

MEMORANDUM

TO : Governor

DATE: 7/3/86

FROM : Attorney General

SUBJECT: Supplemental Comments on Constitutional
Amendment No. 25

Section 8 of Article 1 of Constitutional Amendment No. 25 provides as follows:

"Section 8. Agencies of Local Government.

a) The chartered municipality form of local government on Rota, and Tinian and Aguiguan, is hereby established. Local taxes paid to the chartered municipal governments of Rota, and Tinian and Aguiguan, and Saipan may be expended for local public purposes on the island or islands producing those revenues. New agencies of local government may not be established without the affirmative vote of two-thirds of the persons qualified to vote from the island or islands to be served by the proposed agency of local government.

ANALYSIS

1. The provision establishing the chartered municipality form of local government on Rota, Tinian and Aguiguan is a reversal of the provisions appearing in Article VI, Section 6(a) of the Constitution. Under the language of the Amendment, the form of local municipal governments is established, but it is believed that additional steps must be taken to actually establish a chartered municipal government. In effect, the chartering process must be undertaken. The language of the Amendment is not believed to be self-executing to the extent that it actually establishes specific chartered municipalities.

2. The language relating to local taxes reflects an assumed power on the part of the chartered municipal governments to levy taxes. Such locally generated tax revenues may be expended for local public purposes. Budget submissions to the Commonwealth government should reflect the amount and disposition of local revenues. This provision does not authorize chartered municipal governments to utilize Commonwealth tax revenues raised on the various islands.

3. The number of chartered municipal government agencies may not be increased from existing levels without first receiving an affirmative vote of two-thirds of the qualified voters of the municipality involved.

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Article 2 of the Constitutional Amendment No. 25 amends Section 17(a) and (b) of Article III of the Constitution, and provides as follows:

"Section 17(a). The governor shall delegate to a mayor elected under the provisions of Article VI, Section 2, responsibility for the execution of Commonwealth laws as deemed appropriate, and the administration of public services in the island or islands in which the mayor has been elected. Services being provided on a decentralized basis on Rota, and Tinian and Aguiguan, on the effective date of this provision shall continue. In furtherance of this section, the mayor shall have the responsibility for ensuring that the resident department heads faithfully execute their duties under the law and in accordance with the policies of the Commonwealth government for the administration of public services, in the island or islands in which the mayor has been elected.

(b) Public services on Rota, and Tinian and Aguiguan, shall be headed by a resident department head in the departments providing the services. A resident department head shall submit a budget to the mayor pursuant to the budget instructions. No resident department head may be appointed to serve in any commonwealth-wide board, commission, or authority. These arrangements shall apply to the islands north of Saipan when the population of these islands exceeds one thousand persons."

ANALYSIS

1. Amended Section 17(a) provides that both execution of Commonwealth laws and the administration of public services are matters of delegation from the Governor to mayors elected under the provisions of Article IV, Section 2. The ultimate authority and responsibility resides with the delegating party, i.e. the Governor. Only those Commonwealth laws which are deemed appropriate should be delegated for execution at the local level. Under the original language of Section 17(a) the "deemed appropriate" phrase did not appear.

2. Section 17(a) provides for a perpetuation of the decentralized administration of existing public services on Rota, Tinian and Aguiguan. Under the original language of Section 17(a) such decentralized provision of services could be terminated upon certification by the Governor that such decentralization was inconsistent with the efficient and economical delivery of services. Under the Amendment, the Governor no longer has the authority to terminate the decentralized provision of services, but the mayors have

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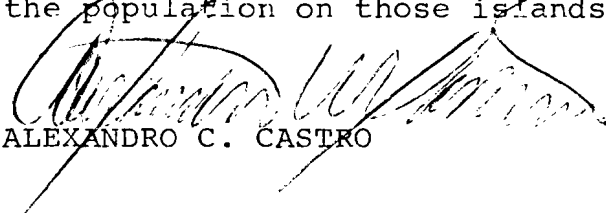
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the affirmative responsibility to execute their duties in accordance with the laws and policies of the Commonwealth government. The resident department heads are specifically required to execute their duties in accordance with Commonwealth policies.

3. Section 17(b) provides that there shall be resident department heads for the departments providing public services on Rota, Tinian and Aguiguan. This means these services are not administered from Saipan. It also refers only to services rendered by departments, as opposed to activities. The resident department heads are required to submit their budgets to the mayor pursuant to budget instructions. The mayors then submit their budgets to the Governor, and the Governor submits the overall governmental budget to the Legislature.

4. Section 17(b) also expressly prohibits resident department heads from serving on any Commonwealth-wide board, commission or authority.

5. The Constitutional provision relating to resident department heads become applicable to the islands north of Saipan at such time as the population on those islands exceed 1,000 persons.



ALEXANDRO C. CASTRO