

DEANNE SIEMER

4242 Mathewson Dr. N.W.
Washington, D.C. 20011

Tel: 202/726-6269
Fax: 202/829-7598

FAX TRANSMISSION COVER SHEET

Total number of pages sent (including cover sheet): 10

TO: Herman T. Guerrero
Chair, Post-Convention Committee
Third Northern Mariana Islands Constitutional Convention
Tel: 670/235-0843
Fax: 670/235-0842

FROM: Deanne Siemer

MESSAGE:

Herman:

Here's the start of a draft to the Governor that we talked about on the phone last night. We have to be in New York over this weekend, but will finish it when we get back on Monday.

We had the following questions:

1. What is the form of heading that you use in your memos to the Governor?
2. Is this style too informal?
3. This will turn out to be a fairly long report -- maybe 15 pages or so. Is this too long? Should it be a series of shorter reports on discrete subjects?
4. Is the format okay? Do you like to use more subheadings in your memos?
5. Are there other subjects where the Governor proposed amendments that we should cover? (I don't have my book of delegate proposals, so I didn't check to see if all his proposals were covered. You may want to look at them.)

Deanne

August 21, 1995

Memorandum for Hon. Froilan Tenorio

From: Herman T. Guerrero

Re: Summary of Constitutional Amendments Affecting the
Executive Branch

This is an overview of the constitutional amendments passed by the Convention that affect the Executive Branch. As you will note, the delegates adopted proposals that you made in your State of the Commonwealth speech and made changes intended to strengthen the Governor's powers to deal with Commonwealth problems.

Because the overall effects of the amendments on the Executive Branch are interwoven, and appear in many articles, this memo outlines first the changes in Article III (Executive Branch) and Article VI (Local Government). It then deals with Article II (Legislative Branch) and the related subjects of Article X (Taxation and Public Finance) and Article XV (Gambling). I have also included a discussion of related changes in other articles. This memo does not deal with amendments that are peripheral to the operation of the Executive Branch. I can brief you on those in a separate memo, if that would be useful.

I am very pleased with the outcome of the Convention. Nearly all of the amendments are helpful to the Executive Branch, and the few that may have negative impacts on currently planned programs can be accommodated in a variety of ways, a few of which I have suggested here. I can provide additional details on how we can minimize these very few negative impacts, as I and others involved in the administration gave this considerable thought during the Convention. I think that, if passed by the voters, these amendments will strengthen the hand of the Governor and help solve important problems that have caused difficulties for this and other administrations.

Article III: Executive Branch

Although the Convention proposed amendments with respect to many sections of Article III, the overall thrust of the Convention's actions in this area was to strengthen the authority of the Governor, to delete many of the provisions added by the 1985 Convention, and to propose modest reforms addressed to

①

problems of concern to the delegates.

Executive Authority

Section 1 of Article III, placing executive authority squarely in the hands of the Governor, was left intact by the Convention, notwithstanding efforts by Rota delegates to amend the section so as to provide a constitutional basis for delegating executive authority to the mayors of Rota and Tinian. The delegates generally expressed a firm preference for a strong chief executive, who could direct the affairs of the Commonwealth and be held responsible at the polls if the voters did not like the way in which the Governor exercised this authority. In line with this general view, the delegates left intact the Governor's reorganization authority under Section 15, notwithstanding the considerable public furor (and litigation) that had been prompted early in the Governor's administration by the exercise of this authority.

After extended deliberations and a walkout by the Rota delegates, the Convention decided that it would not propose any amendments to Section 17 of Article III, dealing with the delivery of public services in the Commonwealth. The Saipan delegates recognized that the recent court decision in the litigation initiated by Mayor Inos by and large confirmed the authority of the Governor, especially with respect to the execution of Commonwealth laws. Although all the delegates would have preferred more clarity and less litigation, they were unable to reach a consensus on how to achieve these goals. Staying with the status quo was a profound setback for former Lieutenant Governor Manglona, who decided not to sign the Convention's proposed amendments because of his disappointment on this issue. Some of the litigation on these issues may be diminished in the future if the amendments are approved by the voters because of the new provision in Article IV (Judicial Branch) providing for advisory opinions by the Supreme Court with respect to disputes between elected officials in the Commonwealth.

