

November 5, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON PERSONAL
RIGHTS AND NATURAL RESOURCES

Subject: Committee Recommendation No. 6:
Eminent Domain

The Committee on Personal Rights and Natural Resources recommends that the Convention adopt in principle the attached constitutional provision with respect to eminent domain.

The Committee's recommended constitutional provision contains two sections. The first provides that the eminent domain power is to be exercised only for a public purpose under terms to be provided by the legislature. The second requires compensation for any lands taken and a determination that public lands cannot be used instead of private lands for the intended public purpose.

The Committee's reasons for its recommendation are as follows:

Section 1: Eminent Domain. This section authorizes the Commonwealth government to exercise the eminent domain power and specifies that it shall be exercised only for a public purpose. The public purpose is to be defined by the legislature. There must be a benefit to the general public defined in any statute authorizing the use of the eminent domain power. This provides flexibility for the legislature to meet future needs.

The Committee decided not to limit the eminent domain power to specified purposes because it is difficult to foresee all of the needs that the government might have in the future. The Committee also decided not to limit the exercise of the eminent domain power to specified executive branch departments or agencies because that would have an adverse effect on the ability of the governor to re-organize the executive branch should that become necessary.

Section 2: Limitations. This section requires just compensation for the taking of any private property. The Committee has included this requirement although Section 5 of the article on personal rights includes the same guarantee. This provision is intended to make clear to the people their rights in the event that the government decides to exercise its eminent domain power.

This section also requires a determination that no suitable public land is available for the intended public purpose before the power of eminent domain is exercised. The Committee believes that a taking of private land is a very serious imposition on an individual citizen and should not occur if the government has any reasonable alternative. The government should be required to plan for its needs in the foreseeable future and to make use of public lands wherever possible.

The general provision contained in Section 1 that the government may exercise the eminent domain power as provided by law permits the legislature to enact further limitations on the use of the eminent domain power. The Committee believes that it is appropriate for the legislature to make decisions with respect to limitations such as: 1) requiring a showing that acquisition by voluntary means is not feasible; 2) requiring that only a leasehold or easement interest be taken; and 3) requiring that the leasehold be returned to the property owner if the public purpose no longer requires it. These are matters that could be affected by the particular use for which eminent domain is to be exercised and by the circumstances within the Commonwealth at the time.

The Committee considered two other powers with respect to land use within the Commonwealth: zoning and property tax benefits. The Committee recommends that no constitutional provision be made for these matters and that they be left to the legislature under its general grant of legislative power.

Zoning requires separating the land within the Commonwealth into zones and restricting the use of land (both public and private) within each zone. By providing no

constitutional language, the Committee's recommendation permits the legislature to exercise the zoning power or to delegate that power to the executive branch or to the local island government. This is the approach taken by most state constitutions. The need for zoning and the most useful approach to zoning will probably change in the future and the Committee believes that it is necessary to preserve flexibility in this regard.

The Committee wishes to point out that the Public Land Corporation has zoning power with respect to the public lands pursuant to Section 5(f) of the Committee's proposed constitutional language. That provision requires the Corporation adopt a comprehensive land use plan with respect to the public lands including priority of uses. The land controlled by the Public Land Corporation will be a large portion of the land on each island and the legislature may decide that further zoning is unnecessary for some time.

Real property tax benefits can be used as an incentive to encourage particular uses of private property. The Committee on Finance, Local Government and Other Matters has recommended that decisions with respect to all types of taxes, including the property tax, be left to the legislature. The Committee on Personal Rights and Natural Resources endorses this view and therefore recommends no additional constitutional language with respect to property tax benefits.

Delegate Proposals. The Committee considered three delegate proposals on the subject of land use controls: proposals numbered 24, 26 and 27.

Delegate proposal number 24 has five parts. Parts 1 and 3 are covered by the Committee's proposed provision. Parts 2, 4 and 5 contain limitations on the use of the eminent domain power that under the Committee's proposed provision would be left to the legislature.

Delegate proposal number 26 requires the approval of the exercise of eminent domain power on Tinian and Rota by the municipal government. The Committee believes that all the powers to be accorded local government should be considered together and for this reason recommends that this delegate proposal be referred to the Committee on Finance, Local Government and Other Matters.

Delegate proposal number 27 contains limitations on the exercise of the eminent domain power within the Commonwealth by the United States. This proposal contains the same language as provided by Section 806 of the Covenant. The Committee believes that it is not necessary to include this provision in the Constitution because this protection is specifically included in the Covenant.

Respectfully submitted by the
Committee,

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