

October 22, 1976

REPORT TO THE COMMITTEE OF THE WHOLE
OF THE COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: COMMITTEE RECOMMENDATION Number 1:
Eligibility to Vote

The Committee recommends that the Committee of the Whole adopt in principle the constitutional provision attached hereto with respect to eligibility to vote.

The Committee considered the matter of eligibility to vote and election procedures and decided that the provisions with respect to eligibility to vote should be a separate Constitutional article and should be transmitted separately for the consideration of the Convention.

The Committee's proposed article contains three sections.

The first section sets out the six basic qualifications for voting.

- . attainment of 18 years of age
- . domicile in the Northern Mariana Islands
- . residence in the Northern Mariana Islands
- . no current serving of a sentence for any crime other than a misdemeanor having a maximum sentence of six months or less
- . no adjudication of unsound mind by a court of law
- . either U.S. citizenship or U.S. national status

The second section prohibits the use of any literacy requirement as a qualification to vote. The third section requires the legislature to set out the criteria for determining domicile and residence in the Northern Mariana Islands and to specify the length of the residence requirement.

The Committee's reasons for recommending each of these requirements are set out below:

Section 1: Qualifications of Voters

Subsection (a): Age. The Committee recommends that the minimum age requirement of the Twenty-Sixth Amendment of the United States Constitution be adopted for use in the Commonwealth. That minimum age requirement is 18 years. The Committee believes that requiring voters to be at least 18 years of age will promote responsible, intelligent and mature voting.

The Committee considered lowering the age requirement to 17 years as would be permitted under the United States Constitution. This would recognize the fact that currently over half of the people in the Northern Mariana Islands are under the age of 18. It would also recognize the fact that persons aged 17 may volunteer to serve in the Armed Forces. The Committee decided against such a lower minimum age requirement because the greater maturity generally available at age 18 would be important with respect to voting, the experience of all of the states indicates that a minimum age requirement of 18 years is practical, and lowering the

age requirement to accommodate the present portion of the population that is below the age of 18 looks too much to the present instead of to the future when those under the age of 18 will be old enough to vote.

Subsection (b): Domicile. The Committee's proposed constitutional provision requires domicile in the Northern Mariana Islands in order to qualify to vote. The provision directs the legislature to define the criteria for determining domicile for voting purposes. The Committee believes that a domicile requirement ensures that only those who intend to make their permanent home in the Northern Mariana Islands will be eligible to vote. This prevents persons who may live in the Northern Mariana Islands for some period of time, but who maintain a permanent residence elsewhere, from voting in the Northern Mariana Islands. The Commonwealth will have a small population whose interests could be adversely affected if persons who come to the Northern Mariana Islands without any intention to stay permanently are permitted to vote.

Subsection (c): Residence. The Committee's proposed constitutional provision also requires residence for a specified period of time in the Northern Mariana Islands in order to qualify to vote. This requirement operates together with the domicile requirement to ensure that persons who have an intention to remain permanently in the Northern Mariana Islands demonstrate that intention by actually

residing in the Commonwealth for a specified period of time.

The Committee decided not to include a length of residence requirement in the Constitution because of the risk of conflict with recent U.S. Supreme Court decisions. Those decisions have allowed 30-day residence requirements (and 50-day residence requirements in two special circumstances), but have prohibited longer durational residency requirements. Instructing the legislature to determine the length of residence required for voting fulfills the need for such a requirement without jeopardizing the Constitution's chance of acceptance by the U.S. Congress. It allows the legislature the flexibility to establish a length of residence requirement in accordance with U.S. Supreme Court decisions.

The Committee decided that the best way to keep outsiders from voting in the Northern Mariana Islands was not a long and possibly unconstitutional residency requirement, but a requirement that all voters be bona fide residents of the Northern Mariana Islands. Therefore, the proposed constitutional provision requires the legislature to determine residence and domicile in the Northern Mariana Islands for voting purposes. A possible list of such criteria is attached to this report.

Subsection (d): Criminal sentence. The Committee decided that persons should be ineligible to vote who are, at the time of the election, serving a sentence after conviction of any crime other than a misdemeanor having a maximum sentence of six months or less. The Committee intends that persons on parole or probation or under a suspended sentence would also be disqualified. The Committee believes that persons who have been convicted of such crimes have demonstrated that they are not responsible enough to vote. However, the Committee believes that the disqualification should not extend any longer than the sentence by which such a person pays his debt to society. Therefore, under the Committee's proposal, the disqualification would end when the sentence was served or a pardon was granted.

The Committee considered limiting the voting disqualification to conviction of a felony. This approach was rejected because many misdemeanors involve very serious violations. The Committee's attention was drawn to an instance in which a man threw a child against a wall and otherwise abused it but was charged only with assault and battery, which is a misdemeanor. The Committee also considered leaving to the legislature the task of defining the crimes for which conviction would carry with it a disqualification from voting. The Committee believed that it was unlikely that this was a situation where circumstances might change over time so as to make flexibility desirable, therefore the Committee rejected this approach.

Subsection (e): Unsound Mind. The Committee decided to disqualify from voting those persons who had been found by a court of law to be of unsound mind. The Committee believes that such persons do not have the capacity to vote responsibly.

