

Questions, comments and recommendations relative to the Draft Constitution approved in Principle on first reading by the Northern Marianas Constitutional Convention as of November 14, 1976.

Sequentially:

Article I, Section 3(b) page 2, "No wiretapping or other comparable means of surveillance shall be used except pursuant to a Warrant".

Recommendation:

Place period after the word "used"; delete the phrase "except pursuant to a Warrant".

Comment:

Privacy and the right to be let alone are the most cherished rights of freemen. Absent compelling reasons of national security and combating organized crime these rights should not be intruded upon. Recent disclosures in the U.S.A., the vaunted bastion of freemen, conclusively establish that even with the safeguard as provided in this section the above rights have been abused to a degree incompatible with the notions of a Republican form of government. National Security is not a concern of the Commonwealth; neither is organized crime. To provide the proverbial "inch" is invitation to attempt the mile. In the unlikely event of drastic changes necessitating reconsideration why not leave the issue to the Legislature?

Article I, Section 12, Privacy, page 4, "The right of individual privacy shall not be infringed except upon a showing of compelling government interest".

Recommendation:

(a) Place a period after the word "infringed" and delete the remainder;

However, should this prove unpalatable to authoritarian tastes,

Then at minimum insert between the words "upon" and "showing", the phrase "an unequivocal", to read "...except upon an unequivocal showing of compelling government interest".

If past is prelude the comment to Section 3(b) above is equally applicable here. For a past number of years government interest needed only to be cursory to be construed compelling. Old habits die hard. More stringent safeguards precluding the possibility of cursory findings of compelling interest are needed.

Article II Legislative Branch of Government.

Comment:

Proposed constitution must pass muster with U.S. government. A 39 member legislature to make law for a population of 14,000 souls - might strike the reviewers as unduly irresponsible.

This could provide justification for the disgruntled to hold up approval or even trigger a refusal to approve unless modified. Why run the risk? Why not - if possible - trim initial membership to an unobjectable level with the view to increasing same as time and experience justify?

Article II, Section 2(^c) page 5.

Comment:

One of the elements for qualification is that an aspiring Senator must have been a resident of the Commonwealth for at least five (5) years immediately preceding his election.

Since the Commonwealth will not have been in existence five (5) years at the time of the first election, this wording will provide ammunition for pettifogging.

Article II, Legislative Branch, Section 3(c) page 6.

Comment:

Second sentence of Section 3(c) "...but no district on Rota and Saipan shall consist of more than one island".

Language obscure, difficult to grasp meaning. Could stand clarification.

Article II, Legislative Branch, Section 11, Legislative Compensation.

Comment:

The matter of Legislative Compensation should be the prerogative of the Legislature. Creation of an advisory commission merely adds to overall cumbersomness in government and given the degree of partisanship which permeates local politics it could well prove to be unduly obstructionist regardless of the care and consideration expended in selecting the membership.

There is no reason to believe that any legislature would be so insensitive to public opinion as to risk ouster by the electorate on an issue invariably capitalized upon in campaign rhetoric. It is submitted that the legislature is as well qualified as a commission to set the compensation "of Commonwealth executive, legislative and judicial officers".

Section 13, Legislative Immunity.

Comment:

Blanket immunity as proposed is probably going a little too far. Surely immunity from arrest for the commission of a felony "while going or coming from a meeting of the legislature or a committee" is an unwarranted indulgence particularly when bestowed on the very persons who make and hence should be aware of the laws.

Section 15(a).

Recommendation:

In the second sentence, third clause, insert after the word "member" the phrase "upon conviction in a court of law". Strike the Article "a" before the word "felony" and strike the comma after the word "felony" and insert "or", and place a period after the word "peace". Expulsion for violation of legislative rules should be treated separately and the procedure delineated.

Comment:

The present posture of Section 15 (a) is too broad in that the legislature is empowered to expel for the commission of the enumerated offenses whether or not the offender was ever convicted in a court of law. Treason, felony and breach of the peace are crimes consisting of certain elements proof of which beyond reasonable doubt must be established preferably in a court of law.

