

November 5, 1976

MEMORANDUM FOR THE COMMITTEE ON  
PERSONAL RIGHTS AND NATURAL RESOURCES

Subject: Statutes of Limitation on Land Matters

Delegate proposals numbered 8 and 10 have proposed that the Constitution repeal all previously applicable statutes of limitation relating to land and provide that all future statutes of limitation shall run from the date of ratification of the Constitution. The proposals seek to permit the courts to review private sales of lands and public takings of lands during the past 25 years to determine if those sales and takings complied with due process of law. At the request of the Committee on Personal Rights and Natural Resources, we have examined the legality of repealing all previously applicable statutes of limitation relating to land. We conclude that, to the extent that repeal would affect vested rights in lands, doing so would violate the due process clause of the Fourteenth Amendment of the U.S. Constitution and would be unconstitutional. The Commonwealth Constitution may repeal the statutes of limitation for the limited purpose of permitting the Commonwealth to provide additional remedies for claimants.

Repeal Affecting Vested Rights

The due process clause of the Fourteenth Amendment prohibits the taking of property without due process of law and this prohibition is made applicable to the Commonwealth by section 501(a) of the Covenant. Possession of real or

personal property for a period of time, under the common law and under statutes of limitations, is a means of acquiring rights in property. Within the period of a statute of limitations, persons claiming rights in property may assert those rights in a proper court against the persons in actual possession of the property or otherwise claiming ownership of the land or rights in it. The running of the statute of limitations bars these claims to the property and in so doing vests in the possessor additional rights to the property. Repealing a statute of limitations after such rights have vested reopens such questions and may deprive the owner of rights that had become good against all claims. This constitutes a taking of property without due process of law that violates the Fourteenth Amendment.

The U.S. Supreme Court, in its decision in Campbell v. Holt, 6 S. Ct. 209, 210-11 (1885), states this reasoning clearly:

By the long and undisturbed possession of tangible property, real or personal, one may acquire a title to it, or ownership, superior in law to that of another, who may be able to prove an antecedent and at one time paramount title. This superior or antecedent title has been lost by the laches of the person holding it, in failing within a reasonable time to assert it effectively; as, by resuming the possession to which he was entitled, or asserting his right by suit in the proper court. What the primary owner has lost by his laches, the other party has gained by continued possession, without question of his right . . . .

(T)he weight of authority is in favor of the proposition that where one has had the peaceable, undisturbed, open possession of real or personal property, with an assertion of his ownership, for the period which, under the law, would bar an action for its recovery by the real owner, the former has acquired a good title, -- a title superior to that of the latter, whose neglect to avail himself of his legal rights has lost him his title . . . . It may, therefore, very well be held that in an action to recover real or personal property, where the question is as to the removal of the bar of the statute of limitations by a legislative act passed after the bar has become perfect, that such act deprives the party of his property without due process of law. The reason is that, by the law in existence before the repealing act, the property had become the defendant's. Both the legal title and the real ownership had become vested in him, and to give the act the effect of transferring this title to plaintiff would be to deprive him of his property, without due process of law. (Emphasis added.)

For these reasons, a repeal of a statute of limitations cannot permit a reopening of claims against the United States or against any private property owner in order to divest them of property rights they now have or to require them to pay any amount of damages or compensation.

Repeal Permitting the Commonwealth  
to Provide Remedies

Although it is impermissible for the repeal of a statute of limitations to affect a vested right in property, it is

permissible to repeal a statute of limitation in order to reinstate a right to a lapsed remedy.<sup>\*/</sup> The Constitution or legislation may permit claims against the Commonwealth government by persons who were compensated inadequately for transfers of interests in property in the past, even though the applicable statutes of limitation have expired. If the Constitution repeals these statutes of limitation for the purpose of permitting claims against the Commonwealth government, a court could consider previously expired claims and determine the damages of aggrieved parties. Damages could be measured in money only, however, because substantive rights in land subject to claims vested with the passing of the original statutes of limitation and cannot be taken away. Another possibility would be to give persons with sufficient claims priority in the distribution of public lands.

If the delegates wish to reopen expired claims, they must be prepared to have all such claims paid for out of the treasury of the new government of the Northern Mariana Islands. It is difficult to predict the total amount of such claims or the burden on the taxpayers that might result.

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<sup>\*/</sup> For example, the right to recover a debt once barred by a statute of limitation may be reinstated by repealing the statute because the passage of time does not destroy the debtor's obligation to pay the debt. Campbell v. Holt, 6 S. Ct. 209 (1885). Similarly, in a fraud case the lapse of time did not vest a right in the defendant to immunity from prosecution. The statute of limitation in that case went "to matters of remedy, not to destruction of fundamental rights." Chase Secur. Corp. v. Donaldson, 65 S. Ct. 1137, 1142 (1945).