



OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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*Rec'd
6/25/85
[Signature]*

REXFORD C. KOSACK
ATTORNEY GENERAL

Legal Opinion No. 02

TO : Committee on Personal Rights/
Natural Resources

DATE: 6/24/85

FROM: Legal Counsel

RE : Supreme Law of the Commonwealth
Legal Opinion No. 02

You have requested an opinion whether the CNMI Constitution would conflict with the Covenant if the Constitution states that the CNMI Constitution is the supreme law of the Commonwealth of the Northern Mariana Islands. It is my opinion that such a statement would not be correct and would conflict with the terms of the Covenant.

The Covenant to Establish a Commonwealth of the Northern Mariana Islands In Political Union With the United States of America, U.S. Public Law No. 94-241, is the organic document of the Northern Mariana Islands government. It establishes a government with a commonwealth relationship with the United States. The Covenant specifies the form of government necessary to the commonwealth relationship. It must be governed by constitutional principles (Section 201), have three separate branches (Section 203), have popular elections (Section 203), etc. Section 501 names those provisions of the United States Constitution that will apply to the Northern Mariana Islands. Section 502 names those federal laws that will apply to the Northern Mariana Islands.

It is against this backdrop that the Commonwealth Constitution was drafted. At least three separate classes of laws already applied to the Commonwealth:

1. federal laws enumerated in the Covenant that negotiators agreed to have apply to the CNMI,
2. United States constitutional provisions specifically enumerated in the Covenant, and

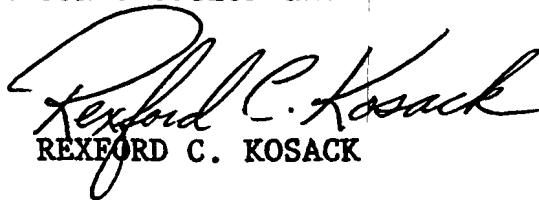
3. United States constitutional provisions that apply of their own force to the Northern Mariana Islands as a commonwealth of the United States.*

The Commonwealth Constitution is, in a sense, subordinate to this agreement establishing a government and those classes of laws:

Section 202. The Constitution will be submitted to the Government of the United States for approval on the basis of its consistency with this Covenant and those provisions of the Constitution, treaties, and laws of the United States to be applicable to the Northern Mariana Islands . . .

. . . Amendments to the Constitution may be made by the people of the Northern Mariana Islands without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.

Therefore, to state within the Constitution that it is the supreme law of the Commonwealth would ignore the reality that it cannot conflict with applicable provisions of the Covenant and the Constitution and laws of the United States.

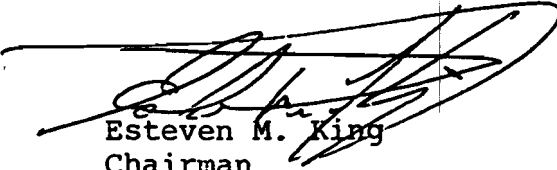

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* The Insular Cases at the turn of the century decided that fundamental constitutional rights under the United States Constitution apply by their own force to unincorporated territories of the United States. Arguably, the Northern Mariana Islands constitutes an unincorporated territory. Commonwealth of the Northern Mariana Islands v. Atalig, 723 F.2d 682 (9th Cir.) cert. den. (1983).

MEMORANDUM

TO : Legal Counsel, Attorney General
FROM : Committee on Personal Rights/Natural Resources
SUBJECT : CNMI Constitution as the Supreme Law of the CNMI-

The above committee has requested you to provide us with an opinion on the following question: Is it in conflict with the Covenant to incorporate in the Constitution language the CNMI supreme law is the Constitution of the CNMI?



Esteven M. King
Chairman

cc: President, 2nd CNMI Con-Con