

June 21, 1995

MEMORANDUM TO THE COMMITTEE ON EXECUTIVE BRANCH AND
LOCAL GOVERNMENT

FROM: Legal Team

SUBJECT: Inos v. Tenorio, Superior Court Civil Action No. 94-1289--A
Brief Analysis of Superior Court Decision Filed June 14, 1995

I. THE COMPLAINT

At the heart of this lawsuit is Amendment 25 to the NMI Constitution, which amended Article III, section 17 and Article VI, section 3 of the NMI Constitution. See, Attachment "A" setting forth the sections, as amended.

The Mayor of Rota alleged several causes of action challenging the validity of certain acts taken by the Governor or the Governor's Representative on Rota. The first cause challenges the establishment of the Office of the Governor's Representative for Rota. The second challenges the actions taken by the Office of the Governor's Representative granting administrative leave to certain resident department employees. The mayor argues that such authority belongs to the mayor alone. The third cause of action challenges the governor's ability to conduct local investigations concerning the administration of public service on Rota. The fourth is whether the Mayor of Rota has the right to assign mayoral employees to assist resident departments involved in the delivery of public services.

The fifth cause of action involves Rota's right to decentralized public service. The issue is whether mayoral supervision of resident department heads is required. The sixth cause of action involves the issue of who has the right to appoint or to dismiss resident department heads on Rota. The seventh cause of action alleged that the mayor alone may promulgate regulations as to local matters affecting a particular resident department on Rota. The eighth alleged that only the mayor has expenditure authority over public funds appropriated for Rota.

II. THE TRIAL DECISION

A.

The basic issue before the court centers on the delegation of certain executive branch responsibility to the mayor. Article III, section 17, as amended, requires the governor to delegate to the mayor the responsibility for the execution of Commonwealth laws "as deemed appropriate." With respect to this part of section 17, the governor may delegate as he determines appropriate the responsibility for execution of Commonwealth Laws. This delegation is revocable by the governor at any time. With respect to the administration of public services on

Rota, the court ruled that the governor's delegation to the mayor of such executive responsibility is mandatory and may not be revoked by the governor, except for "just cause."

While executive power is vested in the governor alone, his duties and responsibilities may be delegated. Amendment 25 allows the governor to delegate his responsibility over the execution of Commonwealth laws. The same amendment requires the governor to delegate to the mayor executive responsibility with respect to the administration of public services. This delegation may not be revoked except for "just cause."

Applying that distinction then, the court examined whether a department's primary function involves the "execution of Commonwealth law" or whether it primarily involves the "delivery of public services." Recognizing that the line between the two functions is sometimes "blurry," the court proceeded to analyze the specific issues raised. It noted the competing interest between the need for consistency with the central government's directives and the "desire to ensure equitable distribution of public goods [services?] to all areas of the Commonwealth." Decision, at 18. Using this distinction, it analyzed the several causes of action raised for resolution by the cross motions for summary judgment.

1. The court concluded that the function of the Department of Labor and Immigration involves primarily the execution of Commonwealth law. Therefore, the governor's revocation of the mayor's delegated responsibility as to this department was properly revoked. (Count V).

2. The court concluded that until legislation is passed expressly authorizing the mayor to promulgate regulations affecting a particular executive branch department, the mayor has no authority to do so. For example, the promulgation of "local regulations" affecting public health on Rota is under the aegis of the Secretary of the Department of Health Services, who has the statutory authority to promulgate regulations for his department. (Count VIII).

3. Next, the court concluded that Article VI, section 3(c), does not give the mayor exclusive authority to conduct "local investigations." It determined that the head of a line department has the duty to oversee the entire department, including the respective resident departments. It ruled that the governor, through his department heads (secretaries), has complete discretion to investigate local matters concerning the administration of public services by the various resident departments on Rota. (Count III).

B.

Proceeding further with its analysis, the court determined that the term "public services" encompasses both centralized services and decentralized services which under Amendment 25 must be delegated to the mayor. The issue, however, is under what circumstances may such delegation be revoked by the governor. It determined that under Article III, section 17(a), as amended, the mayor must ensure that each resident department head faithfully execute the policy directives of the central government, i.e. the department head. Mayors may supervise resident department heads "to ensure that they fulfill their responsibilities." The mayor is obligated to

ensure that the governor's policies are being implemented.

