

TO : President,
Constitutional Convention

DATE: 7/11/85

FROM : Attorney General

SUBJECT: Whether persons conferred citizenship by the Covenant upon termination of the Trusteeship will be "native born" citizens within the meaning of the Article I, Section 2(1) of the United States Constitution

You have asked whether persons conferred citizenship by the Covenant are "native born" citizens within the meaning of Article II, Section 2(1) of the United States Constitution, which requires that candidates for President be native born United States citizens.

The answer to this question requires a determination whether citizenship conferred by the Covenant is citizenship acquired by operation of birth, rather than by naturalization. It also requires a determination as to whether "native born" refers to all United States citizens who acquire citizenship by birth, or just those who are born within the territorial limits of the United States. The short answer is that persons conferred citizenship by Article III, Section 301 of the Covenant will be naturalized citizens, whereas, citizenship conferred by Section 303 of the Covenant on persons born in the Commonwealth on or after the date of the termination of the Trusteeship is citizenship acquired by operation of birth. Moreover, the phrase "native born" used in Article II, Section 2(1) of the United States Constitution refers to citizenship acquired by operation of birth, whether or not the person was born on United States soil. Therefore, persons acquiring citizenship by naturalization under Article III, Section 301 of the Covenant may not run for president, but persons acquiring citizenship by birth under Article III, Section 303 of the Covenant can run for president.

Citizenship can be acquired in the following ways:

1. By birth

- a. In the United States or one of its outlying possessions (jus soli)
 - b. Outside of the United States (jus sanguinis).
2. By derivation
 - a. Through parentage (i.e. upon naturalization of parents)
 - b. Through marriage
3. By political incorporation
 - a. Of the original States
 - b. Of sovereign States (Texas, 1845; California, 1850)
 - c. Of territories through admission to Statehood.
4. By treaty
 - a. With foreign countries
 - b. With the American Indian tribes
5. By naturalization
 - a. Of groups (such as Hawaiians, 1900; Puerto Ricans, 1917; Indians, 1924; Virgin Islanders, 1927)
 - b. Of individuals
 - i. By special Acts of Congress
 - ii. Under naturalization conventions
 - iii. Under general naturalization laws.

Henry B. Hazard, D.C.L. The Immigration and Nationality Systems of the United States of America, 14 F.R.D. 105, 121 (1953).

Citizenship conferred by Article III, Section 301 of the Covenant by virtue of the Trust Territory citizenship or domicile in the Northern Mariana Islands is citizenship granted by naturalization on a group, analogous to that granted to Hawaiians in 1900; Puerto Ricans, 1917; Indians, 1924; and Virgin Islanders, 1927).

By process of elimination, naturalization would seem to be the term that describes the grant of citizenship under Article III, Section 301 of the Covenant. The only other possibility - acquisition of citizenship by treaty - would seem to be ruled out because the Covenant is not a document by which political ties to a former sovereign were transferred to the United States. There is no other sovereign power involved. Thus, the citizenship conferred by Article III, Section 301 of the Covenant was conferred by naturalization of a group, and not by operation of birth. This also follows because "Naturalization" is the conferring of nationality of a state

President, Constitutional Convention

7/11/85

Page 3

upon a person after birth. Act of October 14, 1940, 54 Stat. 1137. Since Section 301 does not confer citizenship by operation of birth, it would seem to be a naturalization process.

Section 303 on the other hand, makes all persons born in the Commonwealth after the date of the termination of the Trusteeship citizens at birth, therefore, by its terms, citizenship conferred by section 303 is citizenship conferred by operation of birth.

Turning to the question at hand, it seems that persons granted citizenship by Article III, Section 301 of the Covenant are not "native born" within the meaning of Article II, Section 2(1) of the United States Constitution, whereas citizenship granted by virtue of birth under Article III, Section 303 are 'native born' within the meaning of that United States Constitution provision. There are no cases on the meaning of the phrase "native born"; however, a legislative declaration in a 1790 statute indicates that the scope of "native born" is not limited to citizenship acquired by being born within the limits of the United States. The 1790 statute, the first general naturalization law enacted by the Congress, included the following "And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States shall be considered as natural born citizens" (1 Stat. 103-104). This indicated that the first Congress, at least, did not consider that the phrase "native born" to be limited to citizens born within the limits of the United States.

Therefore, persons acquiring citizenship by naturalization under Article III, Section 301 of the Covenant may not run for president, but persons acquiring citizenship by birth under Article III, Section 303 of the Covenant can run for president.

JOSEPH A. GUTHRIE
Assistant Attorney General