

November 13, 1976

REPORT TO THE CONVENTION BY THE
COMMITTEE ON GOVERNMENTAL INSTITUTIONS

Subject: Committee Recommendation Number Four:
The Executive Branch of Government

The Committee on Governmental Institutions recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to the executive branch of government. The Committee's Recommendation does not contain any provisions concerning local government or lieutenant governors for the reasons set forth in the attachment to this Report.

The Committee believes that the Commonwealth of the Northern Mariana Islands should have an executive branch headed by a popularly elected governor and vice governor. Under the Committee's Recommendation, the governor's power would include the authority to appoint department heads with the consent of the senate and to remove them, to prepare a budget in consultation with the chief executive officers of Saipan, Rota, Tinian, and the Northern Islands, and to fill a vacancy in the office of vice governor if necessary. The Committee's recommended constitutional language also contains provisions regarding succession to the governorship, the absence or disability of the governor, the impeachment of executive branch officials, the qualifications, duties and compensation of the governor and vice governor,

the civil service system, executive and administrative departments, department of education, and the offices of attorney general and public auditor. The constitutional provisions offered by the Committee comprise an article of seventeen sections.

The principal issues considered by the Committee and the reasons for the Committee's proposed constitutional language are discussed below.

Section 1: Executive Power. This section provides that all of the executive power of the Commonwealth will be exercised by a governor and the officials specified in the article. Article II, § 203 (b) of the Covenant requires that the chief executive officer of the Northern Mariana Islands be given the title of governor.

Section 2: Qualifications of the Governor. This section requires that the governor be thirty years old, possess United States citizenship or nationality, be a qualified voter of the Commonwealth, and have resided and been domiciled in the Northern Mariana Islands for the seven years immediately preceding his election. The recommended provision does, however, permit the legislature to increase or to decrease the period of residency and domicile.

The Committee believes that its proposed age requirement would promote the election of mature and experienced governors. This requirement would not, in the Committee's view, significantly reduce the number of qualified individuals available for the governorship.

This is the same age that the Committee has recommended for judges and for the Washington representative.

Limiting eligibility for the governorship to qualified voters would ensure that candidates for the office are not mentally incompetent. It would also prevent those deprived of the franchise because of criminality from seeking the post of chief executive. The Committee believes that these protections would serve the Commonwealth well.

The Committee is persuaded that requirements of residency and domicile would produce governors who are sensitive to the needs and wishes of the Marianas people. The distance between the Commonwealth and the mainland of the United States and the limited opportunity for travel among the islands make it difficult to acquire a deep understanding of the Commonwealth's culture and its problems. The Committee believes that a minimum of seven years within the Commonwealth is presently necessary to obtain that understanding. Improved means of travel and communication may allow the reduction of the seven-year period in the future. The Committee therefore recommends that the legislature be authorized to modify the residency and domicile requirements imposed by this provision.

Section 3: Vice Governor. This section establishes the office of vice governor. The vice governor would be elected Commonwealth-wide and would be required to possess the same qualifications as those demanded of the governor. The vice

governor would be charged with performing tasks assigned by law or by the governor. The title of vice governor is selected tentatively because of the division of views within the Committee regarding the availability of the term lieutenant governor.

The Committee is persuaded that it is important to have an official available to become governor in the event of a vacancy in the office and to act as chief executive of the Commonwealth if the governor is absent or disabled. Requiring the vice governor to meet the standards of eligibility imposed on the governor and to be involved in the affairs of the Commonwealth to the extent permitted by the legislature or governor would prepare the vice governor for the chief executive's role. The Committee rejected a provision that would have assigned to the vice governor the duty of presiding over the senate. The Committee believes that such a role would compel the vice governor to perform conflicting duties in the executive and legislative branches of government.

The Committee also recommends that the governor be empowered to fill a vacancy in the office of vice governor with the advice and consent of the senate. This Committee believes that the succession of an official other than the vice governor to the governorship would disrupt the smooth operation of the affairs of the Commonwealth. Accordingly, the Committee's recommendation is designed to ensure insofar

as is practicable the presence of a vice governor in the Commonwealth administration.

Section 4: Election of the Governor and the Vice Governor. This section provides that nominees of a political party for governor and vice governor will seek office on the same ticket. The voters will choose these two officials jointly, with a vote for a gubernatorial candidate automatically being cast for the candidate's running mate. Procedures for electing the governor and vice governor will be governed by Article VIII of the Constitution, as will the date on which persons elected to these posts take office.

