SECOND NORTHERN MARIANAS CONSTITUTIONAL CONVENTION
HOUSE OF TAGA
SAIPAN, CM 96950

MEMORANDUM

Date: June 24, 1985

Legal Opinion No. 7

To : Attorney General

From : Chairman, Committee on Organization and Procedures

Subject : Request for Legal Opinion re Interpretation of Language in Public Law 4-30

Section 19(c)(1) of Public Law 4-30 provides that "Each proposed amendment shall be treated separately" in establishing the form of the referendum ballot or ballots to ratify proposed amendments. Section 13 of Public Law 4-30 provides that "A proposed amendment adopted by the Convention may encompass one or more sections, subsections, or articles of the Constitution or may propose the addition of new sections, subsections, or articles to the Constitution, but the Convention may not adopt more than one proposed amendment embracing or affecting the same section, subsection, or article of the Constitution as the same subject matter. Each proposed amendment adopted by the Convention shall be subject to the ratification process independent of the others."

The question has been raised as to whether this requires that each change proposed by the Convention has to be submitted to the voters separately or whether the Convention can combine several proposed changes in a single proposed amendment. This raises several other questions as to how the Convention can structure amendments.

Please issue a legal opinion to respond to these questions and clarify the issues involved.

Herman Guerrero

HERMAN T. GUERRERO

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Legal Opinion No. 7

June 28, 1985

MEMORANDUM:

TO : Chairman & Members of Committee on Organization and Procedures of the Constitutional Convention.

FROM : House of Representatives Legal Counsel's Office

SUBJECT: Interpretation of language and legal significance of Sections 13 and 19(c) (1) of Public Law 4-30.

In analyzing the complexities of the language in question, I will discuss the meaning of each section and then attempt to reconcile the meaning of these sections with each other and with other legal opinions given on this same subject.

Section 13 of Public Law 4-30 establishes procedural guidelines regarding the form of amendments to the Constitution. It allows:

1) An unlimited number of amendments to be proposed by the delegates,

2) An adopted proposed amendment to encompass one or more sections, subsections, or articles of the Constitution,

3) Only one version of an amendment dealing with any particular part of the constitution to be submitted to the voters.

The only ambiguous language is contained in item #3. Therefore, an example may best illustrate its meaning. If the convention adopts an amendment to Article V, Section 2 of the Constitution which asks the voters to approve or disapprove of the following:

Read 6/28/85 - jpm/pq

"Section 2: Term of Office.

The term of office of the representative shall be four years."

The Convention can not also adopt an amendment to Article V, Section 2, which asks the voters to approve or disapprove of the following:

" Section 2: Term of Office

The term of office of the representative shall be six years."

The section limits the ability of the Convention to adopt more than one version of an amendment to one specific section, subsection or article of the Constitution. Thus the voters will only be asked once whether they approve or disapprove of an amendment; they cannot be offered several alternative choices or versions of the same amendment.

I would point out with regard to item #2 as emumerated above, that that portion of section 13 is inconsistent with the opinion rendered to the Local Government Committee by this office on June 27, 1985. (See legal opinion #9). That portion of Section 13 allows amendments proposed and adopted by the Convention to encompass more than one article of the Constitution. Our position remains that delegates may propose amendments which encompass more than one article but the Convention may not adopt such amendments until they have been regrouped by their respective articles. That portion of Section 13 which allows for the adoption of such amendments is contrary to Article XV111, Section 3 of the Commonwealth Constitution. The rational for this position is fully explained in legal opinion # 9.

The language of Section 19(c) (1) requires that each adopted amendment which meets the guidelines previously discussed, will be followed by the referendum language proposed in Section 19 (c) (3). This is to allow voters to select those specific amendments which they favor, rather than having to accept a large block of amendments which might include changes which the voter does not favor, but which he is forced to accept in order to

approve the changes which he does favor.

If further clarification is necessary on these issues, please feel free to contact us.