1. The Right to Have Decentralized Services. The court ruled that, although the delegation as to public services is mandatory, it may be revoked in cases where the mayor fails to discharge his duty to ensure that the administration of public services reflects the policies of the Commonwealth Government. The court decided, however, that such revocation may be made only for "just cause," i.e. that it not be arbitrary, capricious or illegal. Although Rota has the right to have decentralized services, the governor may revoke the mayor's delegated duties for just cause. Resident department heads are to have, at the very least, the same amount of supervisory responsibility existing on the date Amendment 25 became effective. An evidentiary hearing that the governor has "recentralized" some of these services is needed to show whether this, in fact, has been the case.

2. Office of the Governor's Representative. The court ruled that the Governor, through the Office of the Governor's Representative can only perform what the constitution allows or what the legislature authorizes the Office of the Governor to do. The governor may oversee the delivery of public service on Rota only through his department heads. In turn, the mayor acts as "local supervisor of executive departments, and the department secretaries oversee the entire operation." Decision, at 27. The governor cannot, through his representative on Rota, circumvent this procedure and directly supervise the resident department heads. It decided that the Office of the Governor's Representative is operating in violation of Article III, sections 14 and 15, and 1 CMC, section 2053.

3. The Authority to Appoint Resident Department Heads. Amendment 25 specifies that resident department heads are to be appointed by the mayor and confirmed by the municipal council. The mayor must consult, in advance, with the department head regarding the appointee. Relying on the CNMI Personnel Service System Rules and Regulations as an analogy, the court ruled that the mayor must submit to the council the name of the appointee for a particular resident department head, within 30-days of the appointment. The council has 90-days thereafter to confirm or reject the appointment. Where the mayor fails to make an appointment or to submit the appointment to the council, the department head may appoint a "temporary" resident department head, who shall hold such position only until the mayor makes his appointment.

4. The Power to Fire Resident Department Heads. The governor exercises his executive power through his department heads ("secretaries"). The secretaries, in turn, work through their respective resident department heads, who are obligated to implement the governor's policies. At the same time, however, the resident department heads are mayoral appointees. In effect then, they have "two masters." The court ruled that where a department's primary concern is the execution of Commonwealth Law, the department head may fire a resident department head "at any time." Where it involves the provision of public services, however, the secretary may discipline or dismiss only for "just cause," e.g. for failure to carry out the policies of the Commonwealth government. When this happens, the mayor may then appoint a new resident department head. Because there are disputed factual issues on the question of whether

department secretaries have appointed acting resident department heads to positions currently held by mayoral appointees, summary judgment was denied.

5. The Detailing of Mayoral Employees to the Resident Departments. On this issue, the court ruled that whenever a delegated duty has been properly revoked by the governor, the department secretary reasserts control over the resident department. The secretary may then manage staff allocation and decline further assistance from mayoral employees earlier assigned to the resident department. “Once a gubernatorial delegation of duties has been validly revoked, assistance to that agency is no longer a mayoral responsibility.” The court also noted that where a department function involves execution of Commonwealth law, mayoral employees may be removed without cause. Where it involves delivery of public service, however, they may be removed only for just cause.

6. The Power to Grant Administrative Leave. The mayor complains that the Governor’s Rota Representative was entertaining and granting administrative leave for Rota employees. He contends that this authority rests with the mayor alone. The court determined that the mayor has authority to entertain leave applications for the resident department heads, since the mayor is the appointing authority for that position. As to the employees of the resident departments, however, the power to grant administrative leave rests with the department secretary, once the governor has properly revoked a mayor’s delegated responsibility over a particular resident department. By having the Office of the Governor’s Representative take action on leave application, rather than by the department secretary, however, the leave action taken was unlawful. The governor’s attempt to revoke the mayor’s duty regarding administrative leave was “procedurally flawed,” and the court set it aside. The department secretary has the authority to grant leave, once the mayor’s delegated authority has been revoked.

