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March 25, 1977

MEMORANDUM TO PAUL KOFFSKY

Re: Northern Marianas -- Availability of Federal Programs

Attached is an opinion letter dated June 28, 1976, made available to me on Monday, March 21, relating to the above specified subject. We have been asked for our advice whether this opinion properly interprets the relevant provisions of the Covenant.

The specific issue is whether additional Congressional action is required in order to extend federal services and programs to the Northern Marianas under the Covenant. You will note that the marked sentence in the middle of page two seems to suggest that such Congressional action is required, relying on the author's interpretation of Section 703(a) of the Covenant.

I would like your advice regarding this opinion letter. This is one of the subjects which may be discussed at a meeting next week at Interior. The other subjects tentatively deferred until such meeting are: (1) discussing the approval process with OMB; (2) the proposed letter to the administrative office of the United States Courts regarding the establishment of the Northern Marianas federal district court; and (3) the need for IRS assistance in the Northern Marianas.

~~Z~~ H. P. Willens

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cc: Deanne Siemer



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

hw Macassa

June 28, 1976

DGL-T: CBC 113051

Memorandum

To: Acting Director of Territorial Affairs

From: Assistant Solicitor, Territories
Division of General Law

Subject: Clarification of Federal programs and services to be made available to the Northern Marianas as specified in the Covenant

By memorandum dated June 21, 1976, you have asked a series of questions regarding the interpretation of the Covenant as it relates to Federal programs and services to be made available to the Northern Mariana Islands. You wish to provide the answers to Resident Commissioner Canham, the Acting High Commissioner, the Committee on Transition, the Commission on Federal Laws, and the Secretary's Committee on Interagency Territorial Assistance. In view of this fact, I believe that it would be more helpful to give a general explanation of the problems encompassed by your questions than it would be to provide answers to the questions as postulated.

Basically, section 703(a) of the Covenant commits the United States to make available to the Northern Mariana Islands the full range of Federal programs and services available to the territories of the United States. This section restates and expands the commitment contained in section 502(a)(1) which makes applicable in the Northern Mariana Islands the laws of the United States providing for Federal financial assistance and services and the Federal banking laws as they apply to Guam; section 228 of Title II and Title XVI of the Social Security Act; the Public Health Service Act as it applies in the Virgin Islands; and the Micronesian Claims Act. Thus, section 703(a) requires the United States to make available in addition to these services and programs made applicable by section 502(a)(1), all other Federal programs and services available to American Samoa, Guam, the Virgin Islands and Puerto Rico. These programs and services include but are not necessarily limited to public health and welfare, education, public services, employment, and economic development. Thus, the Northern Mariana Islands will be eligible for such programs as those which provide funds for health maintenance organizations, for school lunch programs in areas affected by Federal activity, for grants for basic adult education, for community development as well as airport and airway development for rural electrification and telephone service assistance, for solid waste disposal, road construction assistance, for aid to small business, and for



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economic opportunity, manpower development, and other training programs.

The question as to when these various services and programs become applicable to and available in the Northern Mariana Islands is more complex. They fall into different categories:

(1) All Federal programs and services currently available to the Trust Territory of the Pacific Islands are and will remain available to the Northern Mariana Islands.

(2) Pursuant to section 1003(b) of the Covenant, section 502(a)(1) becomes effective not later than 180 days after March 24, 1976, the date the Covenant was approved and the Constitution for the Northern Mariana Islands has been approved. Upon the effective date of Section 502, the laws mentioned in subsections (a)(1), (a)(2), (a)(3) and (b) become applicable in the Northern Mariana Islands without more.

(3) Pursuant to section 1003(b), section 703(a) likewise becomes effective not later than 180 days after the approval of the Covenant and the Constitution for the Northern Mariana Islands has been approved. Unlike section 502, however, section 703 does not make laws applicable, but rather commits the United States to make available the services and programs mentioned. Thus, to the extent that laws of the United States providing for such services and programs cannot be construed as permitting the extension of their programs and services to the Northern Mariana Islands, appropriate steps will have to be taken by the United States to secure legislative amendments so that the programs and services can be made available.

Section 502(a)(3) appears to create some confusion. Basically, it states what is stated in paragraph (1) above; except that subsequent amendments of those laws will not be applicable unless the Northern Mariana Islands is specifically mentioned. The anomaly, of course, is that the Northern Mariana Islands are still a part of the Trust Territory and will remain so until the Trusteeship Agreement is terminated. Accordingly, the law is as stated in paragraph (1) above, and not as might be implied from reading paragraph 502(a)(3); namely, that those laws now applicable to the Trust Territory will not become applicable for possibly up to 180 days from the date of the approval of the Covenant and the Constitution for the Northern Mariana Islands. I am confident that such a potential hiatus in the applicability of Federal services and programs in the Northern Mariana Islands already available in the Trust Territory was not intended.

Questions have also been raised as to whether the Northern Mariana Islands will qualify as a "State Agency" within the meaning of legislation authorizing grants of aid or assistance to "State Agencies" which include within their respective definitions the "Trust Territory of the Pacific Islands" as a "State Agency." The answer is in the affirmative. The Northern

Mariana Islands will have to establish the necessary political sub-structures to qualify for the respective programs and services sought; but, aside from that, they will qualify for their proportionate share of the benefits authorized for the entire Trust Territory.

Please let me know if I can be of further assistance.

C. Brewster Chapman, Jr.

C. Brewster Chapman, Jr.

Enclosures (ret'd.)

1. OMSN Fifth & Final Sess (2d part)
2. Marianas Pol Status Comm - Sec by Sec
Analysis of the Cov
3. Hearing Before The Subcommittee on Terr
& Insular Affairs - H.J. Res. 549, 550
& 547

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