

July 12, 1995-A

COMMITTEE ON JUDICIARY AND OTHER ELECTED OFFICES

REPORT NO. 3: ARTICLE XX, CIVIL SERVICE

The Committee met on Tuesday, June 27, 1995, Wednesday, July 5, 1995, Monday, July 10, 1995, Tuesday, July 11, 1995, and Wednesday, July 12, 1995 to consider proposed amendments to Article XX: Civil Service. The Committee considered Delegate Proposals 8, 178, 247, 296, 349, 535, 536, 537, 538, 539, 540, 541, 550, 552, 574, and 568. In addition, the Committee reviewed the letter from the Attorney General indicating certain problems with the existing language, and letters from the Civil Service Commission and the Office of Personnel Management. The Committee held public hearings on Saipan on June 21, 1995; on Rota on June 29, 1995; and on Tinian on July 7, 1995. The Committee also consulted with the Office of Personnel Management and with the Civil Service Commission staff about its draft language and draft report to get their comments.

Placement in Article III: The Committee recommends that the provisions on the civil service be placed in Article III. The 1976 Constitution had these provisions in Article III, Section 16. The 1985 amendments moved these provisions to a separate article. The independence of the Civil Service Commission is not affected one way or the other by its inclusion in Article III or Article XX. Using Article XX for these relatively short provisions makes the Constitution longer without making it better.

Section 16(a): The first section defines the civil service and requires that it be non-partisan, independent, and merit-based.

Definition: The definition of the civil service covers all persons who are employed by the Commonwealth or whose salary is paid by the Commonwealth. This is a broad definition with a simple determining factor -- what entity employs the person or pays the person's salary. If that entity is the Commonwealth, then the definition reaches this position. The objective of a constitutionally-established civil service is to help ensure that government employees are treated equally and fairly, and that they receive procedural protections with respect to their employment rights. Placing all government employees in the civil service system, with the exceptions described below, allows employees uniform civil service protection. It provides stability and predictability in the workplace. Applicants are assessed fairly and impartially. Positions are classified and compensated systematically, and the work rules apply to all. Management can rely on a tested system of classification evaluation and discipline. Both the Civil Service Commission and the Office of Personnel Management agree that the civil service system should be broadly based to reach all entities of government in the Commonwealth.

Excepted positions: There are exceptions to the definition. These are "excepted positions". They do not fall within the civil service. Some confusion has developed over which positions are included in the civil service and which are excepted from the civil service because of the language used in the 1985 amendments. The Attorney General has recommended that this confusion be cleared up. Because the excepted positions are not in the civil service system, the Civil Service Commission has no jurisdiction over these positions.

Under the definition in Section 16(a), there are three classes of excepted positions.

First, all elected positions are excepted positions. This includes the elected offices under Article II, Article III, Article V, and Article VI. This also includes elected positions created by statute. Commonwealth elected officials and local government elected officials are covered by this automatic exception. This is a self-executing exception. The Legislature need take no action to implement it.

Second, all positions specified by the Constitution to be filled by appointment by the Governor are excepted positions. This includes the executive branch positions and under Article III, the justices and judges provided for under Article IV, and any boards or commissions for which the Governor has the power of appointment under the Constitution. This does not include positions filled by appointment by the Governor that are not included in the Constitution. If a position is created by statute, and authorizes appointment by the Governor, this position is not within the automatic exclusions.

Third, all positions specified by the Legislature as excepted positions are outside the civil service system, so long as they fall within the categories of professional, managerial, educational, overseas, or elected officials' personal staff positions. The limitation on the Legislature's authority to create excepted positions is necessary to promote wide coverage of the system in the areas of administrative, secretarial, maintenance, and other normal functions where the fair and equitable treatment of employees who have the same essential functions is important.

The categories of professional and managerial positions allow the Legislature the flexibility to create excepted positions where the needs of the government require that salary and other compensation be more flexible than is permitted under the civil service system. Positions that do not qualify as professional and managerial, for example administrative, secretarial, and maintenance positions, cannot be put within this category of excepted positions.

