BRIEFING PAPER NO. 5

LOCAL GOVERNMENT

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the general policy considerations to be evaluated by the delegates in deciding what constitutional provisions, if any, are appropriate on this general subject. The second part of the paper discusses certain specific issues relating to local government that may come before the Convention.

I. BACKGROUND AND GENERAL CONSIDERATIONS

A. Applicable Provisions of the Covenant

The Covenant expressly recognizes the distinct political identities of the three currently chartered municipalities in the Northern Mariana Islands. Section 203(c) provides that each of these municipalities -- Rota, Saipan and Tinian -- shall be equally represented in one house of the bicameral legislature mandated by the Covenant.[2/] Apart from the possible limitations on Commonwealth action flowing from this section,[3/] the Covenant does not address the subjects discussed in this briefing paper. Nor do any provisions of the United States Constitution specifically limit

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2/ For a discussion of this provision and its implementation by the Convention, see BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH OF GOVERNMENT § II(A)(2). Article VII, § 702(b) of the Covenant recognizes the separate needs of these communities (and implicitly some of the related political problems) by earmarking a fixed amount for capital improvements on Rota and Tinian.

3/ The clear intention of the framers of the Covenant was to ensure equal representation in one house for each of the three separate islands. Article II, § 203(c) cannot be construed as requiring that each of the islands remain a separate municipality in perpetuity, that no new municipalities can be created, or that any local government entities must be authorized by the Commonwealth Constitution.

the Commonwealth's authority to organize itself under the Covenant in the fashion believed to best serve the interests of the Northern Marianas people.[4/] The delegates are essentially free, therefore, to decide whether to create any agencies of local government and, if so, what powers or responsibilities they should have.

B. Background

Ruled by outsiders for more than 400 years, the people of the Northern Mariana Islands have had little experience with self-government and even less with meaningful local government at the island or village level. A brief review of the powers assigned to the municipalities under the law of the Trust Territory of the Pacific Islands may provide a useful context within which the delegates can discuss the issues confronting them in deciding what kind of constitutional article, if any, is required on the subject.

The Code of the Trust Territory of the Pacific Islands substantially limits the powers of existing municipalities.[5/] Their duties with respect to education and public health are only such as may be provided by law. Both

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4/ Here, as elsewhere, there are restrictions on action by the Commonwealth arising from generally applicable provisions of the United States Constitution.

5/ Title 4, ch. 3, § 51 of the Code sets out the powers of the municipalities. In addition, § 302 of title 5 provides for nomination by local election of community court judges whose jurisdictions are limited to particular municipalities.

of these functions, in fact, are centralized at the Trust Territory level; even district responsibility for these functions has been limited.[6/] Law enforcement is likewise completely centralized.[7/] District level participation in this function involves no more than nomination of the district chief of police by the district administrator.[8/] Public assistance is essentially a district function,[9/] and public housing a responsibility of the Trust Territory.[10/] The district and Trust Territory governments share jurisdiction over regulation of business[11/] and labor.[12/]

The prevailing pattern of administration not only limits the responsibilities of municipalities; it also restricts their freedom in carrying out these responsibilities.

6/ Compare TRUST TERRITORY CODE tits. 41 (education), 63 (public health) [hereinafter cited as TTC], with MARIANA ISLANDS DIST. CODE tit. 9 (health and safety) [hereinafter cited as MIDC].

7/ TTC tit. 69.

8/ TTC tit. 69, § 51.

9/ MIDC tit. 10, ch. 10.08.

10/ TTC tit. 46 (Supp. 1975).

11/ TTC tit. 2, § 113; TTC tits. 29, 31, 33, 35, 37; MIDC tit. 7.

12/ TTC tit. 49; MIDC tit. 4.

Their ability to make policy is circumscribed by a Trust Territory statute permitting a district administrator to determine which municipalities within the district may enact ordinances to become effective without his approval. 13/ Furthermore, any particular ordinance of any municipality may be nullified or modified by either the district administrator or the high commissioner. 14/ Nor do municipalities exercise extensive authority over their own structures. The high commissioner has sole discretion regarding the establishment of municipalities and the powers they will enjoy. 15/ Local fiscal affairs are also tightly controlled; localities are required to obtain budget approval from the district administrator, 16/ and are quite strictly constrained by district statutes in their use of grants in aid. 17/

These restrictions with respect to governmental action by the municipalities continue under the separate administration of the Northern Mariana Islands. 18/

13/ TTC tit. 4, § 101.

14/ TTC tit. 4, § 106.

15/ TTC tit. 4, § 1.

16/ TTC tit. 77, § 1202.

17/ MIDC tit. 6, chs. 6.04, 6.06.

18/ Sec. Order No. 2989, 41 Fed. Reg. pt. VI, pp. 15892, 15895 (Apr. 15, 1976).

C. General Considerations

All 50 states in the United States divide the authority of government within the state between the state government and certain political subdivisions. A political subdivision in this context typically means a county, a municipality, town or similar general-purpose local government.[19/] A very important threshold issue for the Convention is whether the Commonwealth should have such political subdivisions. Resolution of this issue by the delegates involves consideration of a range of factors: practical; political; managerial; and economic.

Population, more than any other consideration, poses the question of the need and desirability of local government

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19/ It can also mean a special purpose governmental entity, like a port authority, that administers a community's harbor and related facilities. These are distinguished from general purpose government in ways other than their limited functions, such as the method of their creation, the nature of their structure, and heavy reliance on user charges or service fees for their financial base. Such entities are typically more remote from direct citizen control than are the more popular local government forms. D. Lockard, THE POLITICS OF STATE AND LOCAL GOVERNMENT p. 104 (1969).

Discussion of such special purpose entities is beyond the scope of this briefing paper. No special constitutional issue is raised by the availability of this particular kind of government agency, except perhaps the desirability of ensuring that the legislature has the authority to create such entities if the need arises. One possible need was discussed at length during the negotiations preceding the Covenant involving the creation of a Northern Marianas Port Authority to exercise the responsibilities assigned in the Technical Agreement to the Northern Marianas if and when the United States leases and develops the land available to it on Tinian under the Covenant. TECHNICAL AGREEMENT REGARDING USE OF LAND TO BE LEASED BY THE UNITED STATES IN THE NORTHERN MARIANA ISLANDS pt. II.

entities in the Northern Marianas. Unlike the 50 states and the Commonwealth of Puerto Rico, the scale of governmental activity (given the total Northern Marianas population of approximately 15,000) suggests a difference not just of degree but of kind. Even assuming rapid population expansion, fundamental principles of division of labor and management capacity would tend to encourage a greater, rather than lesser, centralization in a single unified Commonwealth government.

