administers the Trust Territory pursuant to the provisions of a 1947 Trusteeship Agreement with the United Nations Security Council which authorizes, among other things, the United States to extend, as it may deem appropriate, its laws to Micronesia. This provision of the Agreement is not self-executing. U.S. laws must be specifically extended to Micronesia by the U.S. Congress before they will be applicable there. The U.S. Congress similarly has provided that until it legislates further on the subject, all executive, legislative and judicial authority necessary for the civil administration of the Trust Territory is vested in such person or persons and in such manner and through such agency or agencies as the President of the United States may direct or authorize. 48 U.S.C. 1681. The President, by Executive Order 11021, has designated the Secretary of the Interior to exercise this authority, and the Secretary in

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turn has established a purely local government with executive, legislative and judicial branches. Secretarial Order 2918, as amended.

The courts have held that the Trust Territory Government, as thus established, is not an agency or instrumentality of the Federal Government but is a separate and distinct legal entity with semi-sovereign powers to sue, be sued and to contract in its own right and name. See, Porter, et al. v. United States, Ct. Cls. No. 111-73 (1974); People of Saipan v. Morton, et al. 502 F. 2d 90 (CA 9, 1974), pet. for cert. filed November 20, 1974.

There are over 7,000 people employed in government service in Micronesia. Of these only 155 are Federal employees. As such, they are subject to the Federal civil service laws and regulations. They are in a sense, therefore, agents of the United States assigned, however, to act as officials in a foreign government, discharging the obligations of the United States under the Trusteeship Agreement pursuant to which we are required to develop the inhabitants toward self-government.

There are an additional 462 U.S. citizens employed under contract by the Trust Territory Government. These are Trust Territory--not Federal--employees and are in no way related to the Federal establishment. Virtually all the rest of the Government employees, or about 6,600 are native Micronesians.

Congress annually appropriates to the Department of the Interior the monies necessary to meet the expenses of administering the Trust Territory, including grants to the Trust Territory, which in addition to local revenues, provide for the support of its government functions.

Regarding these grant funds the Comptroller General, by opinion dated June 11, 1957, B-131569, has said:

> ...[E]xcept for the amounts budgeted and appropriated for the United States High Commissioner and for the Judiciary, the major portion of such appropriations constitute grant funds to supplement local revenues to enable the trust territory civil government to operate essential governmental functions.
>
> The rule is well-settled that grant funds which are transferred to one of the States of the United States become property of the transferee, and are not subject to the statutory restrictions which may exist with respect to the expenditure of appropriated moneys unless they are made a condition of the grant. . . As a corollary to that rule, it would seem to follow that funds appropriated in the nature of unconditional grants to the trust territory when paid over to the trust territory civil government and mingled with local revenues lose their character as public funds.

From what has been said, therefore, it is clear that the Government of the Trust Territory is not a Federal agency or instrumentality, and the Federal funds that are granted to it to support its governmental functions, when paid over and commingled with local revenues, lose their character as public or Federal funds. Accordingly, it is equally clear that Federal laws and regulations relating to the handling of and accounting for Federal funds and to the contracting practices by Federal agencies are no more applicable to the Trust Territory than they would be to a State of the Union or its officials or agencies. This Department has long held, for example, that the Federal Procurement laws, Title 41 U.S.C., and regulations thereunder are not applicable to the territories or possessions of the United States. E.g., Solicitor's Opinion M-36713 (1967). Nor is the Comptroller General inclined to disagree with our position that they are not applicable to the Trust Territory. Opinion letter B-162910, Jan. 17, 1968. Similarly, the provisions of Title 31 of the U.S.C. relating to the handling and accounting by Federal agencies of public funds would be inapplicable, at least to the funds granted to run the government of Micronesia. These, as the Comptroller General notes, cease to be Federal funds upon being receipted for and commingled with the local revenues.

