

N. Warren



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 16 1977

Note to: ✓ Fred Mohamam, House Interior Appropriation, Subcommittee
 Bob Kripowicz, House Interior Appropriation, Subcommittee
 ✓ Dwight Dyer, Senate, Interior Appropriation, Subcommittee

Subject: Northern Mariana Islands Authorization and Appropriations

The following enclosures are provided for your review and comment:

1. Resident Commissioner letter of April 18, 1977.
2. Interior Solicitor opinion of May 6, 1977.
3. Draft response from the Under Secretary.
4. Copy of Sections 701 and 702 of Covenant P. L. 94-241 of March 24, '76.

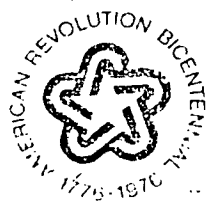
The draft response has been cleared by OMB. Before it is finalized it is desired that both appropriation committees are also in agreement with the opinion in regard to the meaning of Sections 701 and 702 since it effects the authority of the committees in making appropriations for FY 79 and the following six years. It should be noted that the constant dollar index provision (GNPIPD) applies to the base figure contained in Section 702 for all seven years.

We would like to know if a formal request to the Committee Chairman is necessary, or would verbal approval be sufficient with a copy of the finalized letter from the Under Secretary to the Committee Chairman for the record be satisfactory.

Your assistance in resolving this matter will be greatly appreciated so that all parties concern will be in agreement thereby eliminating confusion down the road. Any questions you may have can be directed to myself or Jim Berg of our staff.

Sincerely,

Hugh J. Gallagher
Hugh J. Gallagher
Budget Officer
Office of Territorial Affairs



cc: Frank Wiles
Office of Budget



Government of the Northern Mariana Islands
Office of the Resident Commissioner

Saipan, Mariana Islands 96950

April 18, 1977

Cable Address
ResCom Marian.

Mr. Emmett M. Rice
Acting Director of Territorial Affairs
United States Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Dear Mr. Rice:

During a recent meeting between the Northern Mariana Islands Legislature, members of my staff and the members of the Office of Transition Studies and Planning and Mr. Robert Bauerlein of the Office of Management and Budget, the question of the procedure for requesting funds for appropriation under the Covenant was brought up. At that meeting, the opinion of Mr. Bauerlein with regard to the matter was that even under constitutional government, the Marianas will be required to provide detailed statement of justifications for grants to be made available under the provisions of the Covenant, specifically Section 702. Lawyers that were present at that meeting interpreted that section with a different view from that advanced by Mr. Bauerlein.

The purpose of this letter is to ask a formal interpretation from your office of Section 702 with regards to the budgetary procedure of OMB that must be followed before funds are appropriated. An early official position on this matter will expedite the budgetary activities to be undertaken by the current government with respect to preparation and submission of the Fiscal Year 1979 budget.

If the current procedure for submitting justification is followed for Fiscal Year '79, several problems will arise.

First, the submission of budgetary programs by the current departments would be solicited together with hearings to be conducted among my staff and the present Marianas Legislature which will create confusion as to what operations and CIP programs to follow in the preparation of the budget: the present Legislature or the new one.

Mr. Emmett M. Rice
April 18, 1977
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Additionally, the preparation of the Fiscal Year '79 budget would have to be coordinated very closely with the current activities of the Office of Transition Studies and Planning, especially the operational costs of the new government and priorities for the various economic development plan, Capital Improvement Program, and other programs authorized under the Covenant.

To meet the concerns of Mr. Bauerlein, as well as take advantage of the flexibility in budgeting which we interpret the Covenant to allow the Northern Marianas, we propose to submit only a statement of the Operations, CIP and EDLF totals which are authorized by the Covenant. This statement will be accompanied by a letter explaining that the Northern Marianas will be pleased to present justifications for the authorized budget when it is considered by the Congressional budget contained in the OTSP plan will have been reviewed by the elected Governor and presumably approved by the legislature in accord with the provision of the Northern Marianas Constitution.

I would appreciate getting a formal interpretation of the validity of the position taken by Mr. Bauerlein as soon as possible so that we can know whether or not we need to continue past budget procedures and submit a detailed justification for FY '79.

Sincerely,

Erwin D. Canham

Erwin D. Canham
Resident Commissioner

cc: Northern Mariana Islands Legislature
Director of OTSP
Edward DLG. Pangelinan, Marianas/Washington LNO



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

May 6, 1977

DGL-T: CBC 86576

Memorandum

To: Director of Territorial Affairs

From: Assistant Solicitor, Territories
Division of General Law

Subject: Interpretation of Section 702 of the Northern Mariana
Islands Covenant

You have asked for my opinion as to the effect of Section 702 of the Covenant on the need for appropriation hearings before Congress and the prerogatives of the Congress to alter by reduction the amounts specified therein.

Section 702 must be read together with section 701. Section 701 constitutes a pledge by the United States Government to assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people and an obligation by the United States to provide direct multi-year (initially for a 7-year period) financial support to that Government.

