

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

MEMORANDUM

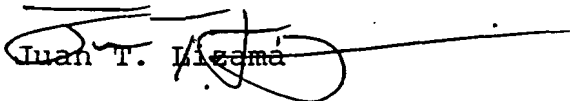
Date: June 25, 1985

Legal Opinion No. 22

To : Attorney General
From : Chairman, Committee on Governmental Institutions
Subject : Request for Legal Opinion on Delegate Proposal
No. 60-85

The subject Proposal would eliminate the phrase "financial or personal" and would substitute the word "private". It proposes, also, to restrict a member of the legislature from voting on a bill before the legislature when a disclosure is made that he has a "private" interest in such bill.

Please provide your recommendation and rationale for Committee interpretation of this Proposal.


Juan T. Lizama

xc: Con-Con President



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REXFORD C. KOSACK
ATTORNEY GENERAL

TO: Chairman, Committee on
Governmental Institutions
Second Constitutional Convention

DATE: 6/26/85

FR: Legal Counsel

RE: Eliminate the Words "financial or personal"
and Substitute "private" in Article II, Section 15
Legal Opinion No. 22

QUESTION PRESENTED: Does an amendment substituting the word "private" in place of words, "financial or personal" place more of a restriction on a member of the legislature from voting on a bill than presently exists?

DISCUSSION: The word "private" has a number of meanings and standing alone probably makes Article II, Section 15 more difficult to enforce than at present.

A review of several cases, and the definitions given therein, points out that there is no clear and concise definition of the word. For example:

Private may mean as belonging to or concerning individual person company or interest, one's own; not public; not general. Mitchell v. Green, 39 S.E. 2d 696, 201 Ga 256.

The word private as applied to the power of a municipality is used to designate proprietary as distinguished from governmental functions. Britt v. City of Wilmington, 73 S.E. 2d 289.

"Public" expresses something common to mankind at large, to a nation, city, or town, and is opposed to "private" which denotes that which belongs to an individual, to a family, to a company or a corporation. Chamberlain v. City of Burlington, 19 Iowa 395.

Rec'd 6/27/85 - pm/sk

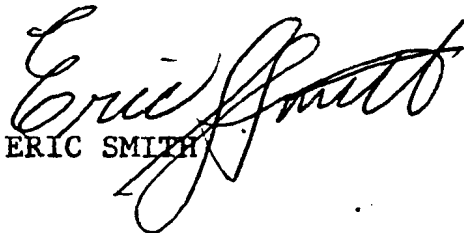
Chairman, Committee on
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These three definitions point out that depending upon the subject matter of a particular bill, a legislator may or may not have a private interest that could prohibit him from voting on the measure.

We feel that rather than replace "financial or personal", with the single word "private", "private" should be added to broaden the scope of Article II, Section 15.

The present language of Article II, Section 15 does not clearly prohibit a legislator from voting on a bill when he has a financial or personal interest in it. By substituting the word "shall" for "may" the section is strengthened to prohibit a legislator from voting on the measure.

We feel that removing the words "on the bill" and substituting "thereon" does not make it as clear that the legislator shall not vote on the bill. Therefore, we would not recommend this substitution of a single word from the present phrase.


ERIC SMITH