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The Honorable Herman Q. Guerrero
Chairman, Political Committee
Northern Mariana Islands Legislature
Saipan, Mariana Islands 96950

Dear Herman:

I understand from Ed Pangelinan that you have requested our opinion with respect to the eligibility of a United States citizen residing in the Northern Mariana Islands to seek election to office in the first election under the Northern Marianas Constitution tentatively scheduled for November 1977. After reviewing the Constitution and the accompanying Analysis, we have concluded that such a citizen would be eligible to serve in an elective office if successful in that election.

The offices of governor, lieutenant governor, senator, representative, representative to the United States, and perhaps mayor will be listed on the first Commonwealth ballot. Individual sections of the Constitution prescribe the qualifications that the occupants of each of these offices must possess. In addition, the Constitution demands that the occupant of each office be qualified to vote in the Commonwealth.

Article VII of the Commonwealth Constitution governs eligibility to vote. Section 1 of that article provides:

"A person is eligible to vote who, on the date of the election, is eighteen years of age or older, is domiciled in

the Commonwealth, is a resident of the Commonwealth and has resided in the Commonwealth for a period of time provided by law, is not serving a sentence for a felony, has not been found by a court to be of unsound mind, and is either a citizen or national of the United States. The legislature may require that persons eligible to vote be citizens of the United States."

The Analysis of the Constitution (p. 136) makes this determination clear: "[Section 1] permits both citizens and nationals of the United States to vote in Commonwealth elections. It prohibits aliens from voting. The provision also permits the legislature to disqualify nationals at some time in the future." Neither the Constitution nor the Analysis discloses a desire by the Convention to exclude United States citizens from voting in the first commonwealth election while guaranteeing their franchise thereafter. Indeed, status as a United States citizen or national is an express precondition for eligibility to vote and, therefore, to serve in the elective offices discussed above.

Before the termination of the Trusteeship Agreement, residents of the Commonwealth who are citizens of the Trust Territory will not enjoy United States citizenship or nationality. The Schedule on Transitional Matters deals with the problem that arises from this fact. Section 8 of the Schedule recognizes three categories of persons who are considered United States citizens and nationals during the interim between popular approval of the Constitution and the termination of the Trusteeship Agreement. To fall within one of those three categories, an individual may not have owed "allegiance to any foreign state" on March 6, 1977.

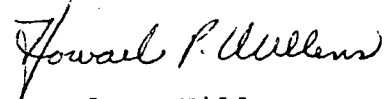
The United States is not a "foreign state" within the meaning of section 8. As the Analysis (p. 213) explains, "A person owes allegiance to a foreign state under this section if the [person] is not a citizen of the Trust Territory of the Pacific Islands or a citizen or national of the United States and is a citizen, national or subject of some jurisdiction other than the Trust Territory or the United States." The Analysis also makes clear that a person who is a United States citizen or national "as of the effective date of the Constitution" is considered to retain that

status for the purposes of voting and holding office during the interim period preceding termination of the Trusteeship Agreement. Because the election of Commonwealth officials is a necessary prerequisite to the formation of that government, the "effective date" referred to in the Analysis should be construed to be the date of the United States Government's approval of the Constitution.

As you know, the constitutional qualifications imposed on the governor, lieutenant governor, senators, representatives and Washington representative are exclusive. The Constitution does, however, permit the legislature to establish additional requirements for mayors, such as "a period of residency or domicile in the island or islands the elected mayor will serve." (Analysis of the Constitution at 120.) It is our view, therefore, that the Northern Marianas legislature may not require that officials to be elected under the Constitution cannot be United States citizens.

I hope this opinion is responsive to your request. Best personal regards to you and your colleagues.

Sincerely,



Howard P. Willens

cc: Mr. Edward Pangelinan

bc: Paul Koffsky

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Dictated by James R. Leonard, 5/16/77

CABLE DATED MAY 13, 1977

FROM: SENATOR H. Q. GUERRERO

TO: EDWARD PANGELINAN

REQUEST ASAP LEGAL OPINION FROM WILLENS ON
FOLLOWING STOP IF ELECTION TO TAKE PLACE THIS NOVEMBER
CAN U.S. CITIZENS SCREEN, DAVID SABLAN, NABORS, ETC.
MARIANAS RESIDENTS MORE THAN SIX YEARS QUALIFY FOR
ELECTION TO PUBLIC OFFICE.

KINDEST REGARDS.