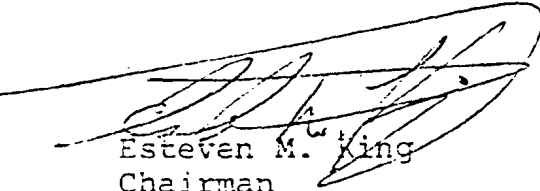


TO : Legal Council Attorney General
FROM : Committee on Personal Rights/Natural Resources
SUBJECT : Restrict Contract Employment or Job Assignment to
Vote in the CNMI

The Personal Rights/Natural Resources Committee is requesting your office to provide us with an opinion on the following questions: Is it in violation of the Covenant or U.S. Constitution to restrict a person to vote who resides in the CNMI because of his/her employment or job assignment? e.g. U.S. Military personnel.


Esteven M. King
Chairman

cc: President, 2nd CNMI Con-Con



House of Representatives
NORTHERN MARIANAS COMMONWEALTH LEGISLATURE
P.O. Box 586
Saipan, Mariana Islands 96950

Phone: 6195/6284/6618

*Reid
6/25/85*

Memorandum Legal Opinion No. 1

To: Committee on Personal Rights/Natural Resources
Esteven M. King, Chairman

From: Legal Counsel

Subject: Restricting the right to vote of persons who reside in
the CNMI because of employment or job assignment

Issue Presented

You have asked the legal counsel for an opinion concerning the ability of the convention to restrict a person's right to vote in the CNMI if the person resides here because of his or her employment or job assignment, e.g. U.S. military personnel.

Conclusion

An amendment to restrict a person's right to vote in the CNMI if the person resides here because of his or her employment or military assignment ~~would violate the Covenant and the United States Constitution.~~

Discussion

Section 501 (a) of the Covenant extends various provisions of the United States Constitution to the Commonwealth as of January 9, 1978. Among these provisions is Section 1 of the Fourteenth Amendment to the United States Constitution. The amendment is central to the United States legal system and sets forth various restrictions upon the power of states, including the privileges and immunities clause, due process clause, and equal protection clause. Section 1 of the Fourteenth Amendment reads as follows:

Section 1. ... No State shall make or enforce any law

which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

For purposes of the Fourteenth Amendment, the Covenant provides that the Northern Mariana Islands are to be treated as if they are one of the several states. (See Covenant Sections 501 (a) and 304.) Therefore, the provisions of the Commonwealth Constitution must be consistent with the mandate of the Fourteenth Amendment.

Currently, the qualifications of voters is established by Article VII, Section 1 of the Commonwealth Constitution and the Election Law. Residency and domicile in the Commonwealth are two of the criteria for determining eligibility to vote. The Constitution allows the legislature to determine the criteria by which residency and domicile are to be determined for voting purposes. (See Article VII, Section 3.)

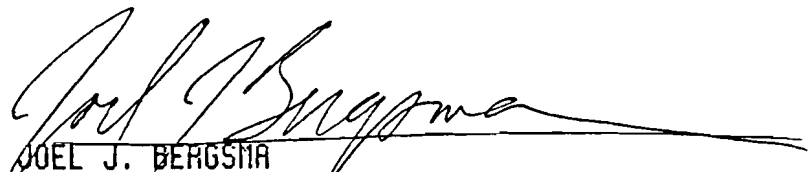
You are suggesting an amendment to exclude from residency and domicile those persons who are in the CNMI for employment reasons. My review of the constitutional law of the United States leads to the conclusion that such an exclusion would be unconstitutional.

Although state statutes and judicial opinions set forth a great number of definitions of residency and domicile, the definitions are limited by constitutional restrictions. For example, the state of Texas attempted to limit the right to vote of members of the US military. A constitutional amendment was approved to prohibit members of the military from voting in Texas so long as they were in the military. The United States Supreme Court struck down the constitutional provision in Carrington v. Rash, 380 US 89, 13 LEd2d 675 (1965). A state simply cannot adopt such a broad presumption; rather, the definitions of residency and domicile must turn on individual facts and circumstances.

The weight of the judicial authority would also strike down a provision that disenfranchised residents of federal government military reservations, such as the Tinian military retention area. (See Evans v. Cornman, 398 US 419, 26 LEd2d 370 (1970); see also 34 ALR2d 1194 and 25 AmJur2d Elections Section 76.)

Finally, some persons may suggest that the convention deny such persons the right to vote through a lengthy residency requirement. This is not a constitutional alternative to restricting the right to vote of military persons, because a residency requirement for voter registration of only 50 days has been found by the Supreme Court to approach the outer constitutional limits. (See Burns v. Fortson, 410 US 686, 35 LEd2d 633 (1973).) A CNMI requirement of a one year or more residency would almost certainly be struck down as unconstitutional. (See Annotation, Validity, Under Federal Constitution, of State Residency Requirements for Voting in Elections, 31 LEd2d 861-915.)

If necessary I am available to discuss this matter further with the committee.


JOEL J. BERGSMA
CHIEF LEGAL COUNSEL
HOUSE OF REPRESENTATIVES

cc: Convention President