The Committee recognizes that there are persons of unsound mind other than those who have been found to be of unsound mind by a court. The Committee decided to limit the disqualification to those persons as to whom a court had acted because the disqualification from voting is a serious matter and should be determined fairly. If the matter of unsound mind is determined by a court, then evidence must be presented, usually by a doctor or psychiatrist, and the protections of due process are available.

Subsection (f); U.S. Citizenship and U.S. National Status. The Committee considered three groups of persons with respect to a possible citizenship requirement for voting: aliens, U.S. citizens, and U.S. nationals.

The Committee decided that aliens should not be permitted to vote in the Northern Mariana Islands. The Committee believes that aliens do not have the requisite stake in the affairs of the Northern Mariana Islands to permit them to vote. By definition, aliens owe allegiance to some other country. The Committee believes that allegiance to the Commonwealth should be required before any person is permitted to vote.

The Committee gave lengthy consideration to the question whether residents of the Northern Mariana Islands who elect to be U.S. nationals rather than U.S. citizens should be permitted to vote. The Committee was concerned primarily with the large group of U.S. nationals that exists elsewhere in the Trust Territory. The Committee considered whether a requirement of U.S. citizenship (that would disqualify U.S. nationals) would be in the best interests of the Commonwealth. On the one hand, this restriction would disqualify some residents of the Northern Mariana Islands. On the other hand, this restriction would help prevent large numbers of U.S. nationals from other places from coming to the Northern Mariana Islands and qualifying to vote, thus diluting the control that the current residents have. The Committee decided that this is a matter where circumstances might change in the future and therefore some flexibility should be given to the legislature. The proposed Constitutional provision permits U.S. nationals to vote at the present time but permits the legislature, by law, to disqualify U.S. nationals at some time in the future should circumstances require that protection.

Section 2: No literacy requirement. The Committee decided that no person should be deprived of the right to vote because he or she is unable to read or write. The Committee believes that many people in the Northern Mariana

Islands who cannot read or write are able to vote intelligently. Because the right to vote is a fundamental right, the Constitution should protect that right whenever possible. The Committee noted the example of Puerto Rico where a constitutional prohibition on literacy tests was adopted at a referendum in 1970. The Committee also took into account the strong opposition of the U.S. Congress to literacy tests.

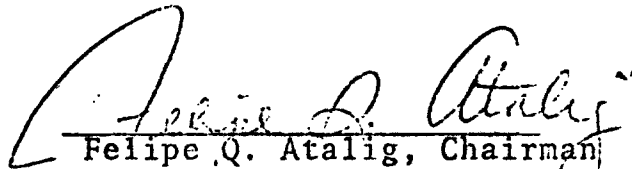
The Committee considered leaving the matter of literacy tests to legislative discretion because of the difficulty of predicting whether the Northern Mariana Islands will need a literacy requirement in the future. The Committee decided, however, for the reasons stated above, that this was an area where the legislature should not have flexibility.

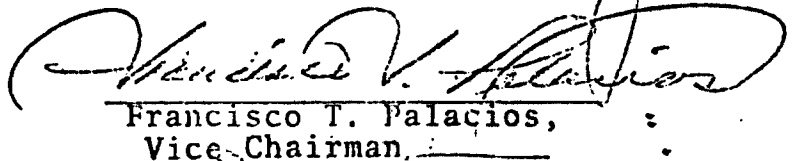
Section 3: Domicile and Residence. The Committee's recommended provision includes requirements for domicile and residence, as explained above, but does not define either of these terms. The Committee believes it is appropriate to leave these definitions to the legislature because the criteria for determining domicile or residence may change over time. The legislature would also be able to adjust these definitions as the court decisions expand or contract the permissible area of restrictions.

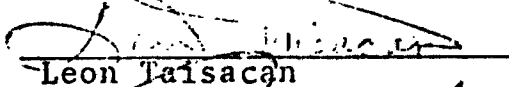
The Committee has also left the task of specifying the length of the residence requirement to the legislature.

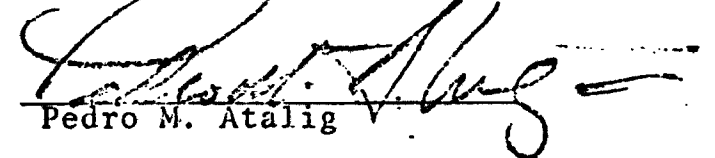
The United States Supreme Court has placed restrictions on the use of a length of residence requirement for voting. It has, in its decisions, indicated that a 30-day requirement is permissible and that a 50-day requirement may be permissible under certain circumstances. The Court is likely to find any requirement beyond 50 days to be unconstitutional. The Committee believes that a 60-day or 90-day residence requirement would be desirable but also believes that this is more appropriately done by statute. If the length-of-residence requirement is in a statute, only the statute could be challenged as unconstitutional. Moreover, if the Supreme Court indicates in the future that a longer residence requirement is permissible under circumstances applicable to the Northern Mariana Islands, the legislature could move promptly to amend the statute and take advantage of the opportunity to impose a more stringent requirement.

Respectfully submitted for
the Committee


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