The situation with regard to Title 40 of the United States Code, particularly the Federal Property and Administrative Services Act of 1949, as amended, is somewhat different. Here the Congress has specifically authorized the Secretary of Interior to acquire excess equipment, material and supplies without reimbursement or transfer of funds when required by the Department for operations conducted in the administration of the Trust Territory. 48 U.S.C. 1685. In the case of property thus acquired, the Department remains the accountable agency, and it may only be used and disposed of in accordance with applicable Federal law and regulations. Receipts from the disposition of such property belong to the United States and must be paid into the U.S. Treasury.

In addition, the Act provides for the disposition of foreign excess property. 40 U.S.C. 511-514. Foreign excess property is defined as "any excess property located outside the States of the Union, the District of Columbia, Puerto Rico, and the Virgin Islands." 40 U.S.C. 472 (f).

The authority given to executive agencies to dispose of foreign excess property is discretionary and very broad. It may be sold, exchanged, leased or transferred for cash, credit, other property; for foreign currencies, credits or other substantial benefits; and it may be abandoned, destroyed or donated if it has no commercial value or the estimated costs of its care and handling would exceed the estimated proceeds from its sale.

Excess property for the Trust Territory has been acquired under both of these authorities. However, in recent years, as the Trust Territory Government has come to be recognized as a separate, sui juris, semi-sovereign legal entity and not a Federal agency or instrumentality, it has acquired

most of its excess property in its own name under the latter authority, primarily from military sources in Southeast Asia. Property once thus acquired belongs to the Trust Territory--not the Federal--Government, and generally may be used and disposed of by that government in its own name and right. Such disposals are not subject to Federal regulation, and any proceeds belong to the Trust Territory Government.

Finally, you have asked for a summary description of the existing legal accountability of the Trust Territory employees for the stewardship of Federal funds and property under both Federal and Micronesian law. Aside from the legal requirements regarding accountability for Federal property which we have already mentioned, the "Manual of Administration for the Trust Territory of the Pacific Islands" which is promulgated by the High Commissioner and has the force and effect of law as it relates to the rules, practices and policies in the management and administration of the affairs of that government, contains quite detailed instructions and guidelines. Chapters 1-3 of Part 278 of the Manual dealing with Property Accountability and Responsibility provide an example and are enclosed for your information. With regard to the handling of funds there is also enclosed for your information Chapters 6 and 7 of Part 250 of the Manual relating to Administrative Control of Funds and Internal Audits. These enclosures are intended to be illustrative only of the high degree of performance and accountability required of Trust Territory employees. In short, it may be stated that the restrictions and requirements of Federal laws and regulations are regularly required to be applied and practiced by the Government of the Trust Territory even though they may not be legally applicable under Federal law to that government.

In addition to the above, and as a further assurance that the property and money which go to the Trust Territory will be properly managed and accounted for, the U.S. Congress requires the General Accounting Office to audit all financial transactions of the Trust Territory in accordance with the Budget and Accounting Act of 1921, as amended, and the Accounting and Auditing Act of 1950. 48 U.S.C. 1883. And these audits are conducted, though only periodically . Finally, in 1973, the Congress expanded the duties of the Government Comptroller of Guam to include audits of all accounts in the Trust Territory. He is required to bring to the attention of the High Commissioner and the Secretary of Interior all failures to collect monies due to the government and the expenditures of funds or uses of property which are irregular or not pursuant to law. He also is required to file an annual report of the fiscal condition of the Trust Territory showing receipts and disbursements, including any comments on irregularities and recommendations for improvements. This report is submitted to Congress. 48 U.S.C. 163(a)-(j). The first of such reports should be due in the very near future.

If you have any further questions on this matter, please feel free to contact C. Brewster Chapman, Jr., Assistant Solicitor, Territories who will give you whatever assistance he can. His number is Code 183 Extension 5216.

Sincerely yours,

/S/ KENT FRIZZELL

Solicitor

Enclosures
As stated