The category of educational personnel allows the Legislature to create excepted positions for the teachers at the Northern Marianas College and in the Public School System. This permits the educational institutions to meet accreditation requirements for independent personnel systems and to have flexibility in the hiring of teachers where necessary. Positions that do not qualify as educational, that is, directly involved in teaching students, for example, administrative, secretarial and maintenance positions at

the College or in the Public School System cannot be put within this category of excepted positions.

The category of overseas positions allows the Legislature to create excepted positions for the staff of the Washington Representative, the liaison offices in Guam, Hawaii, and elsewhere, and any other positions where the person works outside the Commonwealth on a permanent basis. Administrative, secretarial, and maintenance positions in overseas posts are allowed within this category.

The category of elected officials' personal staff positions covers the Commonwealth legislators, the Governor, the Washington Representative's staff in the Commonwealth, the Mayor, the Municipal Council, the School Boards, and any other elected office at any level of government. This category does not cover justices and judges of the Commonwealth courts under the new Article IV recommended by the Committee. They do not run in contested elections. This category permits the Legislature to make a judgment as to the number of personal staff positions that should be allowed under this category. The Committee is mindful of the criticisms of the large staffs in the Mayor's office. The Commonwealth Legislature will make the judgment as to how many of these positions are to be excepted and whether the costs of these positions are justified. The Legislature is in the best position to determine whether the interests of continuity and stability are being furthered in the offices of the mayors by continuing to have large numbers of employees categorized as personal staffs. Otherwise, if the Legislature does not create excepted positions, any local government employee paid with Commonwealth funds, is within the civil service system. Local government employees paid by local funds (and not paid with Commonwealth funds) are not within the civil service system under any circumstances.

The staffs of the autonomous and independent agencies are included within the civil service. The Legislature may create excepted professional and managerial positions in the autonomous agencies at its discretion.

The Legislative Bureau is included in the civil service. The reorganization of the Legislative Bureau under the proposed Article II separates all the permanent employees of the Legislature from the personal staffs of the members. The Legislature may create excepted professional and managerial positions within the Legislative Bureau at its discretion.

The staff positions in the judicial branch are within the civil service. The Legislature may create excepted professional and managerial positions within the judicial branch at its discretion.

The Committee considered whether including the staffs of the autonomous and independent agencies would affect their status as having a lesser degree of control from elected officials such as the Governor. The Committee decided that having these agencies follow the policies and standards applicable to all other government agencies is not a threat to their

independence. These agencies will maintain their own personnel offices and will continue to make their own personnel decisions with respect to individual employees. In making those decisions, however, they will be required to conform to the policies and standards applicable throughout the government. This promotes uniformity of treatment of employees who are similarly situated and cuts down on the costs inherent in having parallel classification systems.

The Committee considered whether the inclusion of the Legislative Bureau and the staff positions in the judicial branch might compromise the independence of those branches of government, and decided that it would not. Imposing a system that treats employees fairly and equitably does not pose any threat to the independence of the co-equal branches. There are a number of points at which the co-equal branches interact. The Legislature acts on the budget of the Executive and Judicial branches. The Governor appoints the justices and judges in the Judicial Branch. The courts are called upon to adjudicate disputes involving legislation passed by the Legislature and actions taken by the Executive Branch. The interaction of the civil service system with the administrative, secretarial, maintenance, and other routine employment matters at the Legislative Bureau and the courts will promote fairness within the overall government system, and decrease the costs of independent and separate personnel systems. The application of the civil service system to the Legislative Bureau and the courts does not affect the day-to-day operation of the personnel offices in those branches. The personnel offices are only obligated to follow civil service policies and standards.

Some contracts with government employees or consultants specify that the person is "excepted" from the civil service system. Under this constitutional provision, there would be no power to create an excepted position by contract. Only the Legislature has this power, and the Legislature may act only within the five categories specified above. Other contracts with government employees or consultants specify that the person is "exempted" from the civil service requirements. Under this constitutional provision, there would be no power to create an exempted position by contract. Only the Civil Service Commission has this power.

Standards: The standards applicable to the civil service system are set out in the last two sentences in Section 16(a). They are the same standards as were included in the 1976 Constitution. They were not changed by the 1985 amendments that moved the language to Article XX.

Section 16(b): This section establishes the Civil Service Commission and gives it jurisdiction over the personnel policies and standards for the civil service.

