

TO : President, Second Constitutional
Convention

DATE: 7-10-85

FROM: Legal Counsel

RE : Outer Constitutional Limits of Domicile
Opinion No. 25

You have asked for an opinion describing the constitutional limits on the uses of the term domicile in discriminating between domiciliaries and non-domiciliaries of the Commonwealth.

The term "domicile" is used in section 301(a)(b)(c) and in section 8 of the schedule of transitional measures in the Constitution in aid of defining who is a citizen or interim citizen, respectively.

The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands, December 6, 1976, p. 204, states that "domicile" has the meaning it is given in the Covenant. Section 1005(c) of the Covenant defines "domicile" as

that place where a person maintains a residence with the intention of a continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

Discriminations on the basis of domicile must withstand scrutiny under the Privileges and Immunities Clause of Article IV, sec. 2, rather than the Equal Protection Clause of Amendment 14. A basic rule is that every person has a domicile somewhere; hence, if a person is domiciled elsewhere than where he claims to be a resident, he can hardly be a resident of that jurisdiction. Consequently, the term domicile does not describe a difference between persons who are residents of the Commonwealth, as does the definition of Northern Marianas descent or a durational residency requirement.