The joint selection of the governor and vice governor will avoid the situation where officials holding these positions are from different political parties. In the Committee's view, this shared political affiliation would afford a logical successor to the governor should he either leave office before the expiration of his term or require a temporary replacement because of absence or disability. In addition, the Committee believes that a shared platform and campaign may reflect a compatibility of political beliefs which would help the two officials to work together easily.

The Committee recommends a four-year term for the governor and vice governor. The Committee believes that a term of this length would enhance the governor's independence

in dealing with Commonwealth officials and political figures. Such a tenure would also enable the governor to fashion and execute a program for the Commonwealth, thereby benefiting the Northern Marianas people and providing them with a basis upon which to judge the administration's performance. The Committee is convinced that a four-year term would not isolate the governor from the views and needs of the people.

The constitutional language proposed by the Committee will prohibit any person from being elected to the governorship more than three times. The Committee is persuaded that this limitation is desirable to prevent the establishment of oppressive political machines and to permit new political leaders to develop. It rejects the notion that a third-term governor's "lame duck" status would substantially decrease his effectiveness.

Section 5: Compensation of the Governor and Vice Governor. Section 5 reflects the Committee's view that the governor and vice governor should receive salaries commensurate with their high offices and sufficient to free them from dependence on outside sources of income. This section provides that initially the governor will be compensated at the rate of twenty-five thousand dollars and the vice governor at the rate of twenty-two thousand dollars per year with such reasonable allowances for expenses as may be provided by law. Under article __ of the Constitution, the legislature must establish

an advisory commission on executive, legislative and judicial compensation. Upon the Commission's recommendation, the legislature may increase or decrease the governor's or vice governor's salary as long as it does not dip below the constitutional minimum. If the legislature alters the chief executive's or vice governor's salary, the changes will not be effective until the end of the incumbent's term.

The Committee believes that these provisions would foster the independence of the governor. The legislature would be precluded from reducing an unpopular chief executive's salary during his four-year term of office. Conversely, the legislature would be prevented from financially rewarding a compliant governor. Provisions regarding the compensation of the governor are crucial to the separation of governmental powers in the new Commonwealth.

Section 6: Prohibition on Government Employment.

This section forbids the governor or vice governor from holding another government position or from accepting from any governmental body remuneration other than the compensation paid to them under section 5. Either the governor or the vice governor may, however, run for any public office during their terms of office. Finally, section 6 requires the legislature to enact a code of conduct for the governor, vice governor and department heads, to require disclosure of financial or other personal interests, and to prevent conflicts of interest in the performance of official duties.

The legislature would have the authority, for example, to require that the governor not engage in private business activities and that he place all of his private commercial holdings in a "blind" trust. Under the terms of such a trust, the governor would transfer legal title in his financial interests to a trustee. The trustee would have the power to manage and dispose of assets in the trust and to acquire new holdings on the governor's behalf. The trustee would be obligated to devote his best efforts to handling the governor's property. The governor, in turn, could receive income generated by the trust but would be barred from obtaining knowledge as to acquisitions and sales of trust assets until he leaves the governorship. The trust would terminate at the conclusion of the governor's term of office.

The Committee believes that it is important constitutionally to attempt to ensure the governor's financial integrity. But the Committee is aware that over the course of time changed circumstances may necessitate the development of new procedures for achieving that objective. Accordingly, the Committee's recommended language reserves broad flexibility for the legislature, rather than prescribing specific standards that the governor must meet or particular procedures by which the chief executive may be compelled to adhere to those standards.

Section 7: Succession to the Governorship. This section provides that if the governor is removed, dies or resigns the vice governor will take office as governor. Should the offices of governor and vice governor both be vacant, the president of the senate will serve as acting governor. An acting governor who assumes office less than one year prior to the expiration of the governor's term will complete that term. When a year or more remains in the governor's term, the acting governor will serve only until a governor is selected by special election as provided by law.

The Committee is convinced that a clear order of succession to the governorship is essential to the efficient operation of the Commonwealth government. Accordingly, the constitutional language recommended by the Committee specifies the first two officers in the line of succession. Any further designation of officers in the line of succession is left to the legislature, because the Committee desires to preserve the opportunity to place offices not created by the Constitution in the line of succession. The Committee also recognizes that the mechanism created by section 2 for filling a vacancy in the vice governorship renders unlikely the succession of the holder of any other office.