Limitations in the resources available to the future Commonwealth -- money and trained personnel -- also suggest that the creation of local government entities need not be required by the Constitution. Funds spent on government salaries or facilities mean that less is available for stimulating the private business sector or for providing needed programs and services to the people. At the outset of the existence of the new Commonwealth, it might be best to strive for the simplest and least costly governmental structure, recognizing that agencies once created by constitutional provision are often difficult to change or eliminate.

On the other hand, the concept of political subdivisions as entities different from state government has a long tradition in governments throughout the world; it transcends questions of operating efficiency and managerial span of control or unity of command. It goes to the heart of the right of people to manage affairs close to home. The question for the delegates is whether this legitimate objective can be achieved in a community of the size and traditions of the Northern Marianas without creating multiple tiers of government.

The United States experience offers a wide variety of governmental arrangements for the Convention to evaluate in light of the particular needs and circumstances of the Commonwealth. Varied responses to the demand for local government reflect the tension between the traditional view that the state has the inherent right to change or eliminate all political subdivisions and a more recent trend toward freeing some such entities, especially large cities, from the detailed control of state governments and legislatures. What emerges, however, is a wide interdependence of government agencies from the smallest town to the federal government itself. A wide variety of programs has appeared in recent decades that provide financial assistance to localities by state and federal agencies in order to overcome inadequate local resources. State and federal officials have used such programs to set national or statewide policies on matters formerly the concern of local governments. At the same time, there has been considerable emphasis on broadening the ways by which local people may participate in decision-making by levels of government above the locality. To a large extent the concept of entrusting separate levels of government with complete responsibility for particular functions has given way to a more complex sharing of responsibilities. Thus there are few areas in which the federal government no longer is involved, even though its role may be principally to set policy and to redistribute public funds on an equitable basis.

These general considerations and factors should be evaluated by the delegates in addressing the specific issues discussed in this briefing paper. There is no "right" or "wrong" way of proceeding on this matter. Many subjective but legitimate considerations will govern, and the political judgment of the delegates will be necessary to weigh these considerations against more objective factors relating to good management or efficiency. It is important to recognize the implications of alternative courses of action because there are no fixed principles that can serve as guidelines with respect to these questions. A wide array of options may be feasible in the Northern Marianas, and the delegates will wish to consider carefully the need to retain the flexibility to deal with changing conditions and evolving perceptions without a major change of the governmental scheme contained in the Commonwealth Constitution.

II. SPECIFIC ISSUES FOR DECISION

This section of the briefing paper discusses first the need for popularly elected governments with specified functions for the three major islands (or their villages) in the Northern Marianas. It begins with a review of the principal functions traditionally performed by such political subdivisions, the extent to which such functions justify local governments in the Commonwealth, and the availability of certain non-traditional alternatives that may deserve consideration by the Convention. If the delegates conclude that political subdivisions should be authorized in the Constitution, specific questions regarding their powers, structure, finances and personnel should be addressed by the Convention. These topics are considered in the second part of this portion of the paper.

A. Need for Traditional Local Government

Before coming to any final decision on whether to create one or more levels of local government, the Convention should consider the functions usually performed by such political subdivisions, the extent to which these functions require local government in the Northern Marianas, and the utility of other means (whether or not requiring a constitutional provision) that might serve the desired objective.

1. Standard functions of local government

Local governments typically serve two principal purposes -- representational and functional.

Local governments elected by the people in the community perform a variety of representational responsibilities. Their elected status enables them to speak for the people -- to pass resolutions on local issues important to the voters, to present petitions to higher levels of government regarding policies and services, and to convene town meetings to encourage direct popular participation in the affairs of the community. If their authority permits, local governments in their representative capacity may enact laws or regulations in the areas delegated to them.

The functional responsibilities of local governments relate primarily to their role in the administration of programs and delivery of services to the people. The nature of the services ranges widely from community to community -- education, police functions, traffic controls, zoning and similar responsibilities. In some instances, the political subdivision exercises nearly full responsibility for initiating and financing the particular program or service; in other cases, the local unit may be serving as the means for delivering a governmental service authorized and financed by a higher level of government, state or federal. All possible variations can be found in the delivery of such services at the local level in the United States.

2. Needs in the Northern Marianas

Any assessment of the current needs for traditional agencies of local government in the Northern Marianas must consider three factors: the size of the Commonwealth; the feasibility of dividing governmental responsibilities in the Commonwealth; and the provisions of section 203(c) of the Covenant.

a) Size

As a small community, the Northern Marianas may not have the same need for political subdivisions that larger communities do in the United States. With about 15,000 people, the Northern Marianas approximates in size a typical county or town in the United States. Even though the people live on different islands, the community is small enough for political leaders to be readily accessible to their constituents and for the people to participate meaningfully in public affairs -- through village meetings, political parties, and voluntary associations. Under these circumstances, traditional local government entities may not be needed to perform the representational function. Public participation in the election of the Commonwealth governor and legislative representatives and continued political and voluntary activity on the individual islands may provide sufficient opportunity for the people to ensure that their interests are being respected by the Commonwealth government. With a government of this size, moreover, a variety of participatory devices can be used to assure representation of localized interests, good communication with citizens on neighborhood and community needs, and respect for the traditions of the individual islands.

b) Feasibility of dividing governmental responsibility

In considering whether local governments below the Commonwealth level should be either required or authorized by the Constitution, the Convention should consider what specific functions or responsibilities would be performed by these municipal units of government. Studies in the field of local government have identified certain factors which are relevant to the determination of the functional responsibilities to be assigned to a particular level of government. The following five factors may be helpful to the Convention in considering this issue:[20/]

20/ This framework is adopted from two sources: Advisory Commission on Intergovernmental Relations, STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS UPON THE STRUCTURAL, FUNCTIONAL, AND PERSONNEL POWERS OF LOCAL GOVERNMENT pp. 19-20 (1962); and Hawaiian Legislative Reference Bureau, HAWAII CONSTITUTIONAL CONVENTION STUDIES, ARTICLE IX: EDUCATION (PUBLIC EDUCATION) pp. 11-22 (1968) [hereinafter cited as HAWAII STUDIES].

i) Uniformity. The first standard against which governmental functions must be measured is the need for uniformity. If a particular activity cannot be carried out effectively without a uniform system throughout the Commonwealth, then that activity should probably be controlled at the Commonwealth level. Uniformity does not necessarily require the actual delivery of services to occur at the Commonwealth level. The Commonwealth government could set standards to ensure uniformity, for example, a standard size for traffic signs, and leave the actual delivery of services to the municipalities.

