

MEMORANDUM

TO : Governor

DATE: 7/3/86

FROM : Attorney General

SUBJECT: Amendment 25 Trips to Tinian and Rota

As you know, On May 29 I went to Rota and on the 30th to Tinian and met with the respective mayors and municipal councils. The objective of my trips was to explain the duties and responsibilities of the mayors and the municipal councils under Constitutional Amendment No. 25. As I went through the relevant provisions, I highlighted potential issues that may arise and urged them to discuss these potential issues and memorialize them into municipal ordinances. It is my firm belief that these potential issues should in no way be obstacles to good and orderly government if they really desire to work for the benefit of the people who elected them. My explanation to them follows:

PART I. DUTIES AND RESPONSIBILITIES OF A MAYOR

The duties and responsibilities of a mayor are found in Section 3 of Amendment 25. They are:

"A MAYOR SHALL SERVE ON THE GOVERNOR'S COUNCIL AS ESTABLISHED BY SECTION 5 OF THIS ARTICLE." [Section 3(a)].

The governor's council under Section 5 is comprised of the governor, the executive assistant for Carolinian affairs, the mayors, (and chief precinct commissioner). The basic function of the council is to "advise" the governor on government operations and local matters. The governor presides over the council. The council must meet "regularly" or at least "four times each year" to consider matters concerning the relationship between the Commonwealth and its separate islands.

The following questions came to light:

Q1: Where should the governor's council have its meetings?

Answer: Anywhere within or without the CNMI. The place may be designated by the Governor or the council.

Q2: Who pays for the travel expenses of the council?

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Answer: Unclear. It could be the governor or the respective members themselves. In view of this ambiguity, it is recommended that all meetings must be budgeted for.

Q3: How often should the council meet?

Answer: The term "regularly" generally connotes as often as the council deems it appropriate. It is clear however that the council must meet "at least four times each year".

Q4: Does the words "each year" mean calendar or fiscal year?

Answer: Unclear. It could mean calendar or fiscal year. Since most (if not all) of the concerns that may be raised at the council's meeting would be in the governor's budget submission, it is recommended that the council meet four times a year within a "fiscal year".

"A MAYOR SHALL ADMINISTER GOVERNMENT PROGRAMS, PUBLIC SERVICES, AND APPROPRIATIONS PROVIDED BY LAW, FOR THE ISLAND OR ISLANDS SERVED BY THE MAYOR, AND SHALL REPORT QUARTERLY TO THE GOVERNOR RELATING TO THESE PROGRAMS AND SERVICE". [Section 3(b)].

There are basically three questions that arises. First, does the phrase "as provided by law" apply only to "appropriations"? Or does it also apply to both "government programs and public services"? If there is a comma after the word "appropriations" then it would be very clear that said phrase applies to all three matters. In the absence thereof, it is concluded that the phrase "as provided by law" only applies to "appropriations". Accordingly, any and all appropriations must be provided for by the legislature.

The second question is triggered by the word "administer". "Administer" means to "manage or conduct; to discharge the duties of an office; to serve in the conduct of affairs, in the application of things to their uses." Black's Law Dictionary (5th.Ed.1979)

Finally, what is meant by the word "quarterly"? Does it mean per calendar year or fiscal year? It could mean either of them. Again, since the result of these reports may ultimately end up in a governor's budget, it is recommended that the reports be made to the Governor during a fiscal year.

"A MAYOR MAY INVESTIGATE COMPLAINTS AND CONDUCT PUBLIC HEARINGS WITH RESPECT TO GOVERNMENT OPERATIONS AND LOCAL MATTERS, AND MAY SUBMIT FINDINGS OR RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE. A

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MAYOR MAY REQUIRE INFORMATION IN WRITING RELATING TO LOCAL MATTERS AS MAY BE NECESSARY TO HIS INVESTIGATION UNDER THIS SUBSECTION". [Section 3(c)].

Under this provision, a mayor can investigate citizen's complaints and may conduct public hearings on these complaints. The crux of the complaint must, however, deal with "government operations and local matters". His findings and recommendations may be submitted to the governor and the legislature and may recommend solutions or proposed actions.

