




COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE CIVIL SERVICE COMMISSION

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P.O. BOX 5150 CHRB
SAIPAN, COMMONWEALTH MARIANAS 96950
TEL. NOS: (670) 234-6925/7327/6958/8036
FAX NO: (670) 234-1013

June 20, 1995

Herman T. Guerrero 
President
Third Northern Mariana Islands
Constitutional Convention
Caller Box 10007
Saipan, MP 96950

Re: Recommendations of Civil Service Commission to Constitutional Convention

Dear Mr. Chairman,

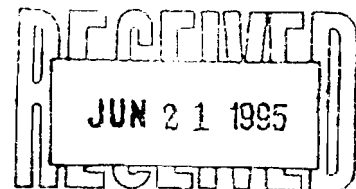
Thank you for your invitation to contribute our suggestions for specific proposed amendments to the Constitution. The following issues concern the Civil Service Commission.

1. TERM OF OFFICE OF COMMISSION MEMBERS

The Civil Service was originally provided for in Article III, Section 16. The section was repealed and replaced by Amendment #41, becoming Article XX of the CNMI Constitution.

Article XX changed the term of office of Civil Service Commissioners from four to six years. In so doing, Article XX states that "Six members shall serve a term of six years....and one member shall serve a term of four years...." Its transition provision authorizes the governor to adjust the terms of the sitting members so that "one member's term will expire the same day as the governor's term, and the term of one member shall expire in January of each of the following years: 1986, 1987, 1988, 1989, 1990 and 1991."

However, the above language provides no guidance as to which of the seven members' terms (whether the Saipan, Rota, or Tinian representatives) is to be limited to four years, or whether, perhaps, the four year term was established solely as an interim measure to



ensure that one of the staggered terms expires on the same day as the governor's.

This provision requires clarification as to intent and interpretation, which can only be done through constitutional amendment.

Suggested language:

~~Six~~ The members shall serve a term of six years, staggered in such manner that the term of one member expires each year. ~~and one member shall serve a term of four years expiring concurrently with the term of the governor.~~

2. AUTHORITY TO EXEMPT FROM CIVIL SERVICE

Article XX, Section 1, states that "Exemption from the civil service shall be as provided by law, and the commission shall be the sole authority authorized by law to exempt positions from civil service classification."

The apparent intention of the Second Constitutional Convention apparently was

(1) that only the Legislature can remove personnel (such as NMC and others listed in 1 CMC § 8131 (a) (1-13) from the civil service system, and

(2) that only the Civil Service Commission can make a position an Excepted Service position, rather than a civil service classified position, within the civil service system.

However, this meaning is not clear from the current language of Article XX. This ambiguity has resulted in considerable litigation. In Manglona v. Civil Service System, 3 N.M.I. 243 (1992), the CNMI Supreme Court interpreted this section to mean that the legislature has the power to exempt employees from the civil service *system*, while the Civil Service Commission has the power only to exempt a position from civil service *classification*, such position remaining within the civil service system.

This provision also requires clarification as to intent and interpretation, which can only be done through constitutional amendment. We suggest that the language be amended to clarify this meaning.

Suggested language:

The commission shall be the sole authority authorized to exempt positions from the civil service system and to designate certain positions as Excepted Service positions, as opposed to civil service classified positions.

3. ADMINISTRATION OF EXEMPT PERSONNEL

The Civil Service Commission administers exempted service personnel in some agencies but not in others.¹ Those agencies listed in 1 CMC § 8131 (a) (1-13) are autonomous and are allowed to make policy for and administer their own exempt service personnel. The employees of such autonomous agencies are not part of the civil service system, and such "exempted" or "excepted service" employees are not covered by the Excepted Service Regulations promulgated by the Civil Service Commission.

The problem is that this allows autonomous agencies to escape the merit pay scale of the civil service system, which promotes political patronage and erodes employee morale. The Commission recommends that all government employees be made part of the civil service system. Elimination of the legislature from any role in determining exemptions to the civil service, and the strengthening of the role of the CSC in establishing rules and regulations for all exempted personnel can only be done by constitutional amendment.