ii) Fiscal capacity. Certain governmental functions, although not requiring a uniform approach, may be impossible to perform without resources beyond the means of a particular locality. The activity may require a minimum number of highly trained, and therefore highly paid, personnel. Or it may require equipment that is expensive to acquire and maintain.

iii) Efficiency. Some governmental services cannot be supplied without a minimum investment of resources. This minimum investment may create a capacity exceeding the needs of any particular locality. In such a case, it is wasteful for separate localities and burdensome on their taxpayers to fund the function individually. Even if such activities do not cost a great deal of money, it is sensible to avoid any needless expense.

iv) Equality. If a particular operation is left to local government, the quality of performance may depend on the wealth of the locality. Citizens of poorer regions could be denied services available to richer areas. In such a case, much may be said for entrusting the activity to a level of government financially able to provide equal services. This supports authorizing the Commonwealth to set standards and provide the necessary fiscal support that enables the municipalities to assure equalized service.

v) Political control. Some activities may be so important to each locality that the local citizens have a right to demand that the people responsible for carrying out those activities be politically accountable to the community. If the voters directly elect those responsible for the activities, or if those responsible report directly to locally elected officials, the likelihood of responsiveness to the community increases. Some activities, indeed, cannot be conducted without popular participation. The likelihood of this participation increases if individuals believe they can have an impact upon government practice. The existence of local governments may encourage that belief.

A multitude of government functions might be measured against the five general factors listed above to determine their appropriateness for assignment to local governments in the Commonwealth. Appendix A of this briefing paper examines 20 functions of government and summarizes how those functions are typically performed in the United States, how they are currently performed in the Marianas, and how the above five factors suggest that the function should be performed in the new Commonwealth. Although the table suggests that few, if any, functional responsibilities require the creation of governmental subdivisions in the Northern Marianas, the political judgment of the delegates may nevertheless indicate that such units are desirable.

c) Section 203(c) of the Covenant

The protection given the people of Rota and Tinian by section 203(c) of the Covenant is especially pertinent to the question of creating (or authorizing) local governments in the Commonwealth. As reflected in the legislative history,[21/] section 203(c) was designed to ensure that the

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21/ The legislative history states:

> It is also the intention of the parties, as reflected in the unanimous view of the members of the Marianas Political Status Commission, that the Northern Mariana Islands Constitution provide for a distribution of the membership of one house of the legislature on the basis

(Footnote continued on next page)

particular interests of Rota and Tinian would be recognized and accommodated under the new Commonwealth. Depending upon the decisions made at this Convention, the house of the legislature in which Saipan, Rota and Tinian have equal representation is very likely to exercise significant powers of government.[22/] Through the exercise of these powers, the representatives of Rota and Tinian will be able to ensure that their communities are fairly treated, notwithstanding the disparity in population as compared with Saipan. Section 203(c), therefore, may provide a degree of ensured participation in the Commonwealth government for the people of Rota and Tinian that minimizes (or eliminates) the need for creating separate political subdivisions on those islands.

(Footnote continued)

> of appropriate considerations in addition to population and in particular that the phrase 'chartered municipalities of the Northern Mariana Islands' be interpreted to mean the present chartered municipalities of Rota, Saipan and Tinian as constituted at the time of signature of this Covenant and any additional future chartered municipalities that may be added pursuant to the terms of the Constitution of the Northern Mariana Islands.

Report of the Joint Drafting Committee on the Negotiating History, reprinted in S. Rep. No. 433, 94th Cong., 1st Sess., p. 404 (1975).

22/ The allocation of powers between the two houses of the legislature is discussed in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH OF GOVERNMENT § II(A)(2).

3. <u>Alternatives to traditional local government</u>

Before reaching a decision on this subject, the Convention should consider whether alternatives to traditional local governments exist that may be more appropriate for the Northern Marianas. Several alternatives might accommodate the delegates' desire that the Commonwealth government adequately serve the distinct interests of the people of Rota, Saipan and Tinian. Of the alternatives discussed below, some lend themselves to constitutional treatment, while others do not:

° <u>Inclusion of specially appointed island representatives in governor's cabinet</u>. These representatives might be appointed by the governor with the advice and consent of the house in which the islands have equal representation. They would be responsible for communicating the views of their communities to the highest levels of the executive branch and for monitoring the delivery of governmental programs and services in their area.[23/]

23/ Such a representative would have many of the characteristics of an ombudsman. An ombudsman is an official of government whose job is to oversee government bureaucracy. He may examine citizen complaints, investigate the government, criticize administrative practices and even take the government to court. The ombudsman is primarily a mediator; he serves to give citizens a representative capable of intervening in normal government operations to prevent injustice. Originally a Scandinavian institution, the office has seen some use in the United States, and has been adopted in Hawaii. The institution is being put to

(Footnote continued on next page)

° <u>Creation of a governor's council</u>. The Constitution might require the appointment by the governor of a council consisting of members drawn from each of the three major islands. Such a council has some precedent in United States history[24/] and can be an effective means of ensuring that the views of the people of each island are considered at the time Commonwealth policy is shaped.

(Footnote continued)

use in an increasing number of contexts. Cappelletti, <u>Governmental and Private Advocates for the Public Interest in Civil Litigation: A Comparative Study</u>, 73 MICH. L. REV. p. 793, at 844-47 (1975).

One variation of this alternative would allow a representative to be selected by the delegation from each island to the Commonwealth legislature.

24/ In the post-Revolutionary War period, many American states created governor's councils that were elected by the legislature or the people. Maine, Massachusetts and New Hampshire retain theirs; ME. CONST. art. V, pt. II, § 1; MASS. CONST. pt. II, ch. I, § III; N.H. CONST. art. II, § 60. These councils were created as a check upon the governor, reflecting colonial distrust of executive power. Councils of this particular type, being only one part of a plan of government designed to greatly weaken the executive, would presumably not be adopted unless a very weak executive branch was sought. <u>Council of State Governments</u>, THE BOOK OF THE STATES 1976-1977 p. 4 (1976); Richards, <u>The Heritage of the Eighteenth and Nineteenth Centuries</u>, in THE 50 STATES AND THEIR LOCAL GOVERNMENTS p. 45 (J. Fesler ed. 1967) [hereinafter cited as THE 50 STATES].

