

MEMORANDUM

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TO: Howard P. Willens, Esq.  
FROM: ~~Howard N. Mantel~~  
SUBJECT: Review of Briefing Paper No. 12: Corporations (Draft  
August 27, 1976)  
DATE: September 2, 1976

Page 1, Introduction

I suspect that the first and second paragraphs could be combined without loss of content. You might add a brief statement on what a corporation is and the types of corporations that exist under the American system. This may appear to be simplistic but some of the delegates, those at least who are not attorneys, may be somewhat mystified by the nature of modern business organizations. If you do insert a definition, then distinction might be made among types of corporations: private corporations, membership corporations, not for profit corporations, and public corporations.\*

Page 2, paragraph 1, first sentence

Again, it may be useful to give a one line sketch of the historic status of corporations in our legal system and the concept of the corporate personality. This would help explain the use of special charters in an earlier period and the gradual conversion to general articles of incorporation in constitutions and the modern practice by which corporations are formed. Part of the reform ethos against corporate abuses took the form of heavy taxation on incorporated companies, particularly banks and railroads. James Bryce in his famous treatise, The American Commonwealth

\* If we assume that the article on corporations excludes governmental corporations, then that fact might be noted.

(1893), makes the following point which might be added to the first footnote, if appropriate:

The newer Constitutions often direct the legislature to see that such undertakings are duly taxed, sometimes forbidding it ever to deprive itself of the power of taxing any corporation, doubtless from the fear that these powerful bodies may purchase from a pliant legislature exemption from civic burdens. The methods, however, of taxing corporations vary greatly from State to State, and are at present in a chaotic condition.\*

-----, second sentence

The fact of extensive case law and detailed legislation itself doesn't militate against the need for constitutional treatment. In fact one could argue just from the reading of that sentence that the opposite might be true. I think this is an editing matter, perhaps some slight rewording is in order.

Page 3, top sentence

It might be helpful to the reader just to list the ten subjects referred to on the third line.

Page 3, first paragraph

It might be argued that as a new jurisdiction, as it were, business firms that are considering incorporating in the Northern Marianas might have more confidence in the stability of the Commonwealth if in fact there were a well written article in the Constitution, which gives an air of permanence. But the point on undue constitutional restrictions is perfectly valid.

It might be useful to include a brief word on existing constitutional or legislative bases for incorporation within the Trust Territories and, particularly, the Northern Mariana Islands. For the "outside" reader, it

\* Volume 1, p. 526.

would be helpful to have some sense of the number of corporations that already exist and their scale-- are there any large corporations; are there substantial numbers of foreign corporations registered to do business in the Islands; etc.

Page 5, paragraph 1, first sentence

Suggest that you omit the word "surprisingly."

Page 6 (2).

Article X, § 1 of the New York Constitution states, "Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. . ." This might be an approach that is worth considering for the Northern Mariana Constitution. As a point of information Article X, § 5 provides, "No public corporation (other than a county, city, town, village, school district or fire district or an improvement district established in a town or towns) possessing both the power to contract indebtedness and the power to collect rentals, charges, rates or fees for the services or facilities furnished or supplied by it shall hereafter be created except by special act of the legislature."\* (Emphasis added). As noted earlier it may be useful to have at least a brief discussion on public corporations and the wisdom of including in any article on corporations special reference to them. Again, for the information of the untutored, some note to the effect that while municipalities are treated as corporations invariably they are created differently than private corporations, with an appropriate

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\* The section contains additional details on public corporations.

cross-reference to the briefing paper on local government. Finally, to repeat the point made earlier, is there any virtue in considering reference to membership or nonprofit corporations?

I assume that there is no basis for any type of innovative constitutional language on either multinational corporations or to deal with the current instances of abuses of corporate power.

Page 7 (4)

I assume that the omission of such a provision in a Constitution does not vitiate limitations on stockholder liability?

Page 10 (8)

One could introduce the point, suggested supra, here that some reference in the Constitution to the police power over corporations may be timely in light of some of the problems of multinational corporate abuses. But it does seem a bit much.

Page 12 (10)

Some reference might be appropriate, as suggested, on the state and status of existing businesses incorporated and doing business within the Northern Mariana Islands.

It would be appropriate I believe to have at least a cross-reference to the briefing paper on land alienation with particular respect to the issue of corporations under the rubric of "persons of Northern Mariana Islands descent" in § 805(a) of the covenant.