The Convention proposed deletion from the Constitution of several sections added in 1985 that intruded on executive authority. For example, the Convention proposed elimination of former section 21, which established a general rule with respect to all boards and commissions appointed by the Governor with certain exceptions. The Convention concluded that the rules applicable to boards and commissions should be left to the Governor and the Legislature for resolution on a case by case basis.

The Convention also proposed deletion of the constitutional provisions establishing special offices for women's affairs and indigenous affairs. The Convention did retain the Executive Assistant for Carolinian Affairs, which has a very important symbolic importance to the Carolinian community. The delegates concluded, however, that a newly established

Council for Indigenous Affairs, designed to implement programs aimed at preserving Chamorro and Carolinian language, culture and traditions, would be desirable and might over time lessen the need for the special office for the Carolinians. The Convention anticipated that the new Council would assume the duties of some existing agencies, although both the Governor and the Legislature will be able to influence the scope and extent of the Council's activities through the normal budgetary process. The Convention delegates in establishing this new Council were reflecting the widespread concern in the community that more attention needed to be directed to the preservation of indigenous traditions and languages as the Commonwealth grows and develops over the years.

The Convention eliminated the elected board of education and provided for a strong secretary of education to be appointed by the Governor. The secretary of education is in charge of establishing policies and executing Commonwealth laws with respect to education. The elected local school boards are assigned tasks and responsibilities relating the administration and instruction in the schools as designated by the secretary.

The Convention also addressed the civil service provisions of the Constitution and has proposed a series of reforms designed to bring about a more efficient and cost-effective civil service. All civil service commission members now must come from the private sector. The executive branch is free to privatize government services without interference from the civil service. In addition, the legislature may create excepted positions for professional, managerial, and educational positions and the personal staffs of elected officials. Another important change is the powers of the commission over salaries. The commission proposes salary schedules; the legislature may approve, decrease, or reject them. It may not increase any salary schedule or take any other action to raise civil service salaries.

Procedural Reforms

The Convention did propose several amendments that address perceived problems in the Commonwealth -- some important and some relatively insignificant. None of them presents any real limitation on the Governor's authority.

Section 7 of Article III, dealing with succession, was amended in 1985 to place the presiding officer of the Senate in line to become lieutenant governor under certain circumstances. The Convention recognized that this could lead to an unacceptable circumstance where the governor and the lieutenant governor might be of different political parties or otherwise unable to work together. As proposed to be amended, Section 7 would let a lieutenant governor who becomes governor select a replacement lieutenant governor subject to the advice and consent of the senate.

There was considerable debate within the Convention regarding the past difficulties in getting a balanced budget approved by the executive and legislative branches of the government before the fiscal year begins. Some very radical proposals were discussed by the delegates but eventually rejected because of their possibly severe consequences on the Commonwealth's citizens. The proposed amendments to Section 9(a) of Article III outline a more modest effort at addressing this problem, which was one that was generally recognized as being best left to the political process. The proposed amendments here impose a timetable on the submission of the proposed budget that is less demanding than legislation presently in place, direct that estimated revenues to be based on legislation already enacted, and modify the continuing resolution procedure so as to make it a less attractive alternative in the event that the Governor and the Legislature are unable to reach agreement on a proposed budget. The Governor remains free, of course, to propose new revenue measures or other programs as part of the proposed budget.

The Convention delegates attached a high priority to a greater flow of information from Commonwealth officials to the people regarding the affairs of the Commonwealth. It was in this vein that the Convention proposed amendment of Section 9(b) to provide that the Governor deliver an annual report in person to a joint session of the Legislature. The Convention also proposed similar such reports by the Resident Representative and the Chief Justice of the Commonwealth Supreme Court. By deleting the requirement added in 1985 that the Governor's report include a comprehensive financial report, the Convention delegates were highlighting their view that this annual occasion provided an opportunity for the Governor to highlight the accomplishments and challenges of the Administration and propose those important new measures needed to address the Commonwealth's problems.