The "requiring of information in writing" raises some question in respect to criminal prosecution. If a person is directed by the mayor to submit information in writing which incriminates him/her said information cannot be used as evidence in any criminal prosecution. Hence, if a mayor requires information that may ultimately end up in the Attorney General's Office for criminal prosecution it is recommended that the person providing information be mirandarized in the language he/she understands.

"THE MAYORS OF ROTA, AND TINIAN AND AGUIGAN, IN CONSULTATION WITH THE MUNICIPAL COUNCIL, AND THE MAYOR OF THE ISLANDS NORTH OF SAIPAN SHALL SUBMIT ITEMS FOR INCLUSION IN THE PROPOSED BUDGETS FOR BOTH GOVERNMENT OPERATIONS AND CAPITAL IMPROVEMENT PROJECTS. THE GOVERNOR'S BUDGET SUBMISSION TO THE LEGISLATURE SHALL STATE HIS DISPOSITION OF THE BUDGETARY REQUESTS CONTAINED IN THE SUBMISSIONS FROM ROTA, TINIAN AND AGUIGAN, AND THE ISLANDS NORTH OF SAIPAN". [Section 3(d)].

Under this provision the mayor is responsible for submitting the budget for his respective island(s) in regards to "both government operation and capital improvements". Arguably, this would include not only the counterparts of the executive departments but also all government operations in their respective islands (excepting autonomous agencies).

If a mayor can only appoint resident department heads (as opposed to activity heads) then how can he direct the latter to submit their budget to his office for his review? This problem must be dealt with by the governor's council in their meeting.

The second problem that arises is - Can the mayor modify the budget submissions in their respective islands prior to submitting the same to the Governor? The answer to this question is in the affirmative.

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Likewise, the governor has the authority to add or delete the mayor's budget submission but he (the governor) must "state his disposition of the budgetary requests contained in the submissions" by the respective mayors in his transmittal of the budget to the legislature.

"A MAYOR SHALL COORDINATE ANY EXTENSION OF FEDERAL PROGRAMS EXTENDED TO THE ISLAND OR ISLANDS SERVED BY THE MAYOR". [Section 3(e)].

The term "coordinate" is defined as "to arrange in proper order; put in proper relation; adjust; harmonize;" (See, The World Book Dictionary, Id.). The first thing that each mayor should do is to identify existing federal programs that has been extended to their respective islands. Secondly, he should analyze same as to whether or not it is being properly administered. If not, then he should coordinate same for the interest of the people.

"A MAYOR SHALL ACT AS THE PRINCIPAL LOCAL OFFICIAL FOR COORDINATING ACTIVITIES WITH DISASTER CONTROL FOR MOBILIZATION OF RESOURCES AND MEETING EMERGENCY CONDITIONS IN THE ISLAND OR ISLANDS SERVED BY THE MAYOR. [Section 3(f)].

In cases of typhoons or other calamity, the mayor must be in direct communication with the Special Assistant to the Administration in Saipan and must follow the promulgated Emergency Management Response Procedures issued by the Office of the Governor.

"A MAYOR OF ROTA, AND TINIAN AND AGUIGAN SHALL APPOINT, IN CONSULTATION WITH THE HEAD OF THE RESPECTIVE EXECUTIVE DEPARTMENT, ALL RESIDENT DEPARTMENT HEADS. [Section 3(g)].

The root word for "consultation" is "consult". Consult has been defined by Webster's Dictionary to mean - "to talk things over; confer; to seek information or instruction from; to consider". In Rota, the members of the municipal council raised the following question: Was Section 3(g) complied with when the mayor simply gives a copy of his appointment to an Executive Department Head in Saipan? The answer to this question is clearly in the negative. A copy of a letter of appointment of a resident department head in Rota transmitted to an executive department head in Saipan may not suffice under Section 3(g). When such an appointment reaches the council for confirmation, the council may rightfully reject a nominee on the grounds that Section 3(g) has not been complied with. At this time, this problem is moot on the grounds that (a) all the resident department heads in Rota have been confirmed by the council and

(b) the executive department heads in Saipan did not raise an objection prior to their confirmation. For the benefit of future mayors and councils, it is recommended that a municipal ordinance be passed setting forth guidelines regarding appointment of resident department heads, the extent of consultation required, when the consultation should occur, and the confirmation process.

