

N. Marianas file

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June 21, 1977

Pedro A. Tenorio, Director
Office of Transition Studies and Planning
P.O. Box 9
Saipan, Mariana Islands 96950

Dear Pete:

I have received your memorandum of June 8, 1977, in which you requested me to consult with Mr. Willens and his associates regarding the nature of the United States Government's financial obligations to the Northern Mariana Islands under section 702 of the Covenant. This letter describes my activities in response to your request and outlines the results of my discussions with our consultants and with officials of the Executive Branch.

In preparation for a conference with representatives of the Office of Management and Budget (OMB) and the Department of the Interior, I conferred on June 16 with Messrs. Leonard, Mantel, Willens, and Koffsky. Mr. Samuel M. Cohn, a vice-president of Robert R. Nathan Associates and a former official of OMB, participated in our discussion of the budgetary process. We concluded that our first task was to ascertain if the Executive Branch disputed the United States' obligation under article VII of the Covenant to provide the new Commonwealth with \$14 million in grant assistance in each of the first seven years of constitutional government. All of those attending this meeting agreed that the United States is subject to that obligation.

Accordingly, the next day I met with Wesley Sasaki, Director of the National Resources Program Division at OMB; C. Brewster Chapman, Assistant Solicitor for Territories, Interior Department; James Berg of the Office of Territorial Affairs, Interior Department; and Robert D. Bauerlein of Mr. Sasaki's staff. I was accompanied by Messrs. Willens, Leonard, Cohn and Koffsky. After we voiced our concerns, we called upon Mr. Sasaki and his colleagues to delineate the United States' view of section 702 and its position as to the budgetary requirements with which the Northern Marianas must comply.

Mr. Sasaki explicitly stated that the Covenant commits the United States to grant the Northern Marianas \$14 million per year for the initial seven years of the life of the Commonwealth. He recognized that this amount may not be reduced. The other Government officials present expressed their agreement, with Mr. Chapman likening the Covenant to a bilateral contract and the United States' obligation to a contract duly secured by adequate consideration. The United States Government, therefore, does not contest its legal obligation under the Covenant with respect to the monies guaranteed the Commonwealth by section 702.

Mr. Sasaki and others did, however, offer practical reasons for the Northern Marianas Government's submitting annual plans for the use of these monies and justifications for those plans to OMB. In addition, he suggested that substantial deviations from the plans should also be reported. First, section 702 of the Covenant is but a multi-year authorization; it does not constitute an appropriation of funds. Consequently, the Northern Marianas must seek a yearly appropriation from the Congress. The President is required by law to present to the Congress an annual budget that includes all proposed governmental expenditures. Submission of the Northern Marianas budget documents requested by OMB, therefore, would permit inclusion of these appropriations in the President's budget. On the other hand, failure to provide OMB with these materials might mean the omission of the \$14 million from the President's budget. That result would greatly complicate the Congress' consideration of the necessary appropriation of those monies.

Second, the Northern Marianas may require the authorization and appropriation of funds over and above the \$14 million during the initial seven-year period. The Commonwealth may also need continued financial support following the end of this seven-year period. Mr. Sasaki said that OMB would be unable to recommend the favorable consideration of either type of request unless the Commonwealth Government demonstrates that it has wisely used the basic grant funds. He emphasized, however, that the Commonwealth Government alone will decide the specific purposes for which these funds are spent. He also stated that the Northern Marianas may modify its annual proposed allocation of the grant funds.

Third, the federal officials stressed that the participation of the Northern Marianas in the annual federal budgetary process would foster an atmosphere of good will, cooperation, and mutual respect between the Commonwealth and the United States Government. They suggested that such an atmosphere is crucial to obtaining increased financial support from Washington. I concur with this view.

Although the federal officials encouraged the Northern Marianas to participate in the normal budgetary process for these reasons, they also recognized that some special flexibility would be required for fiscal year 1979 and until constitutional government under the Covenant was in fact operational. The OMB representatives indicated that their documentation needs could be fully satisfied for the next fiscal year by drawing upon financial planning materials being prepared by consultants acting under contract with OTSP. The Interior representatives also provided some reassurance that the normal requirements for budgetary justifications would be administered flexibly so as to take into account the unusual circumstances prevailing in the Northern Marianas at this time. This view is reiterated in the draft letter from the Undersecretary of the Interior to the Resident Commissioner described below.

Mr. Chapman has prepared a legal memorandum, dated May 6, 1977, on this matter. In addition, Mr. Berg has drafted a letter from the Undersecretary of the Interior to the Resident Commissioner dealing with the issue. Mr. Berg informed us that the Undersecretary's letter has been cleared by the responsible Executive Branch officials and is awaiting approval by members of the appropriate Congressional committees. Messrs. Leonard and Willens and I believe that the reasons for the Northern Marianas' participation in the federal budgetary process are compelling. We therefore recommend the involvement of the Northern Marianas in that process. Copies of both documents are attached.

I hope that the above information is response to your request. Let me know if you wish me to pursue the matter.

Sincerely yours,



Edward DLG. Pangelinan

Enclosures

xc: The Honorable Erwin D. Canham, Resident Commissioner, NMI
The Honorable Herman R. Guerrero, Speaker, NMI Legislature
The Honorable Jesus V. Guerrero, Chairman, Appropriation
Committee, NMI Legislature
Mrs. Ruth Van Cleve, Director, Office of Territorial Affairs,
Department of Interior
C. Brewster Chapman, Jr., Esquire, Assistant Solicitor for
Territories, Department of Interior
Mr. Wesley K. Sasaki, Director, Natural Resources Programs
Division, Office of Management and Budget
Howard P. Willens, Esquire, Wilmer, Cutler & Pickering
Mr. James R. Leonard, Robert R. Nathan Associates



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.

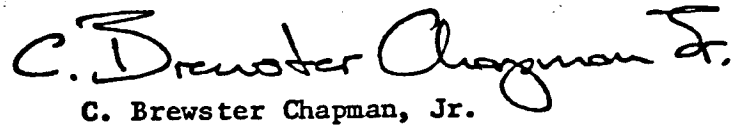
Under the circumstances, it is my opinion that the United States Government cannot reduce in any one year, at least for seven (7) years from the effective date of Section 702, the levels of financial support provided for therein for the Northern Mariana Islands. This is particularly so because the Covenant 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.

A handwritten signature in cursive script that reads "C. Brewster Chapman, Jr." The signature is written in dark ink and is positioned above the printed name.

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 ~~PR~~ 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 ~~of~~ and Budget which is in ~~full~~ agreement with the Department's opinion on the meaning of Sections 701 and ~~70~~ 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~~ at least for seven ~~x~~ years from the effective date of Section 702, the levels of financial support provided for there 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 commitment of financial support will hold until or unless ^{Article VII} 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 ~~should~~ ^{must} be supported by a Northern Mariana Islands budget presentation through the Department ~~to~~ 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