Several other sections of Article III are affected by amendments proposed by the Convention. After exercising emergency powers under Section 10, the Governor is required to report to the Legislature within thirty days. The Convention's concern about the Legislature's inability (or refusal) to act on the Governor's nominees for executive branch positions and concern about "acting" department heads led to proposed amendments of Sections 12 and 14. The general view of the delegates was that the Governor was entitled to have his nominees acted upon in timely fashion by the Legislature and that, failing such action within a fixed period of time, the nominee should be considered confirmed.

The amendment to Section 11, dealing with the Attorney General, might be viewed as a more important constraint on the Governor's authority to appoint, and remove, his own Attorney General. The Convention after much debate decided to keep this position an appointed, rather than elected, one. There was concern about the independence of the office, however, and the

requirement of "cause" to justify removal was proposed with this concern in mind. There is no definition of "cause" in the proposed amendment or in the accompanying Analysis, but it was recognized by the delegates that the Governor was entitled to have an attorney general who generally supported the policies of the Administration. On a practical level, the Convention recognized that an attorney general was always free to resign if the Governor and the attorney general were not able to function effectively together. [to be inserted]

Article VI: Local Government

[to be inserted]

Article II: Legislative Branch

[to be inserted]

Article X: Taxation and Public Finance

[to be inserted]

Article XV: Gambling

[to be inserted]

Article IV: Judicial Branch

A new section has been added to the article on the judicial branch providing for advisory opinions. This is a way of expediting the resolution of disputes between the executive branch and the legislature or local governments. Instead of going through the full trial process, this article short-cuts the procedure and takes these disputes directly to the Supreme Court for a binding resolution. This is particularly important given the evident intent of Mayor Inos to keep litigating questions of local government powers.

When a dispute arises between elected or appointed officials, they would normally try to accomplish an informal resolution outside the courts. If that fails, however, no one may bring a lawsuit in the normal course. Intra-governmental disputes must be resolved through the advisory opinion process. If the Supreme Court decides that resolution of the dispute requires extensive fact-finding, then it can remand the case to the trial court for a regular trial. Normally, however, the Supreme Court will decide the matter on an expedited basis.

This new power, which will be used to define the relationship between local governments and the Commonwealth government, and the relationship between the Executive Branch and the Legislative Branch, puts a premium on the appointments made to the Supreme Court bench. The residency requirements for appointees to the courts have been relaxed, so that residence in the Commonwealth during any five years (not necessarily immediately before appointment) will suffice.

Article V: Representation in the United States

The delegates were concerned about the problems created by the Washington Representative when he seeks to represent the Commonwealth government, which is the prerogative of the Governor. Although the delegates did not move to an appointed Washington rep, as you recommended, they did specifically limit the Washington rep's activities, as follows:

"The Resident Representative does not speak for the governor and the executive branch of the Commonwealth government unless the governor authorizes the Representative to do so. The governor may appoint a liaison officer in Washington, as has been done in Hawaii and at other locations, to represent the governor and the executive branch. Nothing in article V has in the past or now restricts the governor in this respect.

"The functions of an elected representative of the people are different from the functions of the envoy of the governor, who is also elected by the people. The elected representative keeps track of legislation that might affect the Northern Marianas and provides input to fellow elected legislators about the interests of the people of the Commonwealth. The elected representative also pursues the interests of individual constituents with federal executive branch agencies. The governor's representative pursues the governor's program with the federal governments and with state governments. The governor must implement Commonwealth laws, and this requires, in some instances, work with the federal government and a legislative program in the Congress."

Article IX: Initiative, Referendum and Recall

In connection with the compromise on the new four-year term for the House, the delegates insisted on amendments that make recall of elected officials easier.

Under the amended provision, a recall cannot be done during the first six months in office. After that, a petition for recall can be qualified by collecting signatures from 20% of the persons qualified to vote for the official. This applies to mayors and municipal council members as well as legislators and the governor.

(6)

If a petition is certified by the Attorney General, then it goes on the ballot within 90 days -- at a special election if no regular election is coming up -- and the recall succeeds if it is approved by a majority of the votes cast. These relaxed requirements may mean an increased use of the recall power.