"A MAYOR SHALL PERFORM OTHER RESPONSIBILITIES PROVIDED BY LAW." [Section 3(h)].

Aside from the duties and responsibilities of the mayors from A - G, the legislature may vest additional duties and responsibilities if it deems appropriate.

II. THE MUNI IPAL COUNCILS

The duties and responsibilities of the municipal council are enumerated in Section 7 of Amendment 25. They are as follows:

"...THE POWERS OF THE MUNICIPAL COUNCILS SHALL EXTEND TO ALL LOCAL MATTERS OF A PREDOMINANTLY LOCAL NATURE NOT PRE-EMPTED BY THE COMMONWEALTH LEGISLATURE..." (Section 7(a)).

This provision does not automatically empower the municipal council to enact municipal ordinances. The legislature must (a) pursuant to Section 6 of Article I of the Constitution, define "local matters" that may be legislated by the council; and, (b) give the council the authority to pass municipal ordinances in respect to said local matters. (As an example, see P.L. 3-77 attached herewith for your ready reference). All municipal ordinances must be consistent with NMI laws.

The failure to repeal Section 6 of Article I of the Constitution may create a conflict between the Commonwealth Legislature, the respective senatorial districts, and the municipal council in that all of them have the authority to enact local laws.

"Section 6. Local Laws. Laws that relate exclusively to local matters within one senatorial district may be enacted by the legislature or by the affirmative vote of a majority of the members representing that district...or local ordinances adopted by agencies of local government..." (Emphasis applied).

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This problem must be discussed by and between the council, their respective legislative delegations and the legislature.

Once a bill is introduced and passed by the municipal council, where should the bill go to for approval or disapproval? The answer is unclear. It may be sent to -

A) The respective mayor where the bill originates. (The problem with this approach is ensuring that the bill is consistent with Commonwealth laws).

B) The governor. (This will ensure that the bill is consistent with Commonwealth laws but may raise some constitutional issue (i.e., decentralization of government).

C) The mayor and if the mayor approves, then to the governor. (This approach will eliminate the problems in "A" and "B" above. It must be made clear that the mayor's role is to "approve/disapprove" and the governor is to "certify" that it is consistent with the Commonwealth laws.

D) The Governor's Council for approval/disapproval and certification that the bill is consistent with Commonwealth laws. (This will ensure that the mayors of Tinian, Rota, and Saipan, and the Governor is aware of what is going on in the respective islands. However, in view of the fact that the Governor's Council meets at a minimum of 4 times a year this procedure may be time-consuming and cumbersome. Also, the business of one municipality may be of no interest or relevancy to the others.)

The undersigned recommends that approach "C" above be adopted.

"ASSIST THE MAYOR IN THE FORMULATION OF THE ANNUAL BUDGET DELINEATING LOCAL NEEDS" (Section 7(a)(1)).

Before a mayor submits his budget to the Governor, the council has the power to assist the mayor in preparing the same. How can the Governor ascertain that the budget submitted by the mayor has received the input of the Council? By requiring all budget submissions from Rota and Tinian to be signed both by the mayor and the chairman of the council.

"AT THE REQUEST OF AN EXECUTIVE BRANCH DEPARTMENT HEAD, IN CONSULTATION WITH THE MAYOR, THE COUNCIL SHALL HAVE THE AUTHORITY TO APPROVE REPROGRAMING OF FUNDS IN THE APPROVED BUDGET" (Section 7(a)(2)).

Under this provision, it is the council which approves reprograming of funds in the approved budget upon the request of an executive branch department in Saipan, in consultation with the Mayor.

"TO CONFIRM ALL RESIDENT DEPARTMENT HEADS" (Section 7(a)(3)).

As indicated earlier, at this time there is no specific guidelines to be followed in (1) the appointment of resident department heads; (2) the extent and the time of consultation with the executive department heads in Saipan by the mayor; and, (3) the confirmation process of resident department heads by the council. Although this issue may be moot at this point in time, it is highly recommended that such guidelines be established by law or ordinance.

