

October 26, 1976

Memorandum for the Committee on Governmental Institutions

Subject: Constitutional Treatment of a Land Court

The Committee has under consideration several delegate proposals with respect to the creation of a land court. Proposal No. 03 calls for the establishment of such a court to be staffed by an attorney who is not a resident of the Commonwealth. Proposal No. 09 also calls for the formation of a land court and defines the jurisdiction of that court "to include matters of title, boundaries, easements, leases, inheritance, transfers, records and other matters with respect to the ownership of land and rights in land in the Commonwealth." This memorandum reviews the advantages and disadvantages of a court with specialized jurisdiction over land disputes. The memorandum then describes alternative means of providing for such a specialized tribunal if the Committee decides to do so.

I. Advantages and Disadvantages

A land court would offer substantial advantages. First, it would provide a forum for the speedy resolution of cases within its jurisdiction. Because the court would deal exclusively with land matters, no other type of case could interfere with the court's disposition of actions concerning land. The rapidity with which a particular case is decided would depend, therefore, not on the total number of matters

of all kinds before the Commonwealth courts but rather on the backlog of land cases. The court could decide on the priority to give these cases and could put the most urgent first on its calendar.

Second, confining all land matters to one court would hopefully improve the expertise and efficiency of the judges serving in that court. It would promote uniform decisions and application of rules and policies with respect to land matters because all such matters would be handled in the court. This could promote out-of-court settlement and substantially reduce the number of claims that require adjudication.

Third, creation of a land court would emphasize the importance of land in the lives, culture and economy of the Northern Marianas people. The establishment of such a court would symbolize the Commonwealth's commitment to the just and expeditious resolution of conflicts pertaining to the ownership and use of realty.

A land court would, however, suffer from disadvantages. The Committee should weigh these disadvantages in determining whether to recommend the formation of a land court and, if so, the structure and jurisdiction of the court.

At the outset, the Committee may wish to consider whether a land court would impose undue rigidity on the

judicial branch. It is possible that over time the urgency for a land court will fade. Progressively fewer cases pertaining to land may arise. In addition, as popular confidence in the Commonwealth court system grows, litigants may grow increasingly willing to have those land cases which do develop heard in the courts of general jurisdiction. The result would be a land court staffed by one or more judges and supporting personnel with little or no business to occupy their attention. If the land court claims constitutional status, however, the Commonwealth could rid itself of this archaic structure only through the laborious process of constitutional amendment.^{1/}

Second, the creation of a land court might lead to disputes with respect to the scope of its jurisdiction. Unless the power of the court is defined to reach all aspects of a case in which one of the issues concerns land, litigants may spend much time, money and energy arguing over which questions posed by a case should be resolved by the land court and which by the Commonwealth trial court. Those tribunals, in turn, would be required to devote their resources to untangling jurisdictional knots, rather than to deciding the merits of the case.^{2/} Conversely, even if the parties to a

1/ See R. Dishman, State Constitutions: The Shape of the Document p. 34 (1968).

2/ The New Jersey constitutional convention of 1947 faced the problem of split jurisdiction squarely, meshing courts of specialized jurisdiction over legal and equitable issues into one general trial court consisting of two divisions. R. Connors, THE PROCESS OF CONSTITUTIONAL REVISION IN NEW JERSEY: 1940-1947 pp. 173-74 (1970).

case recognize that different portions of their case must be decided by land court and the Commonwealth trial court (if they are different), they would face the inconvenience, delay and expense of litigating in two places.

Third, a judicial branch in which there is a specialized land court might be more expensive to operate than a system that includes only courts of general jurisdiction (the power to hear all types of cases). The land court might require its own staff of secretaries, law clerks and other supporting personnel. This would produce duplication of the resources of the Commonwealth trial court. The legislature could, however, eliminate duplication by requiring the land court to use the Commonwealth trial court's staff and buildings. Because of these difficulties, recently enacted state constitutions tend to provide for a streamlined judicial branch, with only two or three levels of courts. Each of these levels usually is granted general jurisdiction.^{3/} The Model State Constitution also takes this approach.^{4/}

Many states, however, have specialized courts. Such courts often deal with areas of acute concern to the people they serve. Some of these courts owe their existence to the

^{3/} See, e.g., MONT. CONST. art. VII, § § 2, 4, and 5.