The Committee believes that only the vice governor should become governor when a vacancy in the office occurs.

The vice governor will be elected on the same ticket as the governor or be confirmed by the senate for his post. In either case, the vice governor will be selected for his capacity to succeed the governor and therefore could claim a mandate to occupy the governorship. A legislative leader, such as the president of the senate, would not command such legitimacy. As a result, if it is necessary to reach below the vice governor in the line of succession, the new chief executive would serve only as acting governor.

The Committee's awareness of the expense of a Commonwealth-wide special election prompted it to recommend that an acting governor finish a gubernatorial term with less than one year to run. The Committee believes it unwise for an acting governor to serve for longer than that amount of time. In the Committee's view, the Commonwealth needs the vigorous leadership of a public official who has sought the highest elected office in the Commonwealth. The people of the Northern Mariana Islands especially require that leadership over a significant period of time.

Section 8: Absence or Disability of the Governor.

This section provides that the vice governor will serve as acting governor if the governor is physically absent from the Commonwealth or is mentally or physically disabled. If the vice governor is also absent or otherwise unable to act as governor, the president of the senate will assume the task.

(a) Absence of the Governor. The Committee concluded that the governor could not effectively perform his duties if he leaves the Commonwealth. The Northern Mariana Islands' physical distance from centers of population is compounded by the poor communications systems and transportation facilities serving the islands. Problems will demand solutions and decisions will require implementation during the governor's travels outside the Commonwealth. Accordingly, the Committee recommends that the Constitution provide that an acting governor will serve in the place of an absent chief executive.

The Committee decided against recommending that an acting governor assume office only if the governor is without the Commonwealth for a fixed period of time, such as five days. In the Committee's judgment, this approach would deprive the Northern Mariana Islands of executive leadership during such an interim period.

(b) Disability of the Governor. The Committee recommends that the inability of the governor to perform his duties be decided on a case-by-case basis. Accordingly, the constitutional language offered by the Committee permits the person who would serve as acting governor if the chief executive is declared disabled to petition the court with jurisdiction over appeals from the Commonwealth trial court for such a declaration. This court is given exclusive

recognizes that the twenty-fifth amendment to the United States Constitution empowers the Congress to judge whether the President is disabled. The Committee is persuaded, however, that the political atmosphere prevalent in the Northern Mariana Islands would cause this approach to be undesirable.

Section 9: Executive and Administrative Functions.

Divided into four parts, this section delineates some of the major administrative and executive responsibilities of the governor. First, the Committee's recommended language will charge the governor with faithfully executing the laws.

Second, the proposed section will require the governor to consult with the (mayors) (lieutenant governors) of Saipan, Rota, Tinian and the Northern Islands in preparing the budget which the governor is obligated to submit annually to the legislature. The governor must inform the legislature of the budgetary requests of each of the (mayors) (lieutenant governors) and of his disposition of those requests. The budget will not take effect until approved by the legislature, which will have the authority to modify what the governor recommends.

Third, the suggested section requires the governor to report at least annually to the legislature with respect to the affairs of the Commonwealth and to recommend measures he considers necessary or desirable. This provision obviously does not prevent the chief executive from communicating more

frequently with the legislature.

Fourth, the language proposed by the Committee grants the governor the power to issue reprieves, commutations and pardons, after consulting with the board of parole. The section directs the legislature to create that board. The Committee's recommended provision explicitly denies the governor any authority to provide relief from a judgment of conviction upon impeachment. This means that at no time, either before or after impeachment or conviction, may the governor intrude his clemency powers into the legislature's power to remove an official.

a) Responsibility for the Faithful Execution of the Laws. The Committee's proposed language would make the governor responsible for the faithful execution of the laws. The Committee believes that, as the chief executive of the Commonwealth, the governor would possess the resources to enforce its laws and to implement the policies set by the legislature.

b) Preparation of the Budget. The Committee believes that all of the islands that comprise the Commonwealth should be adequately and equitably provided for in the Commonwealth budget. The requirements that the governor consult with the (mayors) (lieutenant governors) of Saipan, Rota, Tinian, and the Northern Islands and that he reveal his responses to their budgetary requests are designed to accomplish this objective. The islands of Tinian and Rota will enjoy an additional protection: under the proposed

language, before becoming effective the budget must be approved by the legislature. The proposed language, moreover, requires the governor to submit a budget to the legislature each year.

