

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

Date: June 25, 1985

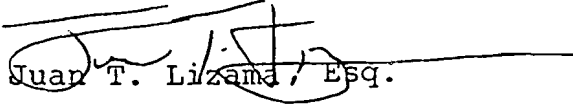
MEMORANDUM

LEGAL OPINION NO. 109

TO : . Attorney General
FROM : Chairman, Committee on Governmental Investigations
SUBJECT: Delegate Proposal No. 20-85

An issue is raised whether a constitutional provision should be provided requiring extradition.

To wit: Should the Commonwealth be required to extradite a criminal fugitive? Please provide your recommendation and rationale.


Juan T. Lizama, Esq.



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 : Chairman, Committee on
Governmental Investigations

DATE: 6-28-85

FROM: Legal Counsel

RE : Opinion No. 19

Your committee has asked whether the Commonwealth should be required to extradite a criminal fugitive. This request will be treated as if the question were phrased:

Should the Constitution contain a section authorizing the extradition of fugitive?

We do not feel that constitutional amendment authorizing or demanding the extradition of a fugitive is proper or necessary.

BACKGROUND

Extradition may be defined as the surrender by one nation to another of an individual accused or convicted of an offense committed within the territorial jurisdiction of the latter authority. Terlinden v. Ames, 184 U.S. 270. The object of extradition is to prevent the escape of persons accused of crime, and to secure their return for the purpose of trial and punishment to the jurisdiction from which they fled.

Article 4 Section 2 of the U.S. Constitution confers on the federal government the power to regulate interstate extradition. To effectuate the constitutional provision, Congress has enacted a general extradition law prescribing the procedure to be followed by officials of both the demanding and asylum state when return of a fugitive is sought. 18 U.S.C. §3182. The legislation embraces territories as well as states, and the

Rec'd 7/1/85 - [signature]

return of alleged offenders to territories is valid and binding on the several states. Ex parte Reggel, 114 U.S. 642.

A state may enact legislation on the subject of extradition as long as the legislation is ancillary to and in aid of the federal requirements. Ex parte Morgan, 86 Cal. App. 2d 217, 194 P.2d 800.

The surrender of fugitives from justice by one independent nation to another on request is based on international comity or on the provisions of an existing treaty between the two nations. All international extradition proceedings must be negotiated through the federal government. United States v. Rauscher, 119 U.S. 407. A state has no power to demand the return of an offender from another country and statutes purporting to authorize such actions are unconstitutional. Hyatt v. New York, 188 U.S. 691.

INTERSTATE EXTRADITION FOR THE NORTHERN MARIANA ISLANDS

Section 501(a) of the Covenant specifically provides that Article IV, Section 2, Clause 2 of the U.S. Constitution will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several states.

Article IV, Section 2, Clause 2 of the United States Constitution provides as follows:

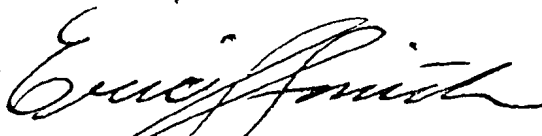
A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Thus it is clear that the U.S. Constitution places a duty on the Commonwealth to surrender a fugitive and also gives the right to the Commonwealth to demand the return of a culprit who is residing in a state or jurisdiction under United States authority, including the territories.

INTERNATIONAL EXTRADITIONS
FOR THE NORTHERN MARIANA ISLANDS

Section 104 of the Covenant provides that the federal government will have complete responsibility for and authority with respect to matters, relating to foreign affairs. Since the entire field of foreign extradition is committed exclusively to the federal government, the Commonwealth has no right or power independently to demand of a foreign nation the return of a fugitive nor does it have the power or right to surrender a fugitive to a foreign country upon that nation's direct request. All such requests must be negotiated through the federal government.

An amendment of the Constitution dealing with extradition would not grant to the Commonwealth more power or authority than it already has and may be unconstitutional and void.



ERIC SMITH