

MEMORANDUM FOR THE CHAIR OF THE COMMITTEE ON EXECUTIVE  
BRANCH AND LOCAL GOVERNMENT

SUBJECT: Issues Before the Committee with Respect to Article VI (Local Government)

This memorandum is aimed at helping the Chair and members of the Committee on Executive Branch and Local Government with an overview of the issues before the Committee so that it can set an agenda and accomplish its task as diligently and expeditiously as possible. The analysis and suggestions here are necessarily preliminary because they are based primarily on the delegate proposals shared to date with counsel. In contrast with our analysis of most of the other articles in the Constitution, we are not identifying issues here by reference to the specific section of the article involved. Because of the complex and controversial nature of the topic of local government in the CNMI, we think that it would be more productive if the Committee addressed certain basic questions regarding the nature of the local government that they believe is most appropriate for the Commonwealth. Once those questions are resolved, counsel can propose amendments to the article that seek to implement the Committee's decisions. The following are the fundamental questions that the Committee may wish to consider.

1. Should the Commonwealth have local governmental entities in all three Senatorial districts or only in Tinian and Rota? Most of the proposals believe that all three municipalities should have the same form of local government, i.e. with the same powers and responsibilities. Other proposals recommend that only Rota and Tinian have local governments. There is a general inclination to eliminate separate local government for the Northern Islands and to incorporate those islands into whatever local government is afforded to Saipan. Assuming that the Committee believes that Saipan (including the Northern Islands) should have local government, should the local government in Saipan be the same as that in Tinian and Rota?

2. If the Committee decides that there should be local government in two or three districts, should it consist of both a Mayor and a Municipal Council? All of the proposals assume that local government would be headed by a Mayor exercising executive responsibility in specified areas. But the proposals differ with respect to the need for Municipal Councils; some would eliminate this agency of local government and, in some instances, replace it with the district commissioner system. With respect to the position of Mayor, the proposals display some difference as to the qualifications and term of the Mayor. Some would make the position non-partisan and set forth various recommendations re length of residence and other qualifications. Most of the proposals recommend that the Mayor and the Municipal Council (if permitted) be paid only from revenues raised through local taxes. Most of the proposals endorse the concept of Municipal Councils to exercise legislative authority in defined areas of responsibility.

3. Assuming that the Committee wants a system of local government, what powers should the local government entity have? The proposals exhibit a wide range of viewpoint on this question. There are several subordinate questions that the Committee will want to consider in addressing this overall issue.

First, should the powers of local government be defined in the Constitution or left to the Legislature? Virtually all of the proposals would eliminate the authority of the Legislature to promulgate local laws. However, some of the proposals would let the Legislature in the future define those areas as to which the local governments would have authority. Other proposals appear to want to define those areas of "local" concern in the Constitution only and deny the Legislature any authority to enlarge on or subtract from the list in the future.

Second, how should the Constitution define the areas in which the local governments have exclusive responsibility? Some of the proposals would provide a generic definition, eg. giving the local government responsibility for subjects that affect only one Senatorial district and letting the legislative history provide the examples of such areas so as to give meaning to the general grant of authority. Other proposals seem to want to spell out the specific areas, eg. secondary roads, trash collection and disposal, fire protection, land use planning and public lands, agriculture, business and commerce (under CNMI-wide guidelines), island beautification, environmental protection, community and cultural affairs, and enforcement of all local laws and ordinances.

4. What revenues should be made available to support the local government and how should they be raised or determined? Virtually all of the proposals endorsing local government want to authorize local governments to raise funds through local taxes, although the subjects on which taxes could be levied vary somewhat. These proposals basically assume that these funds would support the operations (including salaries) of the Mayor and the Municipal Councils and their respective staffs. Some of the proposals contemplate in addition that the local governments would have some call on Commonwealth funds, but the few that speak to the subject differ widely. For example, one proposal would give the Mayors exclusive expenditure authority over all CNMI funds that are to be expended through the resident department heads on the island involved. Other proposals seem to leave room for some form of revenue-sharing with the central government, either spelled out in the Constitution or left to the Legislature, that might be based on some specified formula, eg. based on population.

5. What responsibilities should local government have in the administration of CNMI law and the delivery of public services authorized Commonwealth-wide by the Legislature? This addresses the central controversy raised by Amendment 25 enacted by the 1985 Convention and now the subject of litigation. One proposal would address this issue squarely by making clear that the Mayor, not the Governor, has the responsibility for enforcing CNMI law and delivering public services in the island served by the Mayor and that he has the exclusive responsibility for firing and disciplining the resident department heads. Other proposals would expressly exclude the local governments from having any control over all (or some) responsibilities created under CNMI law. An intermediate position would (as did the first Constitution) authorize, but not require, the Governor (or the Legislature) to delegate specific areas of responsibility to the local governments. The Committee will want to consider all these proposals very carefully.