



SECOND NORTHERN MARIANAS CONSTITUTIONAL CONVENTION
SAIPAN, CM 96950

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Legal Opinion No. 33


Date: July 8, 1985

MEMORANDUM

TO : Attorney General
From : Chairman, Committee on Governmental Institutions
Subject: Delegate Proposals Nos. 181-85 and 269-85.

The subject proposals have been adopted in principle by the Convention. Please review the language and recommend final language that will accomplish the intended purpose without giving the legislature excessive power or creating unforeseen and undesirable consequences. Our intent is to permit only the type of legislative veto traditionally used prior to the recent Supreme Court decision. One concern of the Committee is that it may be necessary to provide a time restriction during which the legislative veto can be exercised.

Thank you for your assistance.


Juan T. Lizama, Esq.

xc: Con-Con President



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REXFORD C. KOSACK
ATTORNEY GENERAL

TO : Chairman,
Governmental Institutions

DATE: 7/15/85

FROM : Legal Counsel

SUBJECT: Delegate Proposals 181-85 and 269-85
Legal Opinion No. 33

You have asked us to review the language and recommend final language to delegate proposals 181-85 and 269-85.

Both of the proposals are written in broad language, as should most constitutional sections, but we are unable to write a proposed recommendation without more information as to the exact nature of the proposals.

We note that any attempt to grant legislative veto power over actions by the executive branch immediately brings into question a fundamental part of our constitutional government, that of separation of powers.

The separation of governmental powers into executive, legislative, and judicial is a fundamental concept to our constitutional form of government. This separation of functions in theory is absolute and encroachment by one department on another is forbidden. The constitutional mandate requires that the three branches remain separate and distinct and that such separation be strictly enforced. Buckley v. Valeo, 424 U.S. 1, 46 L.Ed. 2d 659, 96 S.Ct. 612.

Our constitutional form of government was designed to require sharing of the sovereign power by each of the three coordinate branches of government and to protect each of the three branches from encroachment by the others. The primary purpose of such provisions is to protect the people from arbitrary acts on the part of those in political authority and to avoid the tyranny of any branch of government being supreme in all fields.

It is an established and fundamental principle of constitutional law that one department cannot interfere with, or encroach on, or

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exercise the powers of, either of the other departments. Chadha v. Immigration and Naturalization Service, ___ U.S. ___, 77 L.Ed. 2d 317 103 S.Ct. ___.

The separation of powers doctrine which is embodied in the federal constitution is not mandatory in state government, and is not enforceable against the states as a matter of constitutional law. Mims v. Clance Leaf Cremery Co., 449 U.S. 456, 66 L.Ed. 2d 659, 101 S.Ct. 715. The due process clause of the Fourteenth Amendment does not embrace the federal concept of the separation of powers and, thus, the states are free to distribute the powers of government as they will between the various branches thereof. International Brotherhood of Teamsters, et al. v. Hanke, Wash, 339 U.S. 470, 94 L.Ed. 985 70 S.Ct. 773. However, the Commonwealth Constitution has adopted the concept of separation of powers in the same manner as the federal constitutional framers conceived. Since we have adopted this form of separation of powers doctrine, we are guided by the long history and judicial interpretation of this doctrine.

Section 203, clause (a) of the Covenant provides:

The Constitution will provide for a republican form of government with separate executive, legislative and judicial branches, . . .

The Covenant clearly sets up for a government of three branches, each separate from the others. The legislature has the power to legislate. Those bills which the legislature deems proper to become law are sent to the governor who may sign the bill and create the proposed law or veto the bill and not create the proposed law. This role by the governor in being able singlehandedly to stop new laws guards the community against the effects of oppressive, improvident, or ill-considered measures.

The division of the legislature into two distinctive bodies assures that the legislative power is exercised only after opportunity for full study and debate in separate settings. The unilateral veto power of the executive is limited by the power of two thirds of both houses of the legislature to overrule a veto, thereby precluding final arbitrary action of one person. This is how our constitution is set up and to grant the legislature a veto over the governor's actions, other than by a veto override, would greatly change the constitutional powers granted by the constitution and change the present form of government.


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Certain functions of the executive branch are granted by the Constitution without the necessity of legislative action. But there are areas of the governor's powers over which the legislature has "veto" power. Article III, section 15 provides in part

. . . The functions and duties of the principal departments and of other agencies of the Commonwealth shall be provided by law . . . [c]hanges effect[ing] existing law . . . shall be set forth in executive orders which shall be submitted to the legislature and shall become effective sixty days after submission unless specifically modified or disapproved by a majority of the members of each house of the legislature.

Thus, the Constitution provides for legislative "veto" of some actions by the governor, but this veto power is limited to orders made by the governor that affects existing laws.

Any other "veto" powers must be specific and not usurp or be a significant interference with the operation of the executive branch. In determining whether the legislature should have "veto" power over an action of the governor or an executive branch department head, one must focus on the extent to which it prevents the executive branch from accomplishing its constitutionally assigned tasks. Would the "veto" power give to the legislative inordinate power so as to disrupt the separation of powers doctrine? Would the "veto" power control the executive in the discharge of the latter's function? As long as there is a blend of powers among the various branches of government, constitutional amendments granting the legislature the right to cancel certain executive actions will withstand constitutional attack.


ERIC S. SMITH
Assistant Attorney General