° Establishment of Commonwealth offices on major islands. The understandable desire to have government near at hand might be met at least partially by requiring that the Commonwealth locate offices on Rota and Tinian through which governmental programs and services are administered. The use of such offices, perhaps in conjunction with advisory citizen groups in various specialized areas (such as land use, health services, or education), may serve to decentralize the Commonwealth government and to make it more responsive to the Northern Marianas people.[25/]

° Regular consultation between the governor and the legislative delegations. The persons elected to the Commonwealth legislature will be some of the Commonwealth's most respected and articulate leaders. Their duties will inevitably require familiarity with their islands' special needs and problems. Regular consultation between the delegations from each island and the governor might provide additional assurance that local matters are considered fully by the executive branch. Regular consultation also might increase cooperation between the legislative and executive branches of government.

25/ Fesler, The Future of State and Local Government, in THE 50 STATES p. 584 n.44.

° Periodic reports by the governor to the people of the major islands. Although the governor will probably travel to all parts of the Commonwealth at regular intervals, a requirement of an annual or semi-annual report in person to the people of Rota, Saipan and Tinian might be useful. Such an obligation would stimulate the executive branch to keep its affairs in order and to deal promptly with local complaints regarding government programs and services.

These and similar alternatives should be evaluated by the delegates before adopting those models of local government traditionally found in the United States. A thoughtful departure from precedent to meet the special circumstances of the new Commonwealth and to preserve flexibility in the future may be the soundest course of action.

B. Attributes of Local Government

If the Convention concludes that local institutions should exercise some functions of government within the Commonwealth, it may decide to treat the subject expressly in the Constitution. It is possible to leave the matter for resolution by the legislature by assigning "all legislative power" to the legislature without any restriction on its authority to delegate particular powers to local municipalities.[26/] Assuming that the Convention desires to address the issue in the Constitution, it can either require the creation of local government or authorize the legislature to do so within the guidelines set out in the Constitution. In either case, the Convention must evaluate alternative forms of local government in order to make decisions with respect to the powers to be allocated to local government, the methods by which local institutions are to be created, and the supervision to be preserved for the Commonwealth government.

1. Powers

There are at least six approaches that the Convention may take in allocating powers to localities. They vary in the scope of powers permitted, in the degree of Commonwealth supervision they require, and in their efficiency.

a) No express grant of power (or permissive grant)

If the Constitution does not expressly address the issue of local authority or uses permissive language, the legislature will have complete discretion regarding the powers of local officials. Constitutional silence or permissive

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26/ This method of allocating legislative power is discussed in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH OF GOVERNMENT § II(A)(1).

language also permits the legislature to exercise as much supervisory control as it desires, while leaving open all options as to the actual powers exercised by local officials. American experience illustrates the disadvantages of this approach. State governments with absolute power over localities have behaved arbitrarily on occasion. For example, during the nineteenth century, the legislatures of Alabama and Tennessee abolished -- on paper -- the cities of Mobile and Memphis, respectively. Indeed, the desire to avoid the abuses of this degree of state control over localities originated the movement to treat the subject of local government in state constitutions.[27/]

b) Power over listed functions subject to override by general law

A second alternative would constitutionally list the functions that local governments may exercise, but would authorize the legislature to supersede by law any exercise of the listed functions. This approach would prevent localities from exercising any functions other than those listed and would permit full supervision by the Commonwealth. No state in the United States has used this approach.

27/ Richards, The Heritage of the Eighteenth and Nineteenth Centuries, in THE 50 STATES p. 67. Connecticut's constitution provides an example of language giving complete discretion to the state: "The general assembly shall by general law delegate such legislative authority as from time to time it deems appropriate to . . . political subdivisions." CONN. CONST. art. X, § 1.

Although this kind of provision would encourage flexibility, it has certain obvious disadvantages, especially if the Convention wishes local governments to assume serious responsibilities. The very existence of listed powers may create a problem, since any particular action can be justified only if the local governments can point to some specific grant of authority.28/ Further, the Commonwealth's authority to supersede any action of the local government might result in a tendency to turn to the Commonwealth with local problems.

c) Power over local affairs subject to override by general law

A third alternative empowers local government to exercise "all power over local affairs" subject to general Commonwealth law. Fourteen states take this approach,29/ combining its general language with a list of powers included in the general grant.

As under the second alternative, this provision requires that the locality be able to indicate an affirmative grant of power and provides for full power of Commonwealth

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28/ A discussion of the general problems involved in using enumerated powers is contained in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH OF GOVERNMENT § II(A)(1).

29/ Florida's constitution provides an example: "Municipalities . . . may exercise any power for municipal purposes except as otherwise provided by law." FLA. CONST. art. VIII, § 2(b). California, Idaho, Maine and Wisconsin also use this system. CAL. CONST. art. XI, § 5(a); IDAHO CONST. art. XII, § 2; ME. CONST. art. VIII, pt. II, § 1; WIS. CONST. art XI, § 3.

supervision. The use of a general term such as "local affairs" reflects a broader grant of power, however, and obviously envisions active local governments. The definition of subjects properly classed as "local affairs" may generate some uncertainty and difficulty. The courts are inclined to read the phrase narrowly,[30/] but its reach is not clear.

d) Exercise of all legislative power subject to override by general law

A different approach permits local government to act unless it is in some manner divested of power. The constitutional provision could authorize local government to exercise "all legislative power, except as limited by the Constitution or general laws." The *Model State Constitution*[31/] and the American Municipal Association[32/] recommend this approach, which is used by at least seven states.[33/]

30/ National Municipal League, MODEL STATE CONSTITUTION art. VIII, § 8.02 (Comment), p. 97 (6th rev. ed. 1968) [hereinafter cited as MODEL CONST.]

31/ MODEL CONST. art. VIII, § 8.02.

32/ *Id.* (Comment), p. 97.

33/ An example of this type of provision states: "A chartered governmental unit may exercise any legislative power or perform any function not denied it by its charter, the Constitution or the general laws of the state." S.D. CONST. art IX, § 2. Other constitutions taking this approach are: ALAS. CONST. art. X, § 11; MASS. CONST. art. II, § 6 (as amended by amend. 89); MO. CONST. art. VI, § 19(a); MONT. CONST. art. XI, § 6; N.H. CONST. pt. I, art. 39; PA. CONST. art. IX, § 2.

This "concurrent powers" formula has several advantages if a very active local government is desired. First, the courts are not forced to determine the reach of particular grants of power. Second, the approach of giving concurrent powers permits alteration by statute, thus making any necessary adjustments easier to achieve than under a system of constitutional allocation of powers that can be altered only by constitutional amendment. Third, the concurrent approach creates a presumption that local government can act and may encourage lower levels of government to accept responsibility although they will still be subject to Commonwealth supervision.

e) Power over listed functions without override

A fifth alternative grants specified powers to local government without any authority in the Commonwealth to supersede the exercise of these powers. This approach is used in the state of Illinois.[34/] Unlike the second alternative discussed above, local governments would be supreme with respect to the powers listed. This alternative shares many of the disadvantages of the second alternative. Furthermore, additional ambiguity results because the listed powers are assigned exclusively to the local government units.

