

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

MEMORANDUM

Date: June 25, 1985

Legal Opinion No. 17

To : Attorney General
From : President of the Convention
Subject : Request for Legal Opinion -- Per diem for Rota and Tinian Delegates

Please advise if per diem has to be paid to a delegate elected from Rota and Tinian who works on Saipan and owns or rents a house on Saipan. We note that Public Law 4-30 states that delegates are entitled to per diem while away from their home island. How much difference is there in the meaning of home for purposes of election, voting, per diem under Public Law 4-30, etc? Is payment of per diem in this sort of case mandatory, prohibited, or optional?


HERMAN T. GUERRERO



OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

5TH FLOOR, NAURU BUILDING

SAIPAN, CM 96950

PHONE: 6207-7111

REXFORD C. KOSACK
ATTORNEY GENERAL

TO : President, Second Northern Mariana Islands Constitutional Convention DATE: 7-8-85

FROM: Legal Counsel

RE : Per Diem for Rota & Tinian Delegates
Opinion No. 17

You have asked for our opinion on whether a delegate elected from Rota or Tinian who either works on Saipan or has a house on Saipan is entitled to per diem under Public Law No. 4-30. It is our opinion that such a delegate is entitled to per diem.

The issue is raised by Section 18(b) of Public Law No. 4-30 which provides:

- (b) Delegates shall also be entitled to all necessary travel expenses, and to per diem at standard Government of the Commonwealth of the Northern Mariana Islands rates, while away from their home island on the business of the Convention or any committee thereof.

The right to these benefits turns on the term "home island". No where is this term defined in Public Law No. 4-30.

To best determine the intent of "home island", one should look at how the delegates are elected. First, delegates are chosen so that there are a certain number from each of the three senatorial districts. Section 4. In order to run as a delegate from a particular senatorial district, a candidate must be registered to vote in that senatorial district. Section 5(b). This is the nexus between candidacy and representation.

In order to register as a voter in a particular election district, a candidate must be a resident in that particular election district. 1 CMC §6205(b)(1).

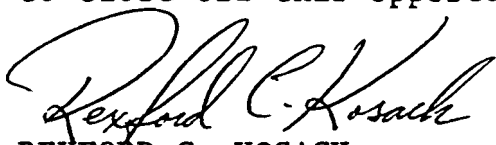
A person has a residence in, or is a resident of, the election district where that person is factually living and has an abode. Ibid.

So, in order to represent a particular senatorial district, a candidate must be factually living in that district. With

knowledge that the election districts are wholly contained within a senatorial district and a senatorial district geographically is an island for the purposes of Rota and Tinian each, it would seem that "home island" is a shorthand way of referring to the senatorial district one represents.

Therefore, we believe that section 18(b) in practical terms refers to delegates who represent Rota and Tinian (which means the Board of Elections determined those islands are where they are factually living) but are on Saipan for the Convention. One's "home island" would be where he has his factual residence or abode.

Merely owning or renting a house on Saipan when one factually resides on Rota or Tinian does not make Saipan one's home island. The law attempts to be equitable in providing housing for those who must leave their homes to attend the Convention. Perhaps it is too broad since such benefits will also be provided to persons owning homes in Saipan or who have relatives they can live with. If it is necessary in order to protect the limited Constitutional Convention funding, the delegates may want to propose legislation to close off this opportunity.


REXFORD C. KOSACK
Attorney General