

SEP 16 1977

Personal

Confidential

BLUE ENVELOPE

Honorable Erwin D. Canham
Resident Commissioner
Government of the Northern Mariana Islands
Saipan, Mariana Islands 96950

Dear Erwin:

We appear to be in very serious difficulty with respect to the approval of the Northern Marianas Constitution, and the likelihood today is that it will not be approved before October 22.

I'm communicating these awful facts to you by this means -- and not cabling you -- because I should think the problem ought not now to be shared with anyone other than your closest associates. We may be able to perform a rescue effort, and of course I'm trying to do that, but in the meantime, consternation in Saipan is unlikely to be helpful. (For all I know, however, the problem may be known there now, for Howard Willens tells me that he's informed Eddy Pangelinan of it.)

I learned late yesterday from Howard Willens that the pertinent Assistant Attorney General has concluded that "Government of the United States", as that term is used in the Covenant, means both the Executive and Legislative Branches; that in his view, the President thus cannot approve the Constitution without formal Congressional approval (even though informal approval has, in effect, been achieved by OMB letters to pertinent Chairmen, with no flack ensuing); and therefore the next steps, Justice says via Willens, are either (a) to wait until October 22 when the 6 months expire, at which time the President can act unilaterally, or (b) send forward forthwith requests to the Congress for their formal approval (before October 22) of the Constitution. For what it is worth, if these are the only options, and I greatly hope they are not, I would much prefer (a). It seems to me (b) would be a dreadful affront to the Congress.

After learning the above, I received informally from the Office of Management and Budget a copy of its submittal to the Justice Department, and that is enclosed. Because it is an internal, deliberative document, I believe it should not be disclosed generally, and I would ask you to

Honorable Erwin D. Canham

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treat it as privileged. You will see that OMB tilted toward the position Justice has taken. Our view has of course been that the President can act alone, but obviously Justice has the final word on a legal question. My own legal opinion (and I have one, although I think I'm not entitled to one these days), is that the Justice construction is needlessly conservative, that the Interior view is at least respectable as a matter of law, and that the practical consequences of the Justice view are so dreadful that Interior's legal position should be adopted.

The dreadful consequences, I have said, are that this will almost certainly delay the election; it could delay the inauguration; and (of vastly lesser importance) it will unquestionably enrage at least some members of Congress, who think they authorized the President to move on this alone.

What I mean to do is to approach the Justice Department as quickly as I am able to do so -- probably early in the week of September 19. If we are unsuccessful there, I shall approach our principal White House contact, to see if he can head this off. If that doesn't work, the Under Secretary has agreed to use his approach to the White House.

It is unlikely that you will even have this letter, let alone be able to respond, before this matter is discussed as above and probably settled. That being so, perhaps all I'm doing is worrying you needlessly. But I do have one request: I would like your appraisal of the "dreadful practical consequences" of the delay to October 22, from your end. If you can send me a cable without telling the world, please do. If you can trust only this form of communication, please use that, and your communication just might reach me in time to be useful.

In any event, I thought you should know these things. We really will do what we can to improve this state of affairs. I will keep you posted.

Sincerely yours,

MRS. RUTH G. VAN CLEVE

Ruth G. Van Cleve
Director
Office of Territorial Affairs

Enclosure

cc: Mr. Berg
Mr. deYoung
Mr. Milner
R.VAN CLEVE:Ict
9/16/77