Article III, Section 2.

Comment:

Same observation as made above relative to Senators and Representatives. The Commonwealth will not have been in existence for seven (7) years at the time of the first Commonwealth election; therefore, no person will have been a resident and domiciliary of the Commonwealth for the required length of time.

Section 3, Lieutenant Governor. Same as Section 2.

Section 5, Compensation of Governor and Lieutenant Governor.

Recommendation:

Compensation should be left to legislature. Reference to advisory commission deleted. See comments under Article II, Section 11, Legislative compensation.

Section 6, Prohibition on Government Employment.

Recommendation:

In the last sentence: Change the word "shall" to "may" to read "The legislature may enact a code, etc." Toward the end of the same sentence: delete the phrase "or other personal interests" or, alternatively, insert more specific guidelines. As written this provision invites abuse in the guise of zeal.

Section 8 (b).

In the last sentence, the court has jurisdiction to determine "all questions regarding (a) disability of the governor, (b) the existence of a vacancy in the office of governor, (c) the succession to office or its powers and duties".

Comment:

There can be little quarrel with (a) and (b) above, however, (c) raises the specter of violation relative to separation of powers.

The Constitution itself delineates the powers of the office of Chief Executive yet this section confers "final" jurisdiction on the court to determine "...succession to the that office or its powers and duties". Further the use of the conjunction "or" in the context is unfortunate because it serves only to add confusion. Substituting "and" for "or" in the phrase would clarify meaning but it still would not solve the conflict issue.

Recommendation:

Place a period after the word "office" and delete the phrase "or its powers and duties".

Section 11, Attorney General.

Comment:

Even though under this Section the Attorney General serves as legal advisor to the governor it should be made clear that the provision in no manner prohibits the governor from appointing a governor's legal counsel.

Section 12, Public Auditor.

Recommendation:

Delete Section 12 in its entirety.

Comment:

Government agencies have a strong tendency to perpetuate and proliferate without proportionate increase in efficiency, many times to the contrary.

Also, without conscious effort, these agencies of times identify with the

executive to the detriment of the other branches of government, or, conversely, they tend to encroach upon the executive. This area is best left to outside firms which will prove more detached and less costly over a span of time.

Section 13, Department of Education.

Recommendation:

In the last sentence of the Section after the word "composition" insert the words "and qualifications of the members".

Article IV, Judicial Branch of Government.

Section 2, Commonwealth Trial Court.

Recommendation:

That the Commonwealth Trial Court in addition to its original jurisdiction over all matters involving land be given original jurisdiction over all civil and criminal matters excepting, of course, jurisdiction over matters which are the proper concern of federal courts.

Comment:

The fact that this Section empowers the Legislature to increase the jurisdiction of the Commonwealth court after five years begs the questions: If eventually, why not from its establishment? What is magical about five years? Either a Judge is competent or he is not. If he is, there is little logic in denying him original general jurisdiction; if he is not, it appears the position of this section that if there are to be miscarriages of Justice the risk should lie with these who pursue small claims or face loss of freedom for five years or less. Hardly a tenable proposition. A poor man's efforts to recover for injury in the amount of \$5,000.00 is entitled to the same consideration as that of a corporation seeking redress in the amount of \$500,000.00; if a Judge is not qualified to handle the latter, he should not be foisted upon the former.

Again, this Section limits the jurisdiction of the Commonwealth Court to a degree that is not apparent on the surface. If one assumes a divorce action in which a property settlement in excess of \$5,000.00 is involved the Commonwealth court would have no jurisdiction; probate, alimony, separate support and maintenance, etc. Reduced to the absurd, the Commonwealth court could even be deprived of jurisdiction in a child support matter should the award during the time span under consideration aggregate to more than the present jurisdictional amount of \$5,000.00. Additionally, should the present provision prevail, the courts would gradually settle into accepted roles rendering it difficult if not impossible to change the status quo.

The Commonwealth is worthy of local courts of general original jurisdiction from the start and not possibly in five years.

Section 4, Jurisdiction of U.S. District Court.

