

Department of Justice
Washington

October 19, 1976

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Mr. Fred M. Zeder, II
Director of Territorial Affairs,
Department of the Interior
Washington, D.C. 20240

Dear Mr. Zeder:

Thank you for your letter of October 7, 1976, notifying me of the October 21, 1976 meeting of the Interagency Territorial Assistance Committee. Unfortunately, I will be unable to attend the meeting. However, I have asked Mr. Bruce C. Rashkow of my staff to attend in my place.

You indicated in your letter that the Agenda will focus on the Northern Marianas, particularly the Covenant, Secretarial Order 2989, and the Statement prepared by the Assistant Solicitor for Territories on "Clarification of Federal Programs and Services to be Made Available to the Northern Marianas as Specified in the Covenant."

The Covenant is a lengthy and complex document dealing with a sensitive subject. As you are no doubt aware, many questions may arise as both we and the Government of the Marianas seek to implement the provisions of that document. Attached are some preliminary comments on the Statement prepared by the Assistant Solicitor for Territories. As these comments indicate, we differ with the conclusions contained in that Statement. Although these differences do not appear to be significant in the present context, they may prove significant in other contexts. Moreover, other agencies may have other perhaps more significant differences or raise other related problems.

In your letter you requested us to submit a comprehensive and descriptive listing of programs, by law and titles, administered by the Department of Justice, which may be made available to the Northern Marianas in accordance with the Covenant. We are still in the process of evaluating which of our programs may be made available to the Northern Marianas. Of course, the answers to this question depend in part on the position that the Executive Branch takes on the

sections of the Covenant examined in the Statement that is to be discussed at the meeting on Thursday, October 21, 1976. Nonetheless, we hope to distribute a preliminary listing at that meeting.

Finally, the Covenant provides for a number of actions which are of interest to the Department of Justice. These include the following:

1. Implementation of section 504. Commission on Federal Laws;
2. Legislation to organize the District Court for the Northern Mariana Islands. Provision for the appointment of District Judge, United States Attorney, United States Marshal, and their terms. Provision, as suggested in the Report of the Drafting Committee, for the appointment to these positions of the corresponding Federal officers on Guam. Section 401;
3. Determination of which provisions of Federal law and of the Constitution of the Northern Mariana Islands should be suspended pursuant to section 1004 until the termination of the Trusteeship.

We would like to discuss these matters with the Committee at some time in the near future.

Sincerely,



Peter R. Taft
Assistant Attorney General
Land and Natural Resources Division

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COMMENTS ON THE STATEMENT OF THE ASSISTANT
SOLICITOR, TERRITORIES, DIVISION
OF GENERAL LAW

1. Relationship between sections 703(a) and 502(a).

We do not agree with the Assistant Solicitor's analysis of the relationship between those two sections; however, there does not seem to be any difference in the ultimate outcome of the two approaches.

Section 502(a)(1) provides in pertinent part that the Federal laws which provide Federal services and financial assistance programs shall apply to the Northern Mariana Islands as they apply to Guam. Pursuant to section 703(a) "the United States will make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States." The Assistant Solicitor takes the position that section 703(a) "restates and expands" the commitment contained in section 502(a)(1), and makes available to the Northern Mariana Islands in addition to the services applicable by section 502(a) those other programs, and services available to American Samoa, Guam, the Virgin Islands, and Puerto Rico.

The Assistant Solicitor's position presumably is based on the comments in the section-by-section analysis prepared by the Marianas Political Status Commission (MPSC Memorandum) relating to section 703(a). That memorandum states that section 703(a) "restates and expands" the commitment made in section 502(a). The section-by-section analysis prepared by the Administration, however, takes the position that section 703(a) merely "restates" the provision contained in section 502(a). While the House Committee Report, H.Rept. 94-364, is silent on this issue, the Senate Committee Report, S. Rept. 94-433, p. 85, agrees with the Administration's interpretation of section 703(a). That conclusion also finds support in other comments of the MPSC Memorandum. Thus, the comments on section 502(a)(1) contain the following passage:

"Subsection 502(a)(1) assures that certain significant laws apply in certain ways:

'Laws which provide federal services and financial assistance programs for the States and territories will apply to the Northern

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Marianas as they apply to Guam. These laws are estimated to provide \$3 million every year to the Northern Marianas. They cover a wide range of federal programs and services, more fully discussed under Section 703."
(Emphasis added.)

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This clearly recognizes that the Federal services and assistance programs of section 502(a)(1) and the full range of Federal programs and services of section 703(a) cover the same ground. Again, the MPSC comments on sections 502(a)(1) and 703(a) both assign the same monetary value, vis., \$3 million per annum, to the benefits flowing from those sections. This would not be possible if section 703(a) "expanded" the benefits available under section 502(a)(1), but is fully consistent with the view that section 703(a) merely "restates" the provision made in section 502(a)(1).

However, if it were assumed arguendo that the full range of Federal programs and services of section 703(a) is somehow broader than the Federal services and financial assistance programs of section 502(a)(1), it has to be realized, and has been realized by the Assistant Solicitor, that the Northern Mariana Islands would be entitled only to Federal programs and services available to the territories, i.e., to American Samoa, Guam, the Virgin Islands and Puerto Rico. Hence, if a program does not apply to Guam, it would not apply to the Northern Mariana Islands under section 703(a). On the other hand, if it applies to Guam, it would apply to the Northern Mariana Islands pursuant to section 502(a)(1). For that reason we do not believe that there is a real difference between the result reached by the Assistant Solicitor and our own analysis of the Covenant.

2. Effective date of section 502(a)(1) of the Covenant.

The explanation of this date on p. 2(2) of the Assistant Solicitor's memorandum is technically correct but should be clarified, e.g., by referring simply to the date on which the Constitution of the Northern Mariana Islands becomes effective.

↑ Nit Pick
Not so at the time my memo was written 180 days had not passed

3. Effective date of "commitment" contained in section 703(a).

with view.

The Assistant Solicitor suggests that in contrast to section 502(a)(1) which is self-executing, the "commitment" of section 703(a) requires implementing legislation. While we would not oppose that conclusion, it should be pointed out that section 1001(b) of the Covenant, pursuant to which the Covenant "becomes law" when approved by the United States, could be read as such implementing legislation. In any event, even if section 703(a) were merely a "commitment," it could be enforceable in court pursuant to section 903 of the Covenant.

Hardy

4. Section 502(a)(3).

The Assistant Solicitor's memorandum states that this paragraph appears to create some confusion, because it might create a gap in the applicability of Federal services and programs to the Northern Mariana Islands. These fears appear to be unfounded. Section 502(a)(3) becomes effective at the same time as section 502(a)(1), i.e., when the Constitution of the Northern Mariana Islands becomes effective. Up to then the Federal programs and services available to the Trust Territory will continue to apply to the Northern Mariana Islands. Thereafter the Northern Mariana Islands will receive those programs and services pursuant to section 502(a)(1).

So what did I say differently?

So who said it wouldn't

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