Size: The Committee recommends that the Civil Service Commission be composed of 5 members appointed by the Governor and confirmed by the Senate. This is a downsizing of the Commission, which currently has 7 members. If this amendment is accepted by the Convention, the downsizing would be accomplished by a provision in the Schedule on Transitional Matters that would allow the terms of two of the current members to expire without

appointing successors. The Committee recommends downsizing in order to contribute to the effort to decrease the size of the government.

Terms: The Committee recommends that the members serve 5-year terms. This is a change. The 1976 Constitution provided for a 4-year term, and the 1985 amendments provided for a 6-year term. The Committee recommends a 5-year term because it would be close to the cycle of gubernatorial elections but would not coincide with them. In this way, the Civil Service Commission can be made responsive to the Governor but not subservient to the political process. The 5-year terms would be staggered so that one term would expire each year. Thus, a Governor could expect to appoint four of the five members of the Commission over the Governor's 4-year term in office, although these appointments would be made one each year. These staggered terms would provide stability and continuity for the Commission without hampering the Governor from appointing people in whom the Governor has confidence. Under the current system, 6 of the members serve 6-year terms and 1 member serves a 4-year term. The Civil Service Commission recommends that this system be changed as it does not work well. They recommended 6-year terms for each member.

Removal: The Committee recommends that the members of the Commission, once appointed, may be removed only for cause. This provides the Governor with the capability to rid the Commission of members who fail to show up for meetings or otherwise neglect their duties, but does not allow mass replacements for political reasons.

Qualifications: The qualifications of the members are left to the Legislature, except that the five members must be from the private sector. Retired government employees who are not currently in any temporary government position are eligible to be members of the Commission. The Committee believes that having members from the private sector is necessary to guard against the potential biases of government employees. Any government employee, no matter how highly placed, would be subject to relocation or demotion, creating the appearance of conflicts.

Current law requires that one member be from Rota, one member be from Tinian, and imposes other requirements for representation of various constituencies. The transition provisions would not affect these requirements. The representation from Rota, Tinian, and other constituencies would be maintained on the five-person board.

Compensation: The compensation of the members is left to the Legislature.

Powers: The Civil Service Commission is responsible for the development, administration, and adjudication of personnel policies and standards for the civil service. The Committee used the language from the 1985 amendments with respect to the power to "develop and administer" policies and standards, and added the word "adjudicate". The adjudication of disputes is an important aspect of making the system operate effectively, and the Civil Service Commission must complete these matters promptly.

Office of Personnel Management: The Committee considered the relationships between the Civil Service Commission and the Office of Personnel Management. Executive Order 94-3 eliminated the position of Personnel Officer, who was in effect the executive director of the Civil Service Commission, and placed a Director of Personnel in the Governor's Office. The Committee recommends that the Constitution leave the Governor considerable flexibility in managing the day-to-day personnel matters in the Executive Branch. The Civil Service Commission is responsible for setting standards and policies that must be followed in managing the day-to-day activities, and for hearing and deciding grievances, but it is not responsible for doing the actual day-to-day management for the Executive Branch.

Section 16(c): This section provides that the Civil Service Commission shall establish position classifications for all positions for which it has jurisdiction. This power allows the Commission to set policies and establish and enforce standards.

Exempted positions: This section also allows the Commission to exempt certain positions from the classification system or from any other requirements imposed by the standards or policies administered by the Commission. Exempted positions are within the civil service and are subject to the jurisdiction of the Commission. A position that is exempted, may later be reclassified by the Commission. Only the Commission may exempt positions. The Legislature may not act in this regard. This is the result reached by the Commonwealth Supreme Court in interpreting the confusing language of the 1985 amendments in Manglona v. Civil Service System, 3 N.M.I. 243 (1992) so this does not change the current system.

The Committee recognizes that the terms "excepted positions" and "exempted positions" have been used in different ways at different times. The Committee believes that using the term "excepted position" for exceptions to the civil service system, and the term "exempted position" for exemptions created by the Civil Service Commission, is the least confusing.

Transition provisions: The transition provisions spell out how the downsizing is to be effected, require that the requirements for representation of Rota and Tinian and other constituencies be maintained, and provide the transition for positions that will be treated differently after this amendment is ratified. These are explained above.