Timothy H. Bellas

Timothy H. Bellas

MEMORANDUM

July 11, 1985

TO: Convention President

FROM: Consultant

SUBJ: Legal Opinions Nos. 7 and 9

The subject legal opinions maintain that Article XVIII, Section 3 of the Constitution restricts the Convention from proposing a constitutional amendment that affects more than one article of the constitution, even though the language of Public Law 4-30 permits such amendments. It is my view that if the Convention is bound by these opinions, the Convention could be hampered in the performance of its constitutional duties and responsibilities. For this reason, I recommend that an opinion be requested from another attorney and the following issues be considered.

Legal Opinion No. 9 notes that Article XVIII, Section 3 restricts the legislature from proposing an amendment that embraces "the subject matter of more than one article of this Constitution." The opinion then extends this restriction to amendments proposed by a constitutional convention and by popular initiative by inference. I do not believe this reflects either the constitutional intent or usual standards of legal construction. First, when a provision is put in one part of a law and left out of another, the presumption usually is that it applies to the first set of circumstances and not to the second, unless there is something in the context or the legislative history that clearly indicates it was meant to apply generally. Second, we should focus on the significantly different purposes of constitutional convention, legislative initiative, and popular initiative. Third, we should note that the constitutional restriction is on embracing "the subject matter of more than one article", not articles per se.

With respect to whether the restriction "A proposed amendment may not embrace the subject matter of more than one article of this Constitution" should be construed as applying generally, I believe there is considerable evidence that it should not, in addition to rules of construction. While Section 4 on popular initiative specifically authorizes the legislature to transform a popular initiative into a legislative initiative, I note that the legislative vote requirement of this section is less stringent that that in Section 3 on legislative initiative. The ability of the

legislature to transform an amendment proposed by constitutional convention or popular initiative into a legislative initiative is obvious even in the absence of this provision, since the legislature is empowered to propose amendments even without a convention or popular initiative simply by meeting the vote requirements of Article XVIII, Section 3. Section 4 simply relaxes the vote requirement.

The purpose of a constitutional convention is comprehensive review of the constitution and proposal of any and all amendments necessary to correct deficiencies in the constitution as they relate to the aspirations of the people and the conduct of their government. To perform this enormous responsibility, the people elect special representatives to address this single purpose. To restrict a convention to proposing amendments article by article would defeat the constitutional purpose. This purpose is quite different from that of legislative or popular initiative, which is to correct a limited, single deficiency. When a broader review is needed, legislative or popular initiative can be used to call a constitutional convention.

The report of the Committee on Finance, Local Government and Other Matters on Committee Recommendation No. 1 as recorded on pages 584-597 of the Journal of the first Constitutional Convention (Vol. II) sheds additional light on the subject. It reads in part:

> The Constitutional Convention process facilitates a comprehensive review of the entire document, or major portions of it, and assures close attention to the experience under the constitution, which often cannot be done by ordinary legislative processes.
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> Legislative Initiative. A constitutional convention typically involves a broad review of the existing constitution and is not a matter to be undertaken frequently or lightly. Based on widespread experience in fifty states and Puerto Rico, however, there is need or desire to consider specific amendments of the constitution, some of a technical nature, others relating to particular constitutional policies or protection of individual liberties. Among the fifty states, the legislature is considered the appropriate forum for proposing individual cosntitutional amendments. . . . To facilitate voter understanding of the issues raised by the amendments, any single amendment would be limited to the subject matter contained in one article of the constitution.
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> Popular Initiative. . . . To preserve the public's ultimate

right to decide the content of its fundamental document . . .

Ratification. . . . The range of changes that a constitutional convention might propose . . . support the higer vote requirement in these instances . . .

Organization of Constitutional Convention. . . . Once a constitutional convention is authorized, it should be free to consider a wide range of potential revisions or amendments, subject of course to provisions of the Covenant and applicable provisions of the United States Constitution. . . . Restrictions on the scope or power of a constitutional convention was not considered warranted.

