



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 of the Convention
Second Northern Marianas
Constitutional Convention

DATE: 7/2/85

FROM : Legal Counsel

SUBJECT: Introduction to Legal Opinion re: Residency,
Domicile and Citizenship

You have asked a number of questions relating to the Commonwealth's power to regulate who can vote and hold public office. Opinion No. 1 answered whether office-holding could be limited to persons of Northern Marianas descent. That opinion may have created an impression that the Commonwealth's powers over who can vote and hold public office are limited to a much greater extent than they are. To the contrary, the United States Supreme Court has recognized that the states have broad powers to determine the conditions under which the right of suffrage and office-holding may be exercised. Lassiter v. Northampton Election Board, 360 U.S. 45, 50, 3 L.Ed. 2d 1072, 1076, 79 S.Ct. 985 (1959).

For example, the Constitutional Convention could adopt proposals denying the opportunity to vote and hold public office to aliens and residents of land leased to the United States for defense purposes under Section 802 and 803 of the Covenant. This memo will discuss these two examples to demonstrate the Commonwealth's broad powers in this area.

The Constitution of the Commonwealth could be amended to provide that only United States citizens, and interim U.S. citizens until termination of the T.T., may vote. The courts have held that a state limitation of the franchise to citizens is valid and does not work an invidious discrimination against aliens in violation of their rights under the due process and equal protection provisions of the United States Constitution. Citizenship is a valid and permissible criterion for determining who shall be allowed to vote and participate in the political process. People v. Rodriguez, 35 Cal. App. 3d 900, 111 Cal. Rptr. 238; Skafta v. Rorex, 553 P.2d 830, app. dismd. 430 U.S. 961, 52 L.Ed. 2d 352, 97 S.Ct. 1638. Hence the Convention could adopt a proposal denying noncitizens the right to vote.

Likewise, the Convention could adopt a proposal denying the right to vote to persons residing on land leased for defense purposes to the federal government under Sections 802 and 803 of the Covenant.

Handwritten note: End 7/3/85 - RCK/la

While a constitutional provision simply prohibiting members of the United States military from voting in Commonwealth elections would violate equal protection, Carrington v. Rash, 380 U.S. 89, 94, 13 L.Ed. 2d 675, 680, 85 S.Ct. 775 (1965), the Commonwealth could deny voting to residents of the areas leased to the military if the Commonwealth renounced exercise of power over those areas. Therefore, a proposal denying residents of these areas from the right to vote would have to include language ceding all legislative jurisdiction which the Commonwealth may have over the land to the federal government.^{1/}

By renouncing power over the areas leased to the federal government, the Commonwealth could deny residents of those areas voting on the grounds that the residents of those areas have no interest in the outcome of Commonwealth elections. The United States Supreme Court has held that states may limit voting to those who are primarily or substantially affected by the electoral decision. Holt Civic Club v. Tuscaloosa, 439 U.S. 60, 69, 58 L.Ed. 2d 292, 99 S.Ct. 383. See also Evans v. Cornman, 398 U.S. 419, 422, 26 L.Ed. 2d 370, 90 S.Ct. 1752; Kramer v. Union School District, 395 U.S. 621, 632, 23 L.Ed. 2d 583, 592, 89 S.Ct. 1886 (1969); Cipriano v. City of Houma, 395 U.S. 701, 704, 23 L.Ed. 2d 647, 650, 89 S.Ct. 1897 (1969). By renouncing jurisdiction over leased land, the Commonwealth could thereby deny residents of those areas the opportunity to vote on the ground that they had no interest in the outcome of the decisions.

Congress has now, by statute, permitted the states to extend important aspects of state powers over federal areas. See discussion at 398 U.S. 423-424. A provision in the Commonwealth Constitution renouncing any jurisdiction which it may have under federal law over the leased areas should be sufficient to uphold a denial of the opportunity to vote under Evans insofar as such a restriction should establish the degree of disinterest in electoral decisions that might justify a total exclusion.^{2/} See 398 U.S. at 426.

^{1/} Section By Section Analysis of the Covenant to Establish a Commonwealth of the Northern Mariana Islands, Marianas Political Status Commission, February 15, 1975, p. 99 states that the lease of land was not intended to be a cessation of jurisdiction, but a constitutional amendment ceding jurisdiction would not be inconsistent with the Covenant.

^{2/} There is reason to believe that a constitutional provision, rather than a statute, would be necessary to survive the test enunciated in Evans v. Cornman, 439 U.S. 60, since a constitutional provision is not as easily changed as a statute.

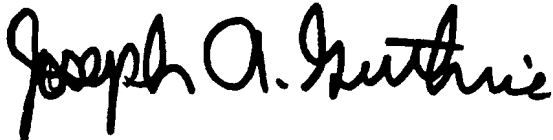
President of the Constitutional
Convention

7/2/85

Page 3

It is also well established that aliens can be denied the opportunity to hold office. 3 Am. Jur. 2d Aliens and Citizens, §39. Likewise, it is also well established that officeholding can be restricted to qualified voters; 3 Am. Jur. 2d Aliens and Citizens, §39, hence persons in leased areas not being voters, could not hold office.

The purpose of this memo has been to counteract any impression that may have been created by Opinion No. 1 that the Commonwealth powers to limit who can vote and hold office are more limited than they are. I have discussed imposing restrictions on aliens and military personnel as examples of what you may do. Shortly to follow will be the answers to your specific questions.



JOSEPH A. GUTHRIE
Assistant Attorney General