Article XI: Commonwealth Lands

The amendments to Article XI maintain the reorganization and consolidation of public land functions contained in the executive order, but re-establish a board to head these functions rather than a single individual. The delegates left the management of the public lands in the executive branch, as you recommended, but they were not satisfied to leave these matters in the hands of a single individual. For that reason, you have a somewhat unusual executive branch department created by these amendments. It will be important to do some detailed planning about how to implement these amendments if they are passed by the voters. I think this proposed structure will give you the flexibility that you sought in the executive order, if it is implemented properly.

The delegates did not re-establish the corporation, but they set up a five-person board within the executive branch and gave the board the powers to act like a corporation.

The delegates provided that the directors are appointed by the governor, and may be removed by the governor without limitation. There is no requirement of removal "for cause" in the constitution. The directors serve five year staggered terms, which means that every governor can appoint four of the five members within a first term. The first appointments that you make will be important in setting the procedures under which this five-person board acts within the executive branch.

All of the appointees must come from the private sector (or from the ranks of retired government employees).

The homestead program, which was well-understood by the delegates to have outlived its original purposes, was cut back and most of the constitutional requirements were eliminated in favor of regulations promulgated by the bureau. The bureau was given authority to use public land for housing for homestead applicants, if that program fits with the governor's objectives.

The leasing program was also simplified. The legislature's approval for 15 year extensions (above the basic 25 year term) and for parcels of more than 5 hectares must be done in an up or down vote; no conditions may be added. If the legislature fails to act within 60 days, the lease is deemed approved. The delegates added a requirement for notice that public land parcels are available for commercial lease so that competing bids may be received and a requirement for public hearing, but I think that these requirements can be met in a streamlined fashion under new

procedures.

The sale program for land exchange purposes or government uses was also changed to simplify the bureau's participation. The bureau may transfer title to another government agency. That agency, which needs the land either for its own buildings or for land exchanges, has the responsibility to justify the request and to handle the details after the bureau turns over the necessary land. The bureau must dispose of requests for land transfers within two years.

A new permanent preserve program was set up. The basic idea here is to allow the bureau to maintain some of the public lands in perpetuity for public use. The constitution provides flexibility in determining which of the public lands should be set aside for this purpose. The only required preserves are those, like sandy beaches, that were previously in the Constitution plus Bird Island, Forbidden Island and currently designated wildlife areas (Kagman Wildlife Conservation Area, Chenchun Bird Sanctuary, Katan Afato Wildlife Conservation Area).

Article XII: Restrictions on Alienation of Land

There are some major changes in Article 12 that should go a long way to alleviating the concerns of local and foreign investors who need to acquire land in the Commonwealth.

The largest problem in dealing with land titles has been the constitutional provision that land transactions in violation of Article 12 are void *ab initio*. That has been changed, and the new standard is "voidable". That means, when a bona fide purchaser takes title to land where there has previously been a violation of Article 12, the bona fide purchaser does not lose the land. The court will shape other remedies.

The 6-year statute of limitations on actions challenging land transactions has been put in the constitution. This will protect against the likely result that the courts would hold Public Law 8-32 unconstitutional. The Attorney General has been given responsibilities to assist landowners with respect to Article 12 restrictions, which should take away the argument that unsophisticated landowners have been taken advantage of by foreign interests. This argument might lead courts in the future to invalidate transactions if this protection were not available to landowners.

The requirements for ownership and control of corporations owning land have been reduced from 100%, imposed in the 1985 amendments, back to the 51% used in the 1976 Constitution. A simple "control" test has been set out in the Constitution (and explained in the Analysis) to determine if persons of Northern Marianas descent are the owners and directors. This is intended to get rid of the arguments about "sham" corporations and "front"

SENT BY: WILSIE CO;

8-18-95 1:04PM; 202+8297598 =>

6702350842;

#10/10

persons.

The problems with the 25% Northern Marianas descent limitation have been met with a new exception allowing gifts to and inheritance by children and grandchildren who do not meet the 25% threshold.

con0818