34/ ILL. CONST. art. VII, § 7.

If it is unclear whether a particular action is permitted under the powers listed, neither the Commonwealth nor the local government can be sure of its power to act.

f) Power over local affairs without override

Six states permit at least some local governments to exercise "all power over local affairs" with no qualification subordinating the locality to "general law."35/ Under this approach, local government is sovereign with respect to local affairs. The difficulties of definition present under the fourth alternative remain, although flexibility is somewhat greater under this approach, and the risk of restrictive judicial interpretation is somewhat less. Local authority is enhanced under this approach, but a substantial uncertainty exists as to the dividing line between state and local areas of competence. At the fringes of "local affairs," neither level of government can be sure of its powers to act.

2. Structure

The Convention may desire to examine possible constitutional provisions relating to the formal structure of local government through which its authorized powers are exercised. This discussion examines two such provisions.

35/ For example, the Kansas constitution states: "Cities are hereby empowered to determine their local affairs and government . . . ." KAN. CONST. art. XII, § 5(b). Colorado has similar provisions applicable to home-rule jurisdictions. COLO. CONST. art. XX, § 6.

First, the discussion will isolate alternate procedures for "incorporation," the procedure whereby a particular area comes to be designated as a local government unit. Second, it will focus upon methods for the drafting of a "charter," the basic document that sets out the organization of a local government and describes its powers.

a) Incorporation

There are basically three alternatives for dealing with incorporation: (1) establish standards or procedures in the Constitution; (2) require the legislature to enact a statutory scheme for incorporation; and (3) grant the legislature the discretionary authority to deal with the question.

Under the first alternative, the Constitution might provide procedures for a referendum on incorporation, permitting inhabitants or property owners in an area, upon petition of some proportion of the voters, to vote upon the question of incorporation. Under this approach, the Constitution also must provide a source of funding for the election. The funding might derive from either the Commonwealth government or a special assessment upon the inhabitants of the region involved. If the Convention concluded that such elections should not be held often, it would have to specify standards for the frequency of such elections and for determining whether a particular area had been covered in a particular election. This alternative has the advantage of leaving the matter up to the people most affected and not involving the Commonwealth government in the process at all. If there is concern that the Commonwealth government will discriminate against particular areas, either by placing unfair conditions upon incorporation or by refusing it outright, this approach recommends itself. It is seldom used; Oregon, for example, is one of the few jurisdictions that totally excludes the legislature from the incorporation process.[36/]

The second alternative constitutionally mandates the legislature to enact a statutory scheme for incorporation that, once enacted, will require no further legislative action. As the foregoing discussion indicates, any scheme of incorporation will require decisions on numerous details, which changed circumstances may render out of date. This approach leaves such matters to the legislature, permitting alteration with much less difficulty than a constitutional

36/ The Oregon constitution provides: "The Legislative Assembly shall not enact, amend or repeal any . . . act of incorporation for any municipality . . . . The legal voters of every city and town are hereby granted power . . . ." ORE. CONST. art. XI, § 2.

amendment. Twenty-six states utilize this approach.[37/]

The third alternative would leave the subject of incorporation to the legislature. The Trust Territory currently uses this method.[38/] Originally the only method of granting incorporation, this approach fell into disfavor in the United States after considerable abuse in the nineteenth century.[39/] It is unclear exactly how many states use this method since constitutions that are silent on the subject may be read as giving the state total discretion. Delaware is one of the few states that explicitly gives the legislature such discretion.[40/]

37/ ALAS. CONST. art. X, § 1; CAL. CONST. art. XI, §§ 1, 2; COLO. CONST. art. XIV, § 13; CONN. CONST. art. X, § 1; HAWAII CONST. art. VII, § 1; IDAHO CONST. art. XII, § 1; ILL. CONST. art. VII, § 2; KAN. CONST. art. IX, § 1; KY. CONST. § 156; LA. CONST. art. VI, pt. I, § 2; MD. CONST. art. XI-E, § 1; MICH. CONST. art. VII, § 21; MISS. CONST. art. IV, § 88; MONT. CONST. art. XI, § 3; NEV. CONST. art. VIII; § 8; N.Y. CONST. art. IX, § 2; N.C. CONST. art. VII, § 1; N.D. CONST. art. VI, § 130; OHIO CONST. art. XVIII, § 2; OKLA. CONST. art. XVIII, § 1; PA. CONST. art. IX, § 1; S.C. CONST. art. VIII, § 7; UTAH CONST. art. XI, § 5; VA. CONST. art. VII, § 2; W. VA. CONST. art. VI, § 39-a; WYO. CONST. art. XIII, § 1. One example of this type of provision is "The General Assembly shall provide by general laws, for the organization . . . of cities and towns." MO. CONST. art. VI, § 15.

38/ TTC tit. 4, ch. 1, § 1.

39/ R. Maddox & R. Fuquay, STATE AND LOCAL GOVERNMENT pp. 396-97 (1975).

40/ The Delaware constitution provides: "No corporation shall . . . be created . . . by special act . . . but the foregoing provisions shall not apply to municipal corporations . . . ." DEL. CONST. art. IX, § 1.

b) Charters

If the Convention decides to address the question of incorporation in one of the ways discussed above, it will probably wish to do likewise with respect to the charters of local governments. The charters can either be written to Commonwealth-wide specifications or be locally drafted.

i) Uniform charters. If the Convention desires to control such charters through generally applicable procedures, it has three basic alternatives: (1) charter communities by constitutional provision; (2) require classification by the legislature; and (3) permit the legislature to classify and charter communities by statute.

The first alternative classifies municipalities in the Constitution, using population, tax base, or some combination of the two. The Constitution could then provide a single structure that all communities in each class would be required to adopt. Alternatively, it could provide a group of charters for each class of community, and let the community select one by referendum. This would involve a great deal of detail because of the necessity of spelling out the functions and powers of all parts of several different types of government. This approach requires no legislative action. Perhaps because of the extreme detail involved, no American jurisdiction uses it.41/

41/ Kentucky's constitution classifies localities, but leaves the chartering to the legislature. KY. CONST. § 156.