Suggested language:

The Commission's authority shall extend to positions other than those filled by election or by appointment of the governor in the departments and agencies of the executive branch, and in the administrative staff of the legislative and judicial branches, and to all positions in exempted service.

4. SOLE AUTHORITY TO SET SALARIES OF GOVERNMENT EMPLOYEES

We recommend that the Civil Service Commission be the sole entity authorized to determine and set government salaries, except for positions appointed by the Governor. This is consistent with our previous recommendation, above, and will ensure a fair and consistent merit pay scale throughout the CNMI government.

5. FINANCIAL INDEPENDENCE

The Constitution sets budget levels for several government agencies (PSS, NMC, OPA, for example), but not the Civil Service Commission. Instead, the Commission is dependent on the governor's budget and legislative action for the level of its budget, and is also vulnerable to gubernatorial re-programming of its resources.

¹"Excepted service" rather than "exempted" is used by the Civil Service Commission to denote unclassified employees employed pursuant to contract within the civil service system.

These concerns could be alleviated through constitutionally mandated budgetary levels for the Commission. The provision of a guaranteed budget for the Civil Service Commission can only be done through constitutional amendment. If funding were to be provided in the Constitution, the model represented by PSS and NMC² would seem most desirable.

Suggested language:

The civil service commission shall be guaranteed an annual budget of not less than .5 percent of the total personnel funding revenues of the Commonwealth. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be available for reappropriation by the civil service commission.

6. SCOPE OF RESPONSIBILITY OF CIVIL SERVICE COMMISSION

Article XX of the Constitution specifies that the Civil Service Commission shall have "the duty to establish and administer personnel policies for the Commonwealth government." The problem is, nobody agrees as to what it means to "establish and administer personnel policies." The Legislature interpreted this duty to mean the administration of the Personnel Office when it enacted the Civil Service Act. However, Executive Order 94-3 significantly alters the operation and responsibility of the Civil Service Commission as it was established in the CNMI Code. For example, the E.O. eliminates the position of Personnel Officer (in effect the executive director of the Civil Service Commission), placing a Director of Personnel in the Governor's Office, and leaving to the Commission only two of the eleven responsibilities assigned to it, via its Personnel Officer, in the Code. These changes have created confusion as to what duties are required by the Constitution to be retained by the Civil Service Commission.

We recommend that the Constitution be clarified to specify what responsibilities shall be the sole province of the Civil Service Commission, so that these duties are clearly defined and not affected by any legislation or Executive Order.

Furthermore, we believe that the separation of the Office of Personnel from the Civil Service Commission as set forth in Executive Order 94-3 has proven unworkable and impractical. We recommend that the Constitution be amended to specify that the duty to "establish and administer personnel policies" necessarily includes the power to oversee

². Rather than a flat amount, as is the case with the legislature, these agencies are allotted a percentage of the general revenue.

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and control the Office of Personnel.

Suggested language:

The legislature shall provide for a non-partisan and independent civil service commission with the duty to establish, implement, and administer personnel policies for the Commonwealth government. The Commission shall have the sole power to appoint the Personnel Office, and the advice and consent of the Senate is not required to approve this appointment.

7. POWER TO REMOVE COMMISSIONERS


In order to prevent partisan tampering with the make-up of the Civil Service Commission, we recommend that only the Civil Service Commission can remove a member from its board. This would require an amendment to Article XX.

Suggested language:

Members of the Civil Service Commission may be removed ~~only for cause~~ only by the Civil Service Commission.

Should you have any questions in regard to these proposals, please do not hesitate to contact me. Thank you for the opportunity to submit these comments.

Sincerely,



Eugene A. Santos
Chairman
Civil Service Commission



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June 20, 1995

Henry U. Hofschneider, Chair
Committee on Judiciary
and Other Elected Offices
Third Northern Mariana Islands
Constitutional Convention
Saipan, MP 96950

Re: Hearing on Article XI: Education in the Commonwealth Constitution

Dear Chairman Hofschneider:

Thank you for the opportunity to present my views on this very important topic. Our children are our future leaders. The education they receive will affect and determine the nature and the quality of their leadership.