The transition provision also takes account of the fact that individual contracts may use the terms "excepted" and "exempted" in different ways, and provides that the meaning of these contracts shall not change.

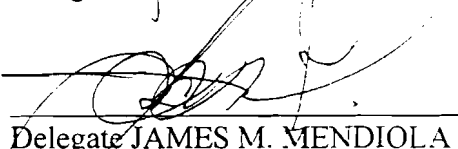
The constitutional language reflecting the Committee's decisions is attached. The Committee recommends this language to the Convention.

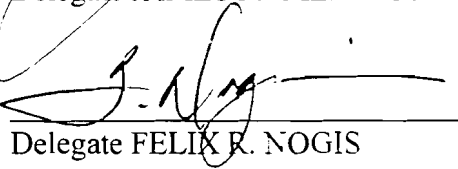
Respectfully submitted,

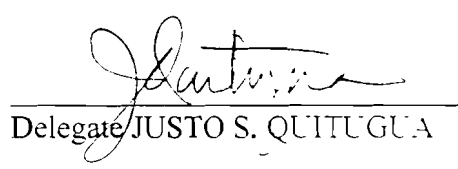
  
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Delegate DONALD B. MENDIOLA, Vice Chair

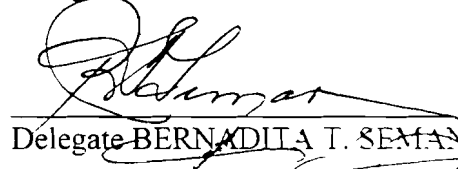
  
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7/12/95-A

ARTICLE III, Section 16: Civil Service

Section 16: Civil Service

a) The civil service shall include all persons who are employed by or whose salary is paid by the Commonwealth except persons holding positions filled by election, appointed by the governor under this Constitution, or designated by law as excepted professional, managerial, educational, overseas, and elected officials' personal staff positions. The civil service shall be non-partisan and independent. Appointment and promotion within the civil service shall be based on merit and fitness as demonstrated by examination or other evidence of competence.

b) There is hereby established a civil service commission to develop, administer, and adjudicate personnel policies and standards for the civil service. The commission shall be composed of five members appointed by the governor with the advice and consent of the senate. At least one member shall be a resident of the each senatorial district and no member may hold any other government position. Other qualifications and compensation shall be as provided by law. Members shall serve five year terms, with one term expiring each year. and may be removed during a term of office only for cause.

c) The civil service commission shall establish a classification for each position for which it has jurisdiction, but may exempt positions from classification where necessary to serve important government interests.

Provision for the Schedule on Transitional Matters

\_\_\_\_\_. Civil Service Commission: The current terms of civil service commission members shall not be changed under the amendment to Article III, Section 16. As these terms expire, in due course, the provisions of Article III, Section 16 shall come into force. The first and second terms to expire shall create vacancies that shall not be filled. This will reduce the size of the commission from 7 members to 5 members. As the remaining terms expire.. the terms of the new appointees shall be five years.

The decreased size of the civil service commission shall not disturb the legislative requirements for representation from Rota, Tinian, Carolinian and other constituencies. As the commission moves from 7 positions to 5 positions, those requirements shall continue to be enforced.

Positions that have been specified by the legislature as outside the civil service system



and that qualify as professional, managerial, educational, overseas, or elected officials' personal staff positions shall remain outside the civil service system after the effective date of this amendment. The civil service commission has no authority of any kind over these positions. Positions that have been formerly specified by the legislature as outside the civil service system but that under the amended Article III, Section 16 are within the civil service system shall be incorporated into the system as provided by the civil service commission.

Positions that have been specified by the legislature or the civil service commission as within the civil service system, but outside the classification system shall remain in that status. After the effective date of this amendment, only the civil service commission may change the status of these positions or add new exempted positions.

Contracts that specify excepted or exempt status as those terms were used prior to this amendment shall continue in force under the former use of these terms until expiration. Employment contracts are subject to the jurisdiction of the civil service commission to the extent of setting policies and standards governing any contract that does not fall within an excepted class. However, rights under current contracts shall not be impaired in any way by these amendments.