The second basic alternative is to constitutionally require classification of communities by statute. This preserves the flexibility of a statutory -- as opposed to a constitutional -- classification, and retains Commonwealth control over the process. The state of Maryland follows this approach.42/

The third alternative is a constitutional provision that permits the legislature to classify and structure communities by statute. This allows the legislature to retain the power to deal individually with unique cases. The effect of such provisions would vest complete discretion in the legislature. Current Trust Territory law43/ and the constitution of North Carolina44/ permit such discretion.

42/ MD. CONST. art. XI-E, §§ 1, 2. One variation on this approach is to require the legislature to enact a statutory group of charters. This way of meeting the problem preserves a local voice in the process, is more flexible than a constitutional system, and eliminates the possibility of legislative inaction. It does, however, permit the legislature to alter charters without local participation. This way of solving the problem is used in Pennsylvania, and, regarding counties, in Utah. PA. CONST. art. IX, § 3; UTAH CONST. art XI, § 4.

43/ TTC tit. 4, ch. 1, § 1. The discretion is vested in the High Commissioner, rather than in a legislative body.

44/ "The General Assembly shall provide for the organization and government . . . of counties, cities and towns . . . as it may deem advisable." N.C. CONST. art VII, § 1.

ii) Locally drafted charters. Instead of allowing the Commonwealth to determine the structure of local government by constitutional provision or statute, the Convention could decide to let the people within each community draft their own charter. Local drafting could be permitted for all municipalities, or limited to only certain areas.

One alternative constitutionally establishes a process whereby a community could appoint a commission to draw up a proposed charter for approval by the voters. This approach leaves the legislature entirely out of the process and is used in Washington and Rhode Island.[45/]

A second approach requires the legislature to enact a statute establishing an automatic system of this sort. This approach has the advantage of increased flexibility, coupled with protection against legislative inaction. It is used in Maine and Hawaii.[46/] If the Convention desires more Commonwealth control over the process, it might require the legislature to enact autonomy legislation while permitting a legislative or executive veto of any charter drafted by a locality. Several states use this technique, among them

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45/ WASH. CONST. art. XI, §§ 4, 10, amend. XXVIII, § 6; R.I. CONST. amend. XXVIII.

46/ ME. CONST. art. VIII, pt. II, § 1; HAWAII CONST. art. VII, § 2.

Oklahoma (veto by governor)[47/] and California (veto by legislature).[48/]

Finally, the Convention may wish to permit (but not require) the legislature to enact local drafting legislation. This approach would provide time for the Commonwealth to acquire experience in municipal government and to work out a comprehensive plan for local government that reflects the need for collaboration and sharing of functions between the different levels of government. This technique, unlike provisions that either exclude the legislature entirely or force it to act in a particular way, provides for flexibility that may be of particular importance in the early years of the Commonwealth. Such a permissive provision is used in Nevada.[49/]

3. Revenue and finance

If the Convention decides to authorize units of local government in the Commonwealth, it necessarily will wish to discuss several related issues regarding the financing of such governmental entities and their programs.

47/ OKLA. CONST. art. XVIII, § 3(a).

48/ CAL. CONST. art. XI, § 3(a): "The charter is effective if approved without change by resolution of the Legislature . . . ."

49/ NEV. CONST. art. 8, § 8: "[T]he legislature may, by general laws . . . permit . . . any city or town to frame . . . a charter for its own government."

This section of the briefing paper considers the tax powers of such units, limitations on their borrowing ability, grants-in-aid, and fiscal administration. Although some state constitutions deal with one or more of these subjects, the Convention should consider whether such detailed matters relating to local governments might better be left to the Commonwealth legislature.

a) Taxes

The Convention has three principal alternatives with respect to the taxing powers of local government: (1) provide specific authority in the Constitution; (2) authorize broad taxing authority subject to general law; or (3) leave the matter to the legislature.[50/]

The first alternative gives to the locality the authority to collect certain sorts of taxes, with heavy Commonwealth government involvement in the process. Florida provides an example: localities are permitted to exact a property tax, but the constitution sets maximum levels, and assessment is governed by general law.[51/]

50/ Other alternatives obviously exist. The Constitution could prohibit any taxes by local governments, leaving them dependent on the Commonwealth government for the necessary funds to finance their operations. Alternatively, the Constitution could simply designate tax sources without providing for any oversight. Neither alternative is found in the United States, and neither seems appropriate for the Northern Mariana Islands.

51/ FLA. CONST. art. VII, §§ 1, 2, 4, 9.

This procedure would ensure some revenue for the local entity, while guaranteeing Commonwealth participation to prevent abuse. This is the method currently in force in the Trust Territory, with localities being free to levy certain enumerated taxes.[52/]

The second approach permits, subject to the general law, local governments to levy any tax. This approach might lessen the need of local units to seek assistance from the Commonwealth, an increasingly common phenomenon in the United States.[53/] Under this scheme, the localities can tax what they please, except those items which the Commonwealth affirmatively determines should be free from local taxes. Ohio utilizes this approach.[54/]

Finally, the Convention might simply require the legislature to enact a statute giving localities "adequate" taxing authority, or the legislature may be given complete discretion on the subject. This approach is most consistent

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52/ TTC tit. 4, ch. 1, § 51.

53/ Public Administration Service, CONSTITUTIONAL STUDIES, vol. 3, ch. VIII, p. 42 (1955). Between 1948 and 1966, transfers from state to local governments increased approximately 500%. J. Maxwell, FINANCING STATE AND LOCAL GOVERNMENTS p. 76 (1966).

54/ After stating that "municipalities shall have authority to exercise all powers of local self-government," the constitution provides that "[l]aws may be passed to limit the powers of municipalities to levy taxes and incur debts . . . ." OHIO CONST. art XVIII, §§ 3, 13.

with the objective of a closely coordinated system that has clear lines of authority and no conflicts of jurisdiction. This approach is taken in Kentucky.55/

b) Debt

Briefing Paper No. 10: Taxation and Finance discusses possible limitations on the Commonwealth's ability to borrow money. A similar need exists with respect to local government.56/ The use of debt ceilings and tax limitations and the requirement of special authorization are the principal means of regulating local debt.

i) Debt ceilings and tax limitations. The most common form of regulation of debt incurred by local government units is the debt ceiling. A debt ceiling is designed to protect taxpayers from an excessive tax burden and to prevent a locality from exceeding its fiscal capacity. The limit is generally expressed in terms of a percentage limitation on outstanding local debt in relation to the property tax base.57/

55/ KY. CONST. § 181: "The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes."

56/ Section 606 of the Covenant imposes a debt limitation of 10% of the assessed value of real property for all levels of government in the Commonwealth combined. Thus, any borrowing by localities will reduce the amount of borrowing the Commonwealth government may do. The Convention should consider this factor in deciding how much borrowing freedom to give localities.