Section 702 constitutes a commitment by and pledge of the full faith and credit of the United States to appropriate annually the funds therein authorized to be paid annually to the Government of the Northern Mariana Islands.

Under the circumstances, it is my opinion that the United States Government cannot reduce in any one year, at least for seven (7) years from the effective date of Section 702, the levels of financial support provided for therein for the Northern Mariana Islands. This is particularly so because the Covenant constitutes a valid binding bilateral agreement between the people of the Northern Mariana Islands and the United States Government lawfully acting through its Congressional and Executive branches.

Nevertheless, though section 702 authorizes the multi-year appropriations at the levels specified therein, it does not appropriate the monies authorized to be appropriated. Accordingly, it is my opinion that annual appropriations of those funds must be requested, and, as a practical matter, therefore, appropriations hearings before the Congress will have to be held. It is my further opinion, perhaps not as a legal but rather as a practical matter,



that the annual requests for the appropriations should be supported by a Northern Mariana Islands budget presentation; because, though the Congress cannot reduce the levels of support authorized, it would seem to have a right to assure itself that the monies appropriated are to be used wisely for the purposes specified.

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

C. Brewster Chapman, Jr.

C. Brewster Chapman, Jr.

Dear Mr. Canham:

This letter is in response to your letter of April 18, 1977 to Mr. Emmett Rice regarding the procedure to be used by the Government of the Northern Mariana Islands for its FY 1979 budget and for those subsequent budgets which are included in the federal grants of Article VII of the Commonwealth Covenant (P.L. 94-241). I am sending a copy of this letter to Senator Jesus V. Guerrero of the Northern Mariana Islands Legislature who wrote to Secretary Andrus on May 12, 1977 on the same subject.

The Office of the Solicitor of this Department has issued an opinion on the meaning of Article VII with regard to the prerogatives of the United States Government in making available the amounts specified in Section 702 of the Covenant. Further, on the question of procedure, we have consulted with the Office of Management and Budget which is in full agreement with the Department's opinion on the meaning of Sections 701 and 702.

We believe that Section 702 of the Covenant, read in the context of the entire Article, constitutes a commitment by and pledge of the full faith and credit of the United States to appropriate annually the funds therein authorized to be paid annually to the Government of the Northern Mariana Islands. Under these circumstances, the United States Government cannot reduce in any one year, at least for seven years from the effective date of Section 702, the levels of financial support provided for the Northern Mariana Islands. Since the Covenant constitutes a valid binding bilateral agreement between the people of the

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Northern Mariana Islands and the United States Government acting lawfully through its Congressional and Executive branches, ^{this} ~~the~~ ^{Article VII} commitment of financial support will hold until or unless ^{the} Covenant ~~is~~ were to be amended.

Section 702 does not however actually appropriate, but only authorizes the appropriation of, the sums included therein. It is therefore our opinion that annual appropriations of these funds must be requested from the Congress and, as a practical matter, appropriations hearings before the ~~appropriate~~ Congressional committees with jurisdiction will have to be held. In this context, given the ~~existing~~ budget and appropriations mechanisms of the Congress, the annual requests for ~~appropriate~~ appropriations ^{must} ~~should~~ be supported by a Northern Mariana Islands budget presentation through the Department ~~of~~ the Interior for submission to the Congress.

With regard to the budget process for FY 1979, we therefore believe it to be necessary for the Government of the Northern Mariana Islands to submit a budget detail document through the Department of ~~the~~ Interior by the end of September. Given the fact that the new Governor and Legislature of the Northern Mariana Islands will not take office until next January under present planning, the specific allotments within the general budgetary divisions of operations, construction and special programs mandated by the Covenant will have to be promulgated by the Resident Commissioner with the advice of the present Northern Mariana Islands Legislature. It should be noted however that ~~this~~ budget submission can be considered preliminary and

subject to later revision by the new constitutional government prior to formal submission of the document to the United States Congress in February of 1978.

In closing, this Department strongly believes that while Article VII of the Covenant is a multi-year authorization for the funds pledged therein, we must all be ever concerned that the Congress of the United States is kept fully informed on the prospective uses of those funds. This Department will commit its best efforts to assist the Government of the Northern Mariana Islands in this process.

Sincerely,

JAJ



Public Law 94-241
 94th Congress, H. J. Res. 549
 March 24, 1976

Joint Resolution

To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes.

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

48 USC 1681 note.

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of the Northern Mariana Islands clearly expressed over the past twenty years through public petition and referendum, and in response to its own obligations under the trusteeship agreement to promote self-determination, entered into political status negotiations with representatives of the people of the Northern Mariana Islands; and

Whereas, on February 15, 1975, a "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Hayden Williams for the United States of America, following which the covenant was approved by the unanimous vote of the Mariana Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975: Now be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. Congressional approval. 48 USC 1681 note.

"COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

"Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

"ARTICLE VII

"UNITED STATES FINANCIAL ASSISTANCE

"SECTION 701. The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end, the United States will provide direct multi-year financial support to the Government of the Northern Mariana Islands for local government operations, for capital improvement programs and for economic development. The initial period of such support will be seven years, as provided in Section 702.

Seven year grant assistance, appropriation authorization.

"SECTION 702. Approval of this Covenant by the United States will constitute a commitment and pledge of the full faith and credit of the United States for the payment, as well as an authorization for the appropriation, of the following guaranteed annual levels of direct grant assistance to the Government of the Northern Mariana Islands for each of the seven fiscal years following the effective date of this Section:

"(a) \$8.25 million for budgetary support for government operations, of which \$250,000 each year will be reserved for a special education training fund connected with the change in the political status of the Northern Mariana Islands;

"(b) \$4 million for capital improvement projects, of which \$500,000 each year will be reserved for such projects on the Island of Tinian and \$500,000 each year will be reserved for such projects on the Island of Rota; and

"(c) \$1.75 million for an economic development loan fund, of which \$500,000 each year will be reserved for small loans to farmers and fishermen and to agricultural and marine cooperatives, and of which \$250,000 each year will be reserved for a special program of low interest housing loans for low income families.

Federal programs and services, availability.

"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. 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.

"(b) There will be paid into the Treasury of the Government of the Northern Mariana Islands, to be expended to the benefit of the people thereof as that Government may by law prescribe, the proceeds of all customs duties and federal income taxes derived from the Northern Mariana Islands, the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions, or consumed in the Northern Mariana Islands, the proceeds of any other taxes which may be levied by the Congress on the inhabitants of the Northern Mariana Islands, and all quarantine, passport, immigration and naturalization fees collected in the Northern Mariana Islands, except that nothing in this Section shall be construed to apply to any tax imposed by Chapters 2 or 21 of Title 26, United States Code.

26 USC 1401, 3101.

"SECTION 704. (a) Funds provided under Section 702 not obligated or expended by the Government of the Northern Mariana Islands

during any fiscal year will remain available for obligation or expenditure by that Government in subsequent fiscal years for the purposes for which the funds were appropriated.

"(b) Approval of this Covenant by the United States will constitute an authorization for the appropriation of a pro-rata share of the funds provided under Section 702 for the period between the effective date of this Section and the beginning of the next succeeding fiscal year.

Pro-rata share, appropriation authorization.

"(c) The amounts stated in Section 702 will be adjusted for each fiscal year by a percentage which will be the same as the percentage change in the United States Department of Commerce composite price index using the beginning of Fiscal Year 1975 as the base.

"(d) Upon expiration of the seven year period of guaranteed annual direct grant assistance provided by Section 702, the annual level of payments in each category listed in Section 702 will continue until Congress appropriates a different amount or otherwise provides by law.

"ARTICLE VIII

"PROPERTY

"SECTION 801. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to all personal property on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be distributed equitably in a manner to be determined by the Government of the Trust Territory of the Pacific Islands in consultation with those concerned, including the Government of the Northern Mariana Islands.

"SECTION 802. (a) The following property will be made available to the Government of the United States by lease to enable it to carry out its defense responsibilities:

Leased property, U.S. defense purposes.

"(1) on Tinian Island, approximately 17,799 acres (7,203 hectares) and the waters immediately adjacent thereto;

"(2) on Saipan Island, approximately 177 acres (72 hectares) at Tanapag Harbor; and

"(3) on Farallon de Medinilla Island, approximately 206 acres (83 hectares) encompassing the entire island, and the waters immediately adjacent thereto.

"(b) The United States affirms that it has no present need for or present intention to acquire any greater interest in property listed above than that which is granted to it under Subsection 803(a), or to acquire any property in addition to that listed in Subsection (a), above, in order to carry out its defense responsibilities.

"SECTION 803. (a) The Government of the Northern Mariana Islands will lease the property described in Subsection 802(a) to the Government of the United States for a term of fifty years, and the Government of the United States will have the option of renewing this lease for all or part of such property for an additional term of fifty years if it so desires at the end of the first term.

March 24, 1976

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Pub. Law 94-241

SEC. 2. It is the sense of the Congress that pursuant to section 1002 of the foregoing Covenant, and in any case within ten years from the date of the enactment of this resolution, the President of the United States should request, on behalf of the United States, the designation of special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.

Approved March 24, 1976.

Special representatives, appointment by President, report to Congress.
48 USC 1681 note.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-364 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 94-433 (Comm. on Interior and Insular Affairs) and No. 94-596 (Committees on Foreign Relations and Armed Services).

CONGRESSIONAL RECORD:

Vol. 121 (1975): July 21, considered and passed House.
Vol. 122 (1976): Feb. 24, considered and passed Senate, amended.
Mar. 11, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 12, No. 13 (1976): Mar. 24, Presidential statement.

90 STAT. 279