Recommendation:

U.S. District Court for the Northern Mariana should be restricted to the same trial jurisdiction as the U.S. District Court on Guam and appellate jurisdiction over appeals from Commonwealth courts of general jurisdiction.

Section 9, Rule making power.

Comment:

Unless the Commonwealth Trial Court is created a court of original general jurisdiction ab initio apathy will insure that the rule making power will remain unexercised thus enshrining the federal rules which make no concession to custom.

Article V. Washington Representative. Section 3: Qualifications.

Comment:

Same as qualifications relative to Senators and Representatives, viz., no person

will have been a resident and domiciliary of the Commonwealth for seven years prior to the time of the first Commonwealth election.

Article VI, Local Government. Section 2(a).

Comment:

Same as above with respect to residency in the Commonwealth for at least three years prior to the first Commonwealth election.

Section 3. Responsibility of Mayor.

Comment:

Section 3(a), (b), (c), (d) and (e) completely innocuous; no teeth; Mayor's "Responsibilities" under these subsections illusory at best. He can go through the motions but no one need pay any heed.

Section 3(f), (g) and (h) not much better, Mayor still a figurehead, little real authority. For example, subsection (g) provides that the Mayor may appoint and supervise employees but note that if the legislature fails to provide or decides against providing such employees by law the Mayor could be a lonely man indeed.

Again, Section 3(f) provides that the Mayor may expend for local public purposes such revenues as are raised by local taxes designated by law for such purposes. Assuming the Legislature does not see fit to delegate taxing powers whatsoever to local government the Mayor will have little to expend. To continue, even if local governments were delegated a modicum of taxing power the Mayor's authority to expend revenues realized must be specifically authorized by the Legislature or by a majority of the Representatives and Senators representing the island served by the Mayor. Assuming disagreement between a majority in the legislature and the Representatives and Senators representing the island on the manner in which the Mayor is to expend money, the legislature might well rescind the delegated taxing power. Not likely but conceivable.

Section 4, Compensation of Mayor.

Comment:

Section provides that salaries and expenses for any assistants to the Mayor "shall be paid by local taxes designated by law for such purposes, etc.",

Comment:

as above.

Section 6. Other agencies of Local Government.

Comment:

Part of Section 6 supportive of comments to Sections 3 and 4 above.

Article XI, Public Lands.

Recommendations General:

Recommend a Constitutional provision reserving all land between high and low water mark to the people forever and providing for access thereto, ART XI, Sec (e) NOT WITHSTANDING

Comment:

Article XII, notwithstanding, without such reservation to the people it will not many years before all beach front property will be in the hands of developers, people of Northern Marianas descent will retain the privilege of observing tourists walking on their beaches, but from a distance. The age old taken-for-granted right of access to all land between low and high water will become a thing at the past.

Section 5(a).

Recommendation:

Delete provision whereby homesteader prohibited from transferring title to homestead land for 10 years.

Comment:

In addition to possible Constitutional objections this provisions fails to take into account financial difficulties that might necessitate sale of homestead land.

ing as homesteader barred from conveying to one not of Chamorro or Carolinian
this disability unwarranted; serves no useful purpose.

tion 5(e).

It will be the situation of those establishments (hotels) which already have
interest" in public lands to the high water mark?

Article XII, Restrictions Alienation of Land.

Recommendation:

The entire subject matter best left to the legislature.

Comment:

In the likely event the courts strike down these provisions it will create more
confusion and consternation than if the courts were merely setting aside statutory
law. In addition, Article XII is silent on the issue of lands currently in the
hands of person who do not qualify under the Northern Marianas descent test, nor
does it clarify the position of Non-qualified persons who -- on information and
belief-- currently have interest in land through a "straw man".

Article XIII, Eminent Domain.

Section 3: Statute of Limitations.

Recommendation:

In the second sentence, to the phrase "but shall not affect any right in property
that vested pursuant to the repealed statute of limitations" add "provided that,
upon timely challenge the court shall find by a preponderance of evidence that
the vesting pursuant to the repealed statute of limitations is upheld."

[Comments of Roger St. Pierre]