^{4/} Model State Constitution art. VI (1970).

legislature; others derive their place directly from a constitutional grant of authority. Although the genesis of a specialized court has no impact on its daily routine, it does determine the capacity of the legislature to alter the court's structure and jurisdiction to meet evolving needs.

The regard of the Hawaiian people for their land rivals that of the Northern Marianas people. The judicial branch of the Hawaiian state government reflects that view. Acting pursuant to the Hawaii constitution's authorization to establish "inferior courts,"^{5/} the state legislature has set up a land court.^{6/} The court is charged with the administration of Hawaii's system of land registration, enjoying exclusive jurisdiction over all applications for the registration of land and over matters involving easements or other interests in land owned in fee simple.^{7/}

Before its constitution of 1975 was enacted, Louisiana typified states whose charters provided for specialized courts. The Louisiana constitution of 1921 went so far as to establish a domestic relations court for East Baton Rouge Parish.^{8/} The rigidity of this approach was abandoned by the drafters of the present state constitution, which merely permits the legislature to form juvenile and family courts.^{9/}

^{5/} HAWAII CONST. art. V, § 1.

^{6/} Rev. Laws of Hawaii, ch. 342 (1955).

^{7/} Legislative Reference Bureau, HAWAII CONSTITUTIONAL STUDIES, ARTICLE V: THE JUDICIARY pp. 8-9 (1968).

^{8/} LA. CONST. art. VII, § 83 (1921).

^{9/} LA. CONST. art. V, § 18 (1975).

II. Alternative Means of Creating a Land Court

If the Committee decides to recommend the establishment of a land court, it may wish to consider various approaches to the vesting of specialized jurisdiction over land. Several basic alternatives are available to the Committee.

First, the proposed judicial branch article could authorize (but not require) the legislature to create such a specialized land court within the Commonwealth court system. This alternative would leave all the implementing details to the legislature, such as whether the land court would be administratively part of the Commonwealth trial court system and whether it would have a limited lifetime. The advantages of the approach are the usual ones of preserving flexibility and keeping unnecessary detail out of the Constitution. The principal disadvantages are that it does not ensure that the legislature will create such a land court and that the legislature, even if it does act, will do so in a sufficient manner.

Second, the Constitution could require the legislature to create such a court but leave all implementing detail to the legislature. This could ensure that such a court would be established.

Third, the Constitution could require the creation of a specialized land court and establish some of the fundamental attributes of that court. If this approach is favored, the judicial branch article should probably address at least these issues: (1) whether the land court should be part of the Commonwealth trial court; (2) whether its duration should be limited; (3) whether any special requirements for its judges should be stated; and (4) whether it should have jurisdiction of all land matters regardless of dollar

value.

Fourth, the Constitution could accept the resolution of the matter presently reflected in the proposed article. This would mean that the Commonwealth trial court would have jurisdiction of land matters **not exceeding \$5,000 in value** and the United States District Court would have jurisdiction of land matters in excess of this amount. This approach would exclude any detailed provisions related to a land court from the proposed article. It would mean, however, that two courts would be considering land matters.

Fifth, the Constitution could provide that the United States District Court would have jurisdiction over all land matters regardless of amount. This might achieve some (and perhaps all) of the objectives of the proponents of specialized land courts. It would put all land matters in one court and ensure that they would be resolved for a substantial number of years by a person from outside the Commonwealth. It might also mean that decisions coming from such a court would have the respect of the people. It would also save money. On the other hand, it might increase the workload of the District Court to the point where some criticism might arise in Congress. In any event, this approach could be coupled with residual authority in the legislature so as to permit land matters to be assigned to the Commonwealth courts at such time in the future as the legislature believes appropriate.

Conclusion

In deciding what recommendation regarding the resolution of land cases to make to the Convention, the Committee may wish to consider what institutional structure would most contribute to fairness

to litigants and to the efficiency of the judiciary. The Committee's projection of the number of land cases that will arise, the speed with which a specialized or generalized court would dispose of those cases, and the length of time that the Committee expects each case to consume are factors worthy of the Committee's attention.