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MEMO 2

From: Jake Wheeler
To: Howard Willens

Subj: Language of Local Government Provisions Draft 7/7/76

I have not seen the briefing paper on local government so I may be wholly off base. My concerns perhaps are taken care of in it. But since I did have reactions to the materials as presented let me share them.

First, I would recommend against inclusion of this material--except as occasional illustrative items--in anything sent to delegates in the pre-convention stage. I doubt that it would be of much use to the general delegate at any time. However, it could be of some use to the constitution drafters once the delegates have decided what kind of a system they want. But the constitution language as such, drawn from various plans, does little to explain what those plans are all about. It seems to me that the briefing paper should deal with the nature and merits of the various alternatives available to the Marianas.

Second, given the smallness of the population and scatteration of real estate, I wonder whether any of the traditional plans of "home rule" or of local government in general can be readily applied. Offhand, the most promising would seem to be the Fordham plan which I will get to. However, I am inclined to think that some creativeness will have to be shown in this matter. Hawaii may offer a pattern to be considered.

Third, the many references to "local self-government" suggest that the islanders are interested in some form of municipal home rule rather than having everything run centrally by the commonwealth government. The two general plans which are talked about today are the "Texas" plan as now articulated in the "Fordham plan" after Jefferson Fordham, former dean of the University of Pennsylvania law school, and the "Bromage plan," as I know it, after Arthur Bromage, long-time professor of government at the University of Michigan and oftentimes consultant on municipal charters. The Bromage plan was followed in the Model State Constitution through the 5th edition; the Fordham plan was embraced in the 6th.

Bromage's more traditional plan follows the ideas of the original progressives who disillusioned with ill-treatment and neglect by state legislatures sought to carve out areas of power for local government and to express these clearly in the constitution where the legislature could not tamper. This arrangement resembles a bit in form the "delegated" powers of the Federal government, only the powers were restrained by Judge Dillon.

Fordham's plan seeks on the one hand to do away with Judge Dillon and on the other to express a theory of local government in harmony with new ideas of federalism. What the plan calls for essentially are local governments free to act on any subject not prohibited by the constitution or the legislature. Presumably the state will not act unless a state interest or value is at stake, leaving the locality free to show whatever initiative ~~or~~ it pleases in dealing with its problems or in pursuing its peculiar values. Whether any of this is really applicable to the Marianas you will have to determine. But I do believe the materials should take cognizance of this.

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The term "local self-government" seems to be a particularly important catchword in this situation but it may prove as troublesome and perhaps as meaningless in any practical sense as the word "sovereignty" has proved for the states. However, I realize the importance of paying due homage to glittering generalities. We can rationalize this term into some meaning by saying that "local" refers to keeping decision-making as close to the people most directly involved as possible. But then, in some cases, this could mean Washington. I do not want to sound like a pedant here. The point is really quite important, indeed a fundamental one. It is what I tried to emphasize on page 1 of my second draft. The American system is a "system" of which the Marianas will now be a part, an integrated part like the states. It is a flexible, growing changing system, not of levels and preserved domains but of interrelationships and hopefully cooperative sharings. Without raising hackles by challenging catchwords we should talk about the kind of "local self-government" possible and desirable. At the very least ~~the very~~ ~~least~~ the phrase means that groupings of people smaller than the whole should have some clearly identifiable role in decision-making without suggesting an impossible areal sovereignty. This is not just academic theory. It is what politicians have been wrestling with in speaking of "creative federalism," "the new federalism," and the like.