The Committee also realizes that efficiency is essential to the budgetary process. Accordingly, the language recommended by the Committee would vest in the governor ultimate control over the budget submitted to the legislature. In addition to expenditures, the governor will be required to specify how those expenditures will be financed. The language also provides that if, at the start of a fiscal year, the budget has not yet received approval, appropriations for governmental operations and obligations will continue at the level set for the previous fiscal year.

c) Annual Address to the Legislature. The Committee decided that the governor should be constitutionally obligated to report to the legislature at least once a year. Although the Committee feels that the governor will desire to communicate with the legislature more frequently, the recommended language reflects the Committee's belief that such a decision should be the governor's. In the Committee's view, the legislature's power to investigate the activities of the executive branch and to vote -- or deny -- appropriations for its projects is sufficient to ensure the governor's responsiveness to legislative requests for information concerning the state of the Commonwealth.

d) Clemency Power. The Committee recommends that the governor obtain the authority to extend clemency. The scope of that authority is outlined above. The Committee feels that the governor's prudent exercise of this power, in conjunction with the board of parole, would permit mercy to be extended when appropriate and wrongful convictions to be erased when necessary. The recommended language would require the governor only to discuss possible grants of clemency with the board; he need not heed their advice. The constitutional provision offered by the Committee will preclude the governor from preventing or vacating the impeachment or removal of a Commonwealth official. In the Committee's opinion, the legislature should exercise an unfettered hand in removing unfit public officials.

Section 10: Emergency Powers of the Governor.

This section authorizes the governor to declare a state of emergency if the Commonwealth is invaded, if a civil disturbance erupts, if a disaster strikes or if another calamity occurs. The recommended language empowers the governor to amass all available resources of the Commonwealth in reacting to an emergency. The Committee expects that under such circumstances the governor would promptly request assistance from the United States. The Committee believes that this provision would facilitate the Commonwealth's rapid and effective response to an emergency.

The Committee decided against providing for the creation of a Commonwealth militia in the proposed article on the executive branch. The Committee believes that the Northern Mariana Islands could ill afford to finance a military organization, especially in light of the United States' responsibility under article I, section 104 of the Covenant to defend the Commonwealth from attack. The recommended language would, nonetheless, permit the legislature to establish a militia in the future.

Section 11: Attorney General. This section creates the office of attorney general. The governor will appoint this official with the advice and consent of the senate. This Committee's proposed language confers three duties on the attorney general. First, that official will advise the governor and the heads of executive departments on legal matters. Second, he will represent the Commonwealth when it wishes to assert its claims in court or it is sued. Third, the attorney general will function as the chief law enforcement officer of the Northern Mariana Islands.

The Committee believes that authorizing the governor to appoint the attorney general will lead to the designation of more qualified persons. The Committee believes that eminent lawyers who would bring valuable talents to the attorney generalship might not seek the

office if they must engage in a political campaign to win election. In addition, the Committee anticipates that an appointed chief law officer of the Commonwealth would enjoy a greater degree of popular respect than would an elected official. The Committee's language will not prevent the governor from retaining counsel other than the attorney general should the legislature appropriate funds for that purpose.

Section 12: Public Auditor. Section 12 requires the governor to appoint a public auditor subject to confirmation by both houses of the legislature. An official independent of the control of the governor and of the legislature, the public auditor will audit the Commonwealth government's handling of funds. The public auditor's jurisdiction will extend to every branch and agency of the government. The public auditor must report annually to the governor and legislature. The report must be released promptly to the public. To secure the auditor's independence and to insulate his office from political pressures, the draft section provides that he will be removable only for cause and with the affirmative vote of two-thirds of the members of the legislature. If a vacancy occurs, the presiding officer of the senate will designate an acting public auditor who will occupy the office until a permanent replacement is chosen.

The Committee believes that the establishment of the office of public auditor is vital to the financial

integrity of the Commonwealth government. The Committee feels that the public auditor would scrutinize carefully the accounts of the government without interfering with its operations.

Section 13: Department of Education. This section reflects the Committee's view that the importance of education to the new Commonwealth requires that the Constitution guarantee the creation of a board of education and a department of education. The recommended language directs the board to appoint a superintendent of education, who will head the department. The board may remove the superintendent. The board will determine and implement policy through the superintendent.