"WHEN A MAYOR IS UNABLE TO DISCHARGE THE DUTIES OF (his) OFFICE BY REASON OF PHYSICAL OR MENTAL DISABILITY, THE PRESIDING OFFICER OF THE MUNICIPAL COUNCIL SHALL BE ACTING MAYOR. IF THE PRESIDING OFFICER IS NOT AVAILABLE, ANOTHER MEMBER SHALL BE SELECTED BY THE COUNCIL TO SERVE" (Section 7(a)(4)).

When a mayor leaves his island or islands but is still within the Commonwealth, does the above provision apply? How about when a mayor leaves and travels outside the NMI? These were questions raised at my meeting in Rota. On the one hand, it may be argued that when a mayor leaves the island/islands he serves and travels within the NMI the chairman of the council does not become the acting mayor because (1) the mayor is still within the NMI; (2) he has ready access to radio or telephone communication should his services be needed; and, (3) he is not ill. On the other hand, it may be argued that the minute a mayor leaves his island he is physically disabled to exercise the duties of his office. Both arguments sound convincing. Examination of Amendment 25 in its entirety reveals that there is no other provision addressing this matter.

Prior to the passage of Amendment 25, the only elected leaders in Rota were the mayor, two senators, and one representative. During the weekdays, the mayor was left behind in Rota because the legislative delegations left for Saipan to attend their legislative matters. Hence, the mayor generally appointed his right hand man in his Office to be the Acting Mayor. After the passage of Amendment 25, we now have the mayor and three municipal council members elected by the people who are in Rota with the mayor. Is it a sound public policy to have an employee of the Office of the Mayor (as opposed to a person elected by the People) serve as Acting Mayor in the mayor's absence from the island? The answer to this question is more of a political nature than legal. The best way to resolve this matter is for the council to introduce a bill and have a public hearing in Rota so that the true desire of the people can be ascertained.

When the mayor travels outside the NMI, it is required that the Chairman of the Council be appointed as Acting Mayor, and if he is not available, then another council member shall be designated, not by the mayor, but by the council itself.

"ADDITIONAL POWERS AND DUTIES AS PROVIDED BY LAW"
(Section 7(a)(5)).

The legislature may vest additional powers and duties upon the council as it deems appropriate.

III. COMPENSATION OF THE COUNCIL

Section 7(a) states that the council "shall meet in regular session no more than twice a month, and shall be paid for each meeting as provided by law". Hence, compensation of the council rests upon the legislature. The council is to be paid per "meeting" and not per "session". In determining the dollar amount to be paid, it is suggested that the NMI per diem rate be followed.

IV. COMPENSATION OF THE MAYOR. Section 4 states that the mayor's salary plus allowance for reasonable expenses must also be provided for by the legislature. This is currently provided by law and can be changed by legislative act.

V. VACANCY OF THE OFFICE OF THE MAYOR.

Section 2(b) states that when a vacancy exists in the Office of the mayor (i.e., death; resignation; or health reason) it "shall be filled by special election if one-half or more the term remains and otherwise provided by law". (Emphasis added). If less than one-half of the terms remains, and the legislature fails to enact a law governing the same, the Chairman of the Council will remain the Acting Mayor until the next election.

VI. VACANCY IN THE COUNCIL

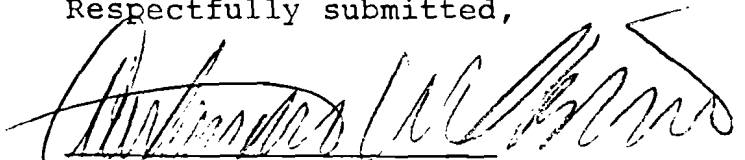
As to the vacancy in the council, the mayor is required to "appoint" the unsuccessful candidate for the office in the last election for the council who received the next highest number of votes. Otherwise, the mayor shall appoint "a person from the island or islands served with the advice and consent of the legislative delegation for the senatorial district for that island or islands." The word

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"otherwise" simply means when the unsuccessful candidate refuses or is unavailable.

VII. PRECINCT COMMISSIONERS - Saipan (until 1990).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alexandro C. Castro", written over a horizontal line.

ALEXANDRO C. CASTRO

cc: Lt. Governor
All Department and Activity Heads