57/ E.g., IND. CONST. art. XIII, § 1(2%); IOWA CONST. art. XI, § 3 (5%); WASH. CONST. art. VIII, § 6 (1.5%); W. VA. CONST. art. X, § 8 (5%).

Some states have restricted local debt by limiting the rate of property taxes used to service the debt.[58/] This rather indirect form of debt limitation is less prevalent than the debt-to-property ratio mentioned above. Other states, however, have enacted property tax limits for local governments but have excluded debt service from the rate limitations.[59/]

Either form of debt ceiling presents several difficulties. In the first place, it may understate a locality's capacity to borrow. Because localities tend to draw their revenues from several sources, to calculate repayment capacity as a function of any single source is likely to produce an unnecessarily low figure. In addition, the very stringency of this approach leads local authorities to circumvent it. One method used is the resort to borrowing not subject to the debt limit, such as the establishment of "special districts" with their own debt limits for carrying out particular purposes.[60/] Another is to persuade the courts

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58/ ARK. CONST. art. XVI, § 9 (counties); KY. CONST. § 157a (county roads and bridge bonds).

59/ FLA. CONST. art. III, § 9(b); MICH. CONST. art. IX, § 6; MO. CONST. art. X, § 11(e). The theory behind the exemption is that as long as a local government has incurred debt, no legal obstacle should prevent the use of its taxes to repay what has been borrowed.

60/ See HAWAII STUDIES p. 9 n.1; F. Michelman & T. Sandalow, MATERIALS ON GOVERNMENT IN URBAN AREAS pp. 429-30 (1970).

that, Constitution or not, localities cannot get along within the particular limits imposed.61/ Yet another approach is ad hoc constitutional amendment to exempt particular sorts of undertakings from the debt limit.62/ These approaches share the disadvantage of serving only to establish piecemeal exceptions to the general limit, with little attention to the overall policy of limitation.

ii) Requirement of authorization. In addition to or in lieu of the other methods of debt regulation, some states require that local debt may be incurred only when authorized by the legislature or popular referendum. The particular requirements vary from state to state, not only whether the legislature or the electorate should decide the issue, but what vote is needed to approve the proposed borrowing.

A substantial number of state constitutions requires legislative approval for *any* local borrowing.63/ Some states apply the same restrictions to local debt as are applied to state debt.64/ Other states add a referendum

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61/ See, e.g., Berry v. Milliken, 234 S.C. 518, 528, 109 S.E.2d 354, 358 (1959).

62/ Kresky, Taxation and Finance, in SALIENT ISSUES OF CONSTITUTIONAL REVISION p. 145 (J. Wheeler ed. 1961).

63/ E.g., ARK. CONST. art. XVI, § 1; COLO. CONST. art. XI, § 1; LA. CONST. art. VI, § 34; ME. CONST. art. IX, § 15.

64/ E.g., HAWAII CONST. art. VI, § 3; ILL. CONST. art. IX, § 9. Restrictions on state debt are discussed in BRIEFING PAPER NO. 10: TAXATION AND FINANCE § II(B)(3).

requirement.[65/]

c) Grants-in-aid

Because resources are not evenly distributed throughout the Commonwealth, some localities might not be able to discharge their functional responsibilities if forced to rely on their own resources. Several alternatives are available to the Convention if the delegates wish to provide some assurance that all local government units will have the necessary funds to perform the duties assigned to them.

First, the Constitution could earmark certain sources of revenue for division with the municipalities. It could specify an amount or percentage of the designated funds to go to localities, or it could leave the matter to the legislature. This approach guarantees outside income to needy local governments. Michigan uses this approach.[66/]

65/ Alaska requires approval by the local governing body and a majority of those qualified to vote and voting on the question. ALAS. CONST. art. IX, § 9. Colorado requires adoption of a "legislative measure" and a referendum, but excepts home rule governments from these requirements. COLO. CONST. art. XI, § 6(1), (3). Florida requires approval by "electors who are owners of freeholds" within the local jurisdiction. FLA. CONST. art. VII, § 12. Idaho requires two-thirds vote of the electorate. IDAHO CONST. art. VIII, § 3. Maryland requires legislative approval and a referendum. MD. CONST. art. XI-E, § 5.

66/ MICH. CONST. art. IX, § 10: "One-eighth of all taxes imposed on retailers on taxable sales . . . shall be used exclusively for assistance to townships, cities and villages, on a population basis as provided by law."

The chief disadvantages of this approach are its inflexibility and that the degree of Commonwealth support is not based on the needs of the localities.67/

A second approach is a constitutional provision requiring support of certain local governmental activities "to the extent necessary" and authorizing central oversight of local administration by the Commonwealth legislature. This ensures that local activities in which the Commonwealth as a whole has an interest can be implemented effectively; it also ensures that funds transferred to areas in greater need are prudently used. Minnesota uses this method to assist municipalities to build streets.68/

A third approach could constitutionally require the Commonwealth to make up any shortfall in local resources, subject to Commonwealth review of local activities. Although this approach eliminates any fear that necessary local activities will lack funding, it has obvious disadvantages. It severely limits local autonomy to the extent the oversight authority is meaningfully exercised. Conversely, it

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67/ The approach has all the general disadvantages of earmarking which are discussed in BRIEFING PAPER NO. 10: TAXATION AND FINANCE § II(A)(4).

68/ MINN. CONST. art. XVI, § 7. This section provides for a municipal state-aid street system to be built and administered by municipalities "as shall be provided by law." Another provision creates a municipal state-aid street fund to be apportioned "as provided by law" among municipalities. Id. § 8. The "as provided by law" qualification permits state regulation.

may encourage local irresponsibility because local governments may undertake projects beyond their capacities in the belief that the central government will be required to fund them. None of the states in the United States requires the legislature to support all local activities, with or without review. Louisiana's constitution allocates a sum of money for local entities; its distribution, however, is to be made "as provided by law," which persumably permits conditioning grants on a certain level of performance.[69/]

Recognizing the difficulties inherent in specifying the financial relationship between the Commonwealth and local governments, the Constitution might simply require the Commonwealth to enact revenue sharing legislation, leaving the details to be worked out by the legislature. A variation of this approach would permit revenue sharing without requiring it. No state constitution mandates revenue sharing, although it is expressly permitted in Hawaii.[70/] Both of these methods provide a high degree of legislative discretion that may be viewed as a threat to local autonomy. Such

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69/ LA. CONST. art. VII, pt. III, § 26.

