

Mar 30, 1977

Northern Mariana
Islands

MEMORANDUM FOR MR. WILLENS

In a memorandum dated June 28, 1976, C. Brewster Chapman, Jr., opined as to the applicability of federal programs and services to the Northern Mariana Islands under the Covenant. Mr. Chapman's analysis turned on Sections 502 and 703(a) of that document.^{1/} His memorandum treated these provisions as complementary, not contradictory.

1/ Section 502 provides:

(a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

(Footnote continued)

Mr. Chapman concluded that "[u]pon the effective date of Section 502, the laws mentioned in subsections (a) (1), (a) (2), (2) (3) and (6) become applicable in the Northern Marianas Island without more."^{2/} Section 502, therefore, is self-executing. In contrast, Mr. Chapman

(Footnote continued from previous page.)

(3) those laws not described in paragraphs (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

Section 703(a), in turn, states:

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. Funds provided under Section 702 will be considered to be local revenues of the Government of the Northern Mariana Islands when used as the local share required to obtain federal programs and services.

^{2/} Memorandum from C. Brewster Chapman, Jr., Assistant Solicitor, to Acting Director of Territorial Affairs, U.S. Department of the Interior (June 28, 1976) 2 (hereinafter cited as "Chapman Memorandum").

interprets §703(a) as merely a commitment by the United States "to make available in addition to services and programs made applicable [to the Northern Marianas Islands] by section 502(a)(1), all other Federal programs and services available to American Samoa, Guam, the Virgin Islands and Puerto Rico." (Emphasis supplied.)^{3/}

Sections 502 and 703(a), therefore, are directed at different federal programs. Mr. Chapman's interpretation requires a federal agency first to determine whether a federal program falls within the reach of section 502. If, pursuant to an express statutory provision, an inference drawn from a statutory provision or an administrative interpretation or ruling, a program conforms to the terms of that section, the program is automatically applicable to the Northern Marianas Islands. In other words, federal programs applicable to Guam also benefit the new Commonwealth.

Only if section 502 is inapposite would section 703(a) come into play. Recognizing this, Mr. Chapman observed

Unlike section 502, however, section 703 does not make laws applicable, but rather

^{3/} Chapman Memorandum 1.

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 Marianas 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. (Emphasis supplied.)^{4/}

These sentences refer only to programs whose applicability to the Northern Marianas Islands is governed by section 703. Reliance on them to gloss section 502 is, accordingly, misplaced.

The legislative history underlying the Covenant supports Mr. Chapman's opinion. The section-by-section analyses in the Senate^{5/} and House^{6/} Reports accompanying the joint resolution approving the Covenant emphasize the complementary relationship of sections 502 and 703(a). The House Report virtually repeats the language of section 502(a), thereby emphasizing that federal services and programs applicable to Guam "will apply to the Northern

^{4/} Chapman Memorandum 2.

^{5/} S. Rep. No. 433, 94th Cong., 1st Sess. (1975) (hereinafter cited as "Senate Report").

^{6/} H.R. Rep. No. 364, 94th Cong., 1st Sess. (1975) (hereinafter cited as "House Report").

Marianas as they apply to Guam."^{7/} Similarly, the Report's explanation of section 703(a) merely reiterates what the section provides: ". . . the United States will make available to the Northern Marianas Islands the full range of federal programs and services available to the territories of the United States."^{8/} Thus, section 703(a) is more expansive in scope than is section 502: the former takes as its point of reference all United States territories; the latter looks only to Guam. Accordingly, it is sensible to read the "will apply" language of section 502 as self-executing, while interpreting the phrase "will make available" as leaving to Congress the vindication of the pledge that it made in section 703(a).

Examination of the Senate Report leads to the same conclusion. The analysis of section 502 focuses on the self-executing nature of the provision:

The basic principle underlying section 502 is that the federal laws applicable to Guam and which are of general application to the several States shall also apply to the Northern Marianas Islands. This means in effect that the federal laws applicable to Guam will be

^{7/} House Report 8.

^{8/} Id. at 12.

extended to the Northern Marianas Islands unless they are locally restricted to Guam, such as the Organic Act of Guam.^{9/}

The Senate analysis goes on to interpret section 703(a) as a "restatement" of section 502(a)(1). The Senate committee probably did not, however, intend that federal services and programs not applicable to Guam automatically benefit the Northern Marianas. Rather, as the analysis states, section 703(a) is designed to commit the United States to "make available" to the new Commonwealth federal services and programs that aid the territories but to which Guam is not entitled.^{10/}

Federal services and programs that are described by section 502 of the Covenant, therefore, will be automatically applicable to the Northern Mariana Islands. Benefits that are not in that category but that are extended to the territories will be available to the Northern Marianas only if Congress discharges the obligation its undertook in section 703(a).

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^{9/} Senate Report 76.

^{10/} Senate Report 85.