Legislative initiative, on the other hand, is designed to permit limited, often purely technical, amendments to be proposed, without the extra difficulty of calling a constitutional convention or obtaining signatures on a petition. Since the legislature does not represent the voice of the people specifically with respect to constitutional issues, and to prevent political professionals from confusing or manipulating the voters with respect to a constitutional amendment, the restriction on the scope of amendments proposed by legislative initiative is appropriate.

Popular initiative is likewise very different. Since it represents the direct voice of the people, in whom all right and power of governance reside, a restriction on the scope of a proposed amendment is not only inappropriate but would deprive the people of a fundamental right. However, in recognition of the fact that a popular initiative could be put forth in the heat of the moment or by a special interest group, the framers of the original constitution took the care to include the requirement that the petition must "contain the full text of the proposed amendment." (see also the Analysis, pg. 190) By ensuring that each signatory sees the full text, the framers protected against abuses without infringing on a fundamental right. This particular requirement is not included in the provisions on legislative initiative and constitutional convention; however, the legislature, recognizing the value of this provision with respect to the people's right to know, included it in the provisions of Public Law 4-30 relating to the form of the ratification ballot.

With respect to the constitutional restriction on embracing "the subject matter of more than one article", which applies to legislative initiative, we should note that the focus is on the subject, not articles per se. In the instance of certain subjects, for example, local government, qualifications for office, ethics of

government officials, etc., the subject appears in more than one article. It would be impossible to make an amendment treating the subject in general without amending more than one article. To require several separate amendments in order to address the subject would make no sense. Consequently, I do not believe this was intended to be an absolute prohibition even on the legislature, and to apply it to constitutional conventions as well would effectively prevent the people from changing the constitution to reflect their needs and desires.

We can further ask, "What sort of responsibility is this restriction against embracing the subject matter of more than one article?" One can easily make the case that, particularly with respect to a constitutional convention, if it applies to such a convention, that it is the same sort of responsibility as the legislative responsibility to limit bills to a single subject. That is a responsibility that is not subject to judicial review. That is, the legislature (or the convention) determines, in its judgement, what the subject is.

As the primary drafter of the Senate amendments to House Bill No. 22 (P.L. 4-30), I do not believe the legislative intent was to restrict the authority of the convention to propose amendments in any way. The language in Section 13 of the law, which I drafted, was intended to 1) memorialize in the statute the broad authority to propose amendments which the convention would have, and 2) require that the convention not propose two or more amendments which are inconsistent one with another, nothing more. Indeed, I do not believe the legislature has any constitutional authority to restrict the scope of amendments proposed by the convention. Amendments proposed by the convention are not subject to legislative approval. Further, Briefing Paper No. 9, prepared for the first Constitutional Convention states: "A number of state constitutions that require periodic submission of the convention question to the voters include in the constitution the precise question to be put to the voters with respect to the convention. For example, the Hawaii constitution provides: The legislature may submit to the electorate at any general or special election the question, 'Shall there be a convention to propose a revision of or amendments to the constitution?' This type of provision denies the legislature the opportunity to limit the scope of convention powers." (page 18)

Conclusion. I believe the Convention itself is the sole judge of what a proposed amendment is. When the Convention takes final action stating that something is proposed amendment No. 1, etc., then that is the form it goes to the voters. The Convention, of

course, has a responsibility to submit amendments to the voters in an orderly manner and to give them free and fair choices, but there is no constitutional authority for restricting the freedom of the Convention in proposing amendments, other than that imposed by the Covenant and the Constitution and laws of the United States as applicable to the Commonwealth. The precise language of Public Law 4-30 may pose some problems, but I believe the constitutional principle should override. If not, an amendment to Public Law 4-30 should be sought from the legislature in order to bring the language into precise conformance with the intent as stated above.

Stephen C. Woodruff