I will address the topics in the order of the outline provided as follows:

SECTION 1: ELEMENTARY AND SECONDARY EDUCATION

Section 1(a): Terms of Public Education

1. Free Education

I believe that primary and secondary education should continue to be provided on a free basis in the Commonwealth. Providing its youth equal access to education is a recognized state responsibility. I see no need to make the CNMI an exception in this regard.

2. Compulsory Education

I believe that education should be compulsory, up to the age of 16. Free public education should be provided through the secondary level, but it should not be made mandatory beyond the age of sixteen.

Rec'd 6/21/95-69

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3. Legislative Language

I believe the legislative language contained in the 1985 amendment regarding elementary and secondary education should be retained. The goals and purposes are well-stated. Including the administrative means for providing them in the Constitution brings a stability to the Department of Education that otherwise could be endangered if these issues were left to the Legislature.

SECTION 1(B) AND (C): GOVERNANCE OF EDUCATION SYSTEM

1. Centralized or Decentralized

I believe the system should be decentralized, to provide Rota and Tinian greater control over the schools in their jurisdiction, provided that the schools on Rota and Tinian remain in compliance with the regulations of the central Board of Education.

2. Executive Department or School Board

I am not in favor of abolishing the school board and providing for an executive department headed by an appointed superintendent.

3, 4. Elected or Appointed School Board/ Size of the Board

I see no problems with the school board as it is presently constituted, both in terms of the number of members, and in their being elected by the general public.

SECTION 1(D): QUALIFICATION FOR SCHOOL BOARD

1. Additional Qualifications

I see no need to change the qualifications for school board membership. Presumably, only those interested in the education of our youth will run for election to the Board, and their interest is what is important. The system must serve everyone, whether they are college-educated or not, and their concerns are fully entitled to representation on the Board.

Section 1(e): Guaranteed percentage of Commonwealth revenue

1. I believe the Constitutionally-guaranteed allocation should be abolished. PSS spends Commonwealth funds. At present there is nothing to control whether PSS

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decides to spend its money for vehicles or for school-room supplies. PSS should be held responsible for justifying its needs for those monies just as is every other Commonwealth agency.

Moreover, a fixed percentage does not take into account changes in school population, changes in the economy, or changes in school curriculum needs.

SECTION 2: POST-SECONDARY EDUCATION

Section 2(a): Northern Marianas College

1. Place in the Constitution

I believe provisions for Northern Marianas College should be in the Constitution.

2. Governance

However, I believe that, like the Board of Education, the College's Board of Regents should be elected, rather than appointed.

Other than to provide for the number and terms of an elected Board of Regents, I believe there has been no indication of the need to specify the governance of the College in more detail in the Constitution.

Section 2(b): Mission Statement

1. The legislative language defining the mission of the College should not be deleted. It is a good statement, and should not be subject to change by the Legislature.
2. For the same reasons, PSS should be required to justify its needs for funding from CNMI funds. Also, NMC should be required to justify its needs for funds, rather than receiving a fixed amount.

OTHER ISSUES

1. I firmly believe that Chamorro and Carolinian should continue to be required subjects in the public elementary and secondary schools. It is through language that custom and culture is preserved, and we do not want to lose them.
2. The CNMI's open government policies should apply both to the school system, and

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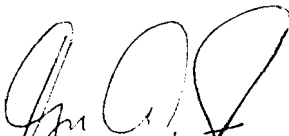
to the college. Decisions in these important areas should not be made behind closed doors.

3. I do not believe that the Board of Education should have taxing authority. Responsibility for revenue generation should not be decentralized among government agencies.

4. While I believe it is very important that parents contribute school-oriented community service on a regular basis, I do not believe this should be made mandatory on a constitutional level.

I wish to thank you again for this opportunity to share my views on the education system of the CNMI. I would be happy to answer any further questions you might have.

Sincerely,



EUGENE SANTOS
Chairman
Civil Service Commission