



United States Department of the Interior

MAY 29 1975

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

May 28, 1975

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IN REPLY REFER TO:

DGL-T: CBC 100813

Honorable Harold Fong
United States Attorney
District of Hawaii
P. O. Box 654
Honolulu, Hawaii 96809

Dear Mr. Fong:

It was a pleasure to talk with you on the phone last Friday. I have since talked with Alexis Panagakos and at her suggestion I am transmitting this material directly to you. She, of course, will get copies for her files of everything I am sending to you.

Enclosed herewith is a copy of Secretarial Order No. 2973. This Order establishes the machinery for the plebiscite to be held in the Mariana Islands on June 17. Attached to it is a Proclamation proclaiming the plebiscite and announcing the ballot. It is the phraseology of the "NO" ballot language that has caused concern. Also enclosed herewith is a copy of a letter dated May 1 to Secretary Morton from certain members of the Northern Mariana Islands electorate which I believe points out the problem quite clearly. Also enclosed is a copy of the telegraphed answer to these people from the Acting Secretary of the Interior. Finally, there are enclosed copies of the Trusteeship Agreement between the United States and the United Nations Security Council, the Joint Resolution of Congress approving the treaty, the Congressional Enabling Act relating to the administration of the territory (this can be updated by reference to Title 48 U.S.C. 1681 *et seq.*), and a copy of Executive Order 11021 vesting administering authority over the Trust Territory in the Secretary of the Interior. The particular language of interest in the Trusteeship Agreement is found in Article 6, 1 and Article 7.

At the heart of the problem is the question of whether the "NO" language on the ballot defeats the requirement for a fair, unbiased, impartial plebiscite. It is alleged that bias is created by the fact that the people of the Northern Mariana Islands or a majority of them, would rather have almost any other arrangement than to remain as a district of the Trust Territory. The Acting Secretary's cable, I think, gives



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the best answer there is to this allegation.

As I indicated to you on the phone, we have every reason to believe that a law suit will be filed. We suspect because of People of Saipan v. Morton, et al., 502 F.2d 90 CA 9 (1974), that a suit initially will be filed in the High Court of the Trust Territory. We think that Court may very well dismiss that suit for lack of jurisdiction. Should this happen, we believe that the plaintiffs will proceed forthwith to file an action in the U.S. District Court of Hawaii, and that the relief requested will be for a temporary and permanent restraining order. It is possible, of course, that they may seek relief in the District Court for Guam, but should this happen we can bring the special counsel to the plebiscite commissioner down from Saipan to defend that action. Incidentally, the plebiscite commissioner's name is Erwin P. Canham and the name of his special counsel is John C. Craft. These gentlemen can be reached at Box 185, Capitol Hill, Saipan, Mariana Islands 96950. In addition, as I mentioned to you, Dick Miyamoto, the Attorney General of the Trust Territory, will also be available to supply assistance.

In the event that an action is initiated in the District Court in Honolulu, we would suggest the possibility of a series of defenses. At the threshold would be a Motion to Dismiss for lack of jurisdiction and for failure to join indispensable parties. This may sound way out, but I suggest that the United Nations Security Council, as one of the high contracting parties to the Treaty, might well be an indispensable party. After all, what is involved here is a question of whether we have complied with the requirements of the Trusteeship Agreement. The final arbiter of this question will be the Security Council. If it is not satisfied with the way we have conducted the plebiscite it can veto our action and, of course, we would have to start all over again. Furthermore, this may be a suit involving a non-justiciable case or controversy, i.e., a political question. Should the court reject these arguments then it will be necessary to argue on the merits that the complained-of language does not contain bias or prejudice. Here again, I believe that the letter from the Acting Secretary postulates the best argument; particularly if you carefully note that in the "NO" language on the ballot you will see that the Northern Mariana Islands will remain as a district of the Trust Territory with the right to participate with the other districts in a future political status. The implication here clearly is that they have a right not to participate with the other districts. This option seems to have been lost in the rhetoric.

At this time I have nothing further to add to the above suggestions and I may have omitted something; however, Alexis Panagakos is also working on some of these legal theories. She has a very fertile mind and could

easily come up with something in addition.

As I advised you on the phone, I will let you know immediately if I learn anything about an action being initiated in the TTPI High Court. And, of course, if an action is actually filed in Honolulu, we will supply the Department of Justice with the usual litigation report. However, in view of the potential urgent nature of this matter, I felt it important to get this material to you as soon as possible.

Sincerely yours,

C. Brewster Chapman, Jr.

C. Brewster Chapman, Jr.
Assistant Solicitor, Territories
Division of General Law

Enclosures
As stated

cc: A. Panagakos

P.S. In the event you find it necessary to telephone Mr. Canham or Mr. Craft, I suggest you do so by calling Mr. Robert Law, our TTPI Liaison Officer in Honolulu, and request assistance from him. His telephone number is: 955-2581 or -6751.

P.P.S. The plaintiffs will undoubtedly be represented by Micronesian Legal Services, P.O. Box 826, Saipan, Mariana Islands. I believe that Mr. Edward C. King, Deputy Director, will be the lead counsel.