7. The Mayor’s Expenditure Authority. The mayor is responsible for the administration of government programs, public services, and appropriations provided for the island served by the mayor. Article VI, section 3(b). The mayor’s delegated responsibility may be revoked by the governor, as noted earlier. Here, the mayor complains that the governor failed to provide for the salaries of three new employees of the Customs Service on Rota. The three positions were authorized by a House Joint Resolution, a “temporary appropriation” superseded by P.L. 9-25, the appropriations measure later enacted. Whether the governor committed a “usurpation” of power, however, involves a disputed factual issue, and requires a trial.

8. The Estoppel Issue. The mayor’s last issue is that the governor is estopped from exercising any authority to revoke executive duties previously delegated. The court held that previous practices by past administrations must give way to what the Constitution expressly requires.

Attachment: Article III, section 17, as amended
Article VI, section 3, as amended

ARTICLE III: EXECUTIVE BRANCH

Section 17: Public Services.

(a) The governor shall ~~(may)~~ delegate to a mayor elected under the provisions of Article VI, section 2, responsibility for the execution of Commonwealth laws as **deemed appropriate** and the administration of public services in the island or islands in which the mayor has been elected. Services being provided on a decentralized basis in Rota and Tinian **and Aguigan**, on the effective date of this **provision (Constitution)** shall continue ~~(to be provided on this basis unless the governor personally certifies after public hearing on the island involved that such decentralization is inconsistent with the efficient and economical delivery of services)~~. **In furtherance of this section, the mayor shall have the responsibility for ensuring that the resident department heads faithfully execute their duties under the law and in accordance with the policies of the Commonwealth government for the administration of public services in the island or islands in which the mayor has been elected.**

(b) Public services on Rota and Tinian **and Aguigan**, shall be headed ~~(supervised)~~ by a resident department head in the departments providing the services ~~(appointed by the head of the executive branch department with the advice and the consent of the majority of the members of the legislature from the senatorial district in which the resident department head shall serve)~~. **No resident department head may be appointed to serve in any commonwealth-wide board, commission, or authority.** These arrangements shall apply to the islands north of Saipan when the population of these islands exceeds one thousand persons.

ARTICLE VI: LOCAL GOVERNMENT

Section 3: Responsibilities and Duties of the Mayor.

(a) A mayor shall serve on the governor's council as established by section 5 of this article.

(b) A mayor shall **administer (review the)** government **programs, public services, and appropriations** provided by law for the island or islands served by the mayor, and shall **report quarterly (submit)** to the governor ~~(findings or recommendations)~~ relating to those **programs and services or appropriations.**

(c) A mayor may investigate complaints and conduct public hearings with respect to **government operations** and local matters, and may submit findings or recommendations to the governor and the legislature. **A mayor may require information in writing relating to local matters as may be necessary to his investigation under this subsection.**

(d) ~~A mayor~~ **The mayors of Rota, Tinian and Aguigan, in consultation with the municipal council, and the mayor of the islands north of Saipan shall recommend submit** items for inclusion in the proposed ~~annual budget, review the proposed budget before its submission by~~

~~the governor to the legislature, and recommend amendments in the proposed budget relating to the island or islands served by the mayor. A recommendation relating to the budget made by a mayor shall be considered by the governor and rejected only for good cause.~~ budgets for both government operations and capital improvement projects. The governor's budget submission to the legislature shall state his disposition of the budgetary requests contained in the submissions from Rota, Tinian and Aguigan, and the islands north of Saipan.

(e) A mayor shall coordinate any extension of federal programs extended to the island or islands served by the mayor ~~(may promulgate regulations on local matters as provided by law).~~

(f) A mayor shall act as the principal local official for coordinating activities with disaster control for the mobilization of resources and meeting emergency conditions in ~~may expend for local public purposes the revenues raised by local taxes that are designated by law for those purposes after the expenditures are authorized by the legislature or by the affirmative vote of a majority of the members of the legislature representing the island or islands served by the mayor.~~

(g) The mayors of Rota, and Tinian and Aguigan, shall appoint, in consultation with the head of the respective executive branch department, all resident department heads ~~(A mayor may appoint, supervise and remove those employees as provided by law to assist in the performance of Mayoral responsibilities).~~

(h) A mayor shall perform other responsibilities provided by law.