The members of the board will be appointed by the governor with the consent of the senate; the membership of the board will represent the geographical and other communities of the Northern Mariana Islands. The legislature will determine the number of board members and the length of their term. The legislature will also decide such details as whether board members may be removed prior to the expiration of their term and, if so, the means of removal.

Section 14: Heads of Executive Departments. This section provides that each principal department shall be

under the supervision of, the governor and, unless otherwise provided in the Constitution or by law, shall be headed by a single executive. It also provides that the governor may appoint the heads of the executive departments with the advice and consent of the senate and will possess the power to remove these officials. All other officials will be appointed and removed as provided by law. Finally, the proposed language requires officers of the executive branch to furnish information in writing or otherwise to the governor.

The first provision in this section is designed to prevent departments headed by more than one official, a practice that virtually ensures inefficient management. Regarding the governor's appointment power, the Committee believes that the chief executive must command the loyalty of his principal associates in the executive branch if he is to govern effectively. The Committee believes that its recommended section 14 would allow the governor this necessary control over his department heads while affording the senate the opportunity to scrutinize the qualifications of the governor's appointees before they assume office. In the Committee's judgment, the force of popular opinion will also serve as an incentive to the governor to select highly qualified persons to head the executive departments.

Section 15: Executive and Administrative Departments. This section is designed to facilitate and simplify

control of the Commonwealth government. It provides that no more than fifteen executive branch departments can be created, exempting regulatory, quasi-judicial and temporary agencies established by law. It is the legislature's responsibility to establish departments, define their functions, powers and duties and make changes as appropriate. This section also provides, however, that the governor can take the initiative in administrative reorganization. If any changes in the law are required, this section authorizes the governor to effect such changes by executive orders, provided that such orders are not modified or disapproved by a majority of the legislature within sixty days after their submission.

The Committee believes that a flexible provision of this kind will assist the governor to administer an effective government. There is certainly no magic in the number fifteen; the Model State Constitution uses the figure of twenty, and some state constitutions go lower. Such a limitation prompts the legislature to exercise greater care in the establishment of new agencies, compels a continuing review of the administrative structure, protects the legislature from undue pressures to create new departments, and helps ensure that the governor has a manageable "span of control" over departments. Giving the governor the authority to institute reorganization seems particularly useful, since it is the governor who carries the responsibility for executing Commonwealth policies and providing public services in the most orderly and cost effective manner.

Section 16: Civil Service Commission. This provision obligates the legislature to create a non-partisan and independent civil service commission. The recommended section requires the commission, in turn, to base standards governing initial selection for the civil service and promotion within the service upon merit and fitness. These qualities will be gauged by objective indicia whenever possible. The Committee is persuaded that a civil service system predicated on merit would improve the quality of the functions performed by the executive and judicial branches of government.

Section 17: Impeachment of Executive Officials. The Committee recommends that only elected officials within the executive branch be subject to removal upon impeachment as provided in article II of the Constitution. The Committee believes that impeachment is a necessary check on the power of these officials, but did not wish to risk the possibility of legislative intimidation of appointive officials. In order to limit further the risk of legislative intrusions into the executive branch, however, the grounds for impeachment are limited to treason, commission of a felony, corruption, and neglect of duty. The Committee feels that the governor's authority to remove department heads and the department's capacity to discharge those under its jurisdiction under civil service rules would be sufficient safeguards against official or personal abuses by appointed employees in the executive branch of government.

The Committee recommends the adoption of this recommended article on the executive branch.

Respectfully submitted,

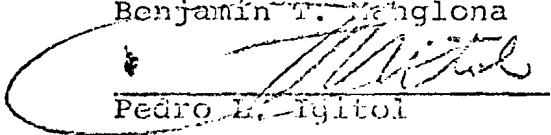
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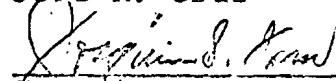
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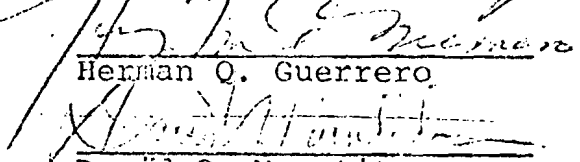
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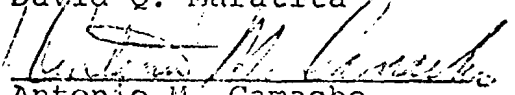
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