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*House of Representatives*  
NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
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July 11, 1985

MEMORANDUM

TO: Chairman, Committee on Finance and Other Matters

FROM: House Legal Counsel

SUBJECT: Legal Opinion No. 31 on Delegate Proposal 186-85

The text of this proposal, in its present form, will not achieve the purpose desired by its author. First, it should be noted that Section 702 of the Covenant will soon be nonexistent in light of the document signed on July 10, 1985 on Saipan. A new Section 705 will be enacted by the U.S. Congress which will govern the financial relationship between the CNMI and the U.S.. Second, the money received under either section includes money for government operations as well as capitol improvement which the legislature is required to appropriate to the branches of government. Even, what has recently been renamed capitol development funds, must be appropriated to the various capital improvement projects by the legislature. Third, the document which was signed yesterday, has provisions which prohibit the use of those funds for any purpose other than for capital improvement. If a conflict of laws should arise that document would supercede, local law and the CNMI Constitution, since it will be part of the Covenant.

We also have current statutory language which prohibits the transfer or reprogramming of Covenant funds to operations accounts of the government. [See 1 CMC Section 7402(a)(3)]. However the Governor's emergency powers in Article III, Section 10 of the Constitution contain no such limitation. This is the method that has been used in the past to take such funds from EDLF, for example. Therefore we would recommend the following language be added on to the end of Section 10 of Article III:

*Rec'd 7/12/85 - am/af*

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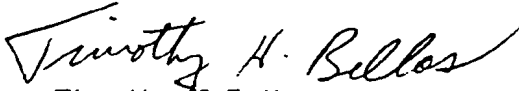
"Covenant funds or interest thereon for capital improvement or economic development shall not be appropriated, borrowed or otherwise transferred to finance government operations, even if a state of emergency is declared by the governor."

This simple language will not only prevent the governor from taking the money, it will also prevent the legislature from doing so, due to the inclusion of the word "appropriated".

Another alternative would be to amend the same section by specifying that

"Fiscal or financial deficits or crises of the government shall not be conditions which warrant the declaration of a state of emergency by the governor."

We feel these substitutes will best implement the perceived purpose of the author. If we can answer further questions please contact us.

  
Timothy H. Bellas  
Deputy Chief Legal Counsel

cc: President, Constitutional Convention