

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

MEMORANDUM

LEGAL OPINION NO. //

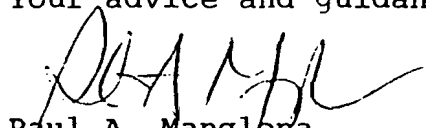
To : Attorney General

Date: June 24, 1985

From : Chairman, Local Government Committee

Subject : Delegate Proposal No. 98-85

The Committee on Local Government wishes to have better language to substitute for "elsewhere" in Delegate Proposal No. 98-85. Our thinking is that it should be "any country", but some members brought up the question as to whether some foreign countries afford due process in their court systems. Your advice and guidance are needed.


Paul A. Manglona

provisory #3

Attachment

xc: Con-Con President

TO: Chairman, Committee on
Governmental Institutions
Second Constitutional Convention

DATE: 6/27/85

FR: Legal Counsel

RE: Legal Opinion No. 11

Your committee has asked that we propose better language for the word "elsewhere" in Delegate Proposal No. 98-85.

Some background information may be useful for the committee in helping decide whether or not to amend the Constitution.

In early common law, upon which our laws are based, whether or not a person had been convicted of a serious crime greatly controlled his life after he served his sentence. Some of the serious crimes were labeled felonies and one side affect of being convicted of a felony was that the culprit could not hold public office. It is partially for this historical reason we continue to restrict office holders to non-felons.

Over the years, the definition of felony has changed. At very early common law any crime that included a total forfeiture of the offender's land, upon conviction, was called a felony. Today, in the absence of a statute, felonies are general defined offenses which were formerly punishable by death or by forfeiture of lands. Where a statute classifies a crime as a felony, specific conduct may be designated as a felony or the type of punishment may designate whether a crime is a felony.

In the Commonwealth, a felony is defined as any offense or conduct prescribed by the Commonwealth law which is punishable by more than one year confinement in a jail or prison.

Rec'd 6/28/85 - am/aj

Like the Commonwealth, many other jurisdictions within the United States have likewise defined a felony based not on the nature of the offense but rather on the type and duration of punishment that could be imposed.

Problems arise with the definition of a felony when a person has been convicted of a crime in a foreign country, and that country classifies the crime in a different manner than the local jurisdiction. For example:

Assume that a person seeking the mayor's position was convicted in a foreign country for a crime deemed by that country to be a felony. The crime, had it been committed in the Commonwealth, would be treated as a misdemeanor. How should the Commonwealth treat the foreign conviction, as a felony or as a misdemeanor? The foreign jurisdiction may not have the same due process standard as does the Commonwealth. Thus, a conviction elsewhere might not withstand a constitutional attack had the trial been held in the Commonwealth.

For example, a foreign country may sentence all persons who are convicted in their courts for the possession of a small amount of marijuana to more than a year in jail. That foreign country's proceedings do not permit cross-examination of police officers who read their police reports to the judge in court. Should a person otherwise qualified to hold office in the Commonwealth who is convicted of this above offense be forever barred from holding the position of mayor within the Commonwealth?

The present language of the Constitution Article, Section 2(a) reads in part:

. . . No person convicted of a felony in the Commonwealth or in an area under the jurisdiction of the United States may be eligible for the office unless a full pardon has been granted.

Article III, Section 2 setting forth the qualifications for governor has the same requirement. In reviewing the Analysis of the Constitution Article III, Section 2, the term "any area under the jurisdiction of the United States" was intended to mean any area presently or in the past under the jurisdiction of the United States. The Analysis clearly sets forth the statement that, "[i]t is intended that this portion of the disqualification be limited to felonies committed in an area

While that area was under the jurisdiction of the United States . . . at p. 61. Although there is no statement why the intent was to treat felons only while the area was under United States jurisdiction within the Analysts a rational argument can be made that there was the intent to avoid the tremendous problems that would arise if someone in seeking the elected position had been convicted of a crime in a non-common law jurisdiction.

The qualifications for holding public office may be expressly set forth in the Constitution provided they are not inconsistent with the United States constitutional provisions, and they are not unreasonable, arbitrary or capricious. The qualifications for office must have a rational basis, such as age, integrity, training, and perhaps residency or domicile. There must be a rational nexus between any requirement and the duties of the position in question. By amending the Constitution to add the requirement in the qualifications that the mayor must not be a convicted felon regardless of where the crime was committed is a proper exercise of your authority and within your powers to recommend.

All above is not an attempt on my part to dissuade the committee to adopt an amendment to the Constitution but rather to point out some practical problems that might arise with an amendment as proposed.

Should the committee wish to submit a recommendation to the delegates to amend all sections of the Constitution that provide for qualifications of an office holder, the following language may be helpful:

No person convicted of a felony in the Commonwealth, in any area under the jurisdiction of the United States, or any crime in any other jurisdiction that had the crime been committed in the Commonwealth would now be deemed to be a felony may be eligible for this office unless a full pardon has been granted;

or

No person who has been convicted of any crime in any laws of the Commonwealth may be eligible for this office unless a full pardon has been granted;

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or

No person who has been convicted of a crime of moral turpitude in any jurisdiction may be eligible for this office unless a full pardon has been granted.

ERIC SMITH