70/ HAWAII CONST. art. VII, § 3: "The legislature shall have the power to apportion state revenues among the several political subdivisions." The statute implementing this constitutional mandate gives the state considerable discretion in fixing the amounts to be made available. HAWAII REV. STAT. tit. 14, § 248-6.

flexibility may be desirable in the early years of the Commonwealth, however, when the legislative and executive branches will most likely be engaged in a collaborative effort to produce a comprehensive financial plan for the Northern Marianas based on transitional studies now in progress.

d) Fiscal administration

The Constitution may require each locality to adopt certain fiscal procedures such as annual audits, annual budgets and special financial reports. Providing for such specifics in the Constitution is not usually regarded as essential and may be counter-productive. Instead, the Constitution might require the legislature to enact a statute setting standards for local fiscal administration. This avoids the dangers of constitutional specificity and ensures some appropriate regulation; it is used by Michigan and Illinois.[71/] Still another approach would permit (but not require) the legislature to act on this

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71/ MICH. CONST. art. IX, § 21: "The legislature shall provide by law for the maintenance of uniform accounting systems by units of local government and the auditing of county accounts by competent state authority and other units of government as provided by law."

ILL. CONST. art. VIII, § 4: "The General Assembly by law shall provide systems of accounting, auditing and reporting of the obligation, receipt and use of public funds. These systems shall be used by all units of local government and school districts."

subject. This permissive approach is used in Ohio. 72/

4. Personnel

As discussed in Briefing Paper No. 2: The Executive Branch of Government, many state constitutions make some mention of civil service systems. It is unusual, however, for local civil service systems to be mentioned. New York's constitution is one of the few that does so. 73/

Even if the Convention decides to regulate local governments in some respects, their personnel systems should probably be left for legislative treatment. Control of personnel is simply one aspect of the power to perform a particular function; once the powers of government are allocated, the personnel function should follow fairly automatically. Nor does silence on this subject appear to provide much of a hindrance to central control. Hawaii, for example, regulates its counties' employment policies quite closely, despite the brevity of its constitutional provision. 74/

72/ OHIO CONST. art. XVIII, § 13: "Laws . . . may require reports from municipalities as to their financial condition . . . and may provide for the examination of the vouchers, books and accounts of all municipal authorities. . . ."

73/ N.Y. CONST. art. V, § 6: "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination. . . ."

74/ HAWAII CONST. art. XIV, § 1: "The employment of persons in the civil service, as defined by law, of or under the State, shall be governed by the merit principle." The laws on the subject are found in HAWAII REV. STAT. tit. 6, chs. 76-77.

Conclusion

The decisions that the Convention makes with respect to local government require the most careful consideration of particular needs in the Northern Marianas and a willingness to look critically at traditional methods and practices to determine whether they meet the Commonwealth's needs. The framework used to ensure representation of local interests and delivery of governmental services to local areas can be a cornerstone of the adaptability and efficiency of the Commonwealth government. Local government usually contributes substantially to the total cost of government, and thereby to the burden on the taxpayers and resources available to the government. If the Convention is able to devise a system that minimizes the financial burden while providing effectively for local interests and local services, it will have passed one of the most formidable hurdles to a stable, capable Commonwealth government.

	Factor Favors Delivery of Service or Enforcement of Regulations by Commonwealth Government						Current Practice			
	Uniformity	Fiscal Capacity	Effi-ciency	Equal-ity	Political Control	Com-bined Factors	Northern Mariana Islands	Source	American States	Source
Health	Yes	Yes	Yes	Yes	No	Yes	District	(1)	Varies	(20)
Education	Yes	Maybe	Maybe	Yes	No	Yes	District	(2)	Local	(21)
Social Services	Yes	Yes	Yes	Yes	Maybe	Yes	District	(3)	Varies	(22)
Public Welfare	Yes	Yes	No	Yes	Maybe	Yes	District/Local	(4)	State	(23)
Police protection	No	Maybe	Maybe	Maybe	No	Maybe	District	(5)	Local	(24)
Prosecution	No	Yes	Yes	Yes	Maybe	Yes	District	(6)	State/Local	(25)
Prisons	Maybe	Yes	Yes	Maybe	Yes	Yes	District	(7)	State	(26)
Courts	Yes	Yes	Yes	Yes	Yes	Yes	District/Local	(8)	State/Local	(27)
Fire protection	No	No	No	No	No	No	Local	(9)	Local	(28)
Electricity	No	Yes	Yes	No	Yes	Maybe	District	(10)	Local	(29)
Water	No	Maybe	No	No	Yes	No	None	(11)	Local	(30)
Sanitation	No	Maybe	Maybe	No	Yes	Maybe	Local	(12)	Local	(31)
Business incorporation	Yes	No	No	Yes	Yes	Yes	District	(13)	State	(32)
Business licensing	Yes	No	No	Yes	Yes	Yes	District/Local	(14)	State/Federal	(33)
Wages and hours	Yes	No	Yes	Yes	Yes	Yes	None	(15)	State	(34)
Trade promotion	No	Maybe	Yes	No	Yes	Masbe	District	(16)	State/Local	(35)
Land use planning	Maybe	Maybe	Maybe	Maybe	No	Maybe	District	(17)	Local	(36)
Pollution control	Maybe	Yes	Yes	No	Yes	Yes	District	(18)	State	(37)
Conservation	Maybe	Maybe	Maybe	Maybe	Yes	Maybe	District/Local	(19)	State/Local	(38)
Agriculture extension	No	Maybe	Maybe	No	Yes	Maybe	District	(19A)	State/Local	(39)

APPENDIX A

DELIVERY OF GOVERNMENT SERVICES

The table that follows this page summarizes information with respect to the delivery of government services. It lists in the first column the principal functions that might be assigned to local governments.

The next five columns summarize the application of the five factors -- uniformity, fiscal capacity, efficiency, equality and political control -- discussed at pp. 14-15 of the Briefing Paper. A "yes" in one of these columns means that the factor favors delivery of the service or enforcement of the regulation by the Commonwealth government. A "no" in one of these columns means that the factor favors delivery of the service or enforcement of the regulation by a local government subdivision of the Commonwealth. A "maybe" in one of these columns indicates that there are varying circumstances a substantial proportion of which favor vesting of this function in the Commonwealth government.

The seventh column entitled "Combined Factors" summarizes the assessment of the five preceding columns that deal with individual factors.

The next four columns, under the title "Current Practice" summarize what is now done in the Northern Mariana Islands and the prevailing practice in the American states. The columns entitled "source" contain numbers that refer to footnotes set out on succeeding pages.