

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

MEMORANDUM

Date: July 8, 1985

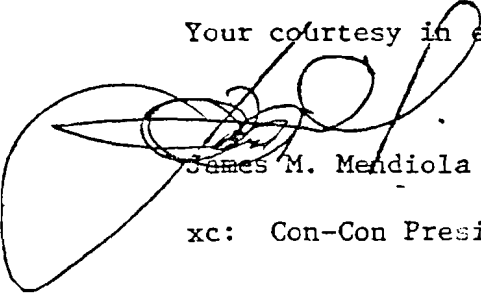
LEGAL OPINION NO. 32

TO : Attorney General
FROM : Chairman, Tinian Con-Con Delegation
SUBJECT : Request for Legal Opinion

Please provide your legal opinion on the following issues:

- 1) Can the Con Con legally adopt a proposal that would prohibit abortions in the Commonwealth?
- 2) Can the Con Con legally prohibit the use of public facilities and public employees to perform abortions?

Your courtesy in expediting this request will be very much appreciated.



James M. Mendiola

xc: Con-Con President



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 : James Mendiola, Delegate,
Constitutional Convention

DATE: 7-8-85

FROM: Legal Counsel

RE : Issue of Abortion
Opinion No. 32

Your request on the issue of abortion has been assigned to Mr. David Price. Any questions or clarification should be addressed directly to him.

A handwritten signature in cursive script, appearing to read "Eric S. Smith".

ERIC S. SMITH
Assistant Attorney General

SECOND NORTHERN MARIANAS' CONSTITUTIONAL CONVENTION

SAIPAN, CM 96950

Telephone

6517/6572

Officers

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Vicente M. Calvo, 1st Vice President
David M. Cing, 2nd Vice President
Maria T. Pengellnan, 3rd Vice President
William B. Nabors, Convention Secretary
Juan T. Lizama, Floor Leader

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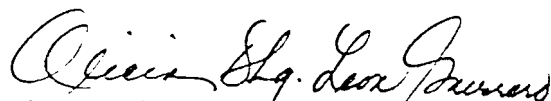
MEMORANDUM

July 9, 1985

To : Delegate James M. Mendiola
From : Supervisor, Sueno Pool
Subject : Request for Legal Opinion on Abortion

Attached is a copy of a response received from the Office of the Attorney General regarding your request for a legal opinion on the issue of abortion. The attached response is self-explanatory; however, I have forwarded a complete package of your request to Mr. David Price, Legal Advisor to the Governor, to respond to your request.

Mr. Price assured me that he will prepare a response to your request at the earliest possible time.


ALICIA DLG. LEON GUERRERO

Attachment

xc: President, ConCon
w/attachment



SECOND NORTHERN MARIANAS CONSTITUTIONAL CONVENTION
SAIPAN, CM 96950

Telephone
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Officers

- Antonio T. Guerrero, President
- Antonio M. Calvo, 1st Vice President
- Antonio M. Cing, 2nd Vice President
- María T. Pangellinan, 3rd Vice President
- William B. Nabors, Convention Secretary
- Jan T. Lizama, Floor Leader

Legal Opinion No. 32

Date:

Members

- Antonio I. Deleon Guerrero
- Antonio Igisomar
- Antonio L. Igitol
- Antonio H. Inos
- Antonio R. Kaipat
- Antonio M. King
- Antonio M. Limes
- Antonio P. Mafnas
- Antonio A. Manglona
- Antonio M. Mendiola
- Antonio H. Mundo
- Antonio T. Ogumoro
- Antonio T. Reyes
- Antonio A. Tenorio
- Antonio Tomokane
- Antonio S. Torres
- Antonio G. Villagomez
- Antonio Villanueva

MEMORANDUM

TO : Delegate James M. Mendiola

FROM : Governor's Special Legal Advisor

SUBJECT: Anti-Abortion Proposal

I have been requested to provide an opinion regarding whether it would be permissible to include an anti-abortion provision in the Constitution of the Northern Mariana Islands.

I have concluded that any attempt to prohibit abortions during the first trimester of a pregnancy would violate Sections 102 and 501 of the Covenant which make certain provisions of the United States Constitution applicable to the Commonwealth of the Northern Mariana Islands. Further, any such attempt would also appear to violate Section 10 of Article I of the Constitution of the Northern Mariana Islands which states "The right of individual privacy shall not be infringed except upon a showing of compelling interest."

The landmark decision involving abortions is Roe v Wade 410 U.S. 113, 93 S.Ct. 703 which was decided in 1973. The Supreme Court held, inter alia, that the constitutional right to privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy and that prior to approximately the end of the first trimester of pregnancy i.e. three months the attending physician, in consultation with his patient, is free to determine that the patient's pregnancy should be terminated without interference by the state. The court notes that the United States Constitution does not explicitly mention any right of privacy but concludes that such a right is founded in the Fourteenth Amendments concept of personal liberty and restrictions upon state action and other provisions of the United States Constitution. Further, Roe held that any statute that excepts from criminality only a life-saving procedure on behalf of the mother without regard to the stage of pregnancy and other considerations violates the Due Process Clause of the Fourteenth Amendment. The court stated that, after the first trimester, a state in promoting its interest in the health of a mother may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

Since Roe was decided in 1973, numerous attempts have been made to enact abortion regulations and to define the limits of a state's authority to regulate the performance of abortions. See, for example, City of Akron v. Akron Center for Reprod. Health, 103 S.Ct. 2481 (1983) which reaffirms Roe v. Wade.

In my opinion, the subject of abortion should be treated at the legislative level and not be addressed by this Constitutional Convention. I have been advised that abortions may not be performed by National Health Service Corps personnel except in instances where the life of the mother is endangered and that the policy of the Department of Public Health and Environmental Services is to refuse voluntary terminations of pregnancy except for certain health reasons. The present policy has caused some concern to medical practitioners who are uncertain as to their personal liability to support children after refusal to perform abortions. The lack of private physicians in the Commonwealth makes it difficult for low-income people to obtain abortions and our government's refusal to comply with Roe v. Wade could result in litigation due to the unique circumstances which exist in the Commonwealth. For example, a proposal to prohibit the use of public funds for abortions may have the effect of making abortions impossible to obtain in the Commonwealth as there are no alternative medical facilities, clinics, etc.

If you desire any further information regarding this subject matter, please do not hesitate to contact me. I acknowledge that the abortion controversy is an extremely sensitive issue and one which has religious and philosophical overtones. However, we are bound by Roe v. Wade until such time as the Supreme Court of the United States reverses itself.


DAVID L. PRICE, ESQ.

xc: Attorney General
Con Con President