

# Discussions on proposals start

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Esther Fleming

explain to the public why we believe these changes are so important, said Fleming.

The budget provisions for the Legislature were a key part of the package, according to Fleming, and were adopted only after careful study of a number of possible alternatives and extensive public hearings and discussion.

"First, we wanted to provide each legislator with enough money to do his or her job properly," Fleming said.

The budget limitations allow the legislators a salary, currently set at \$39,000 plus benefits, and an allowance of \$70,000 each year for office and other expenses.

The \$39,000 salary is higher than all but a handful of the States provide for their legislators.

"The salary and expense allowance gives each legislator a little over \$100,000 a year of discretionary spending. We thought that was enough," Fleming reported, "and no legislator or anyone else who testified or wrote to us said anything to the contrary. We felt very comfortable with the \$100,000 number."

"Our second consideration was whether to give each legislator the same amount of money each year," Fleming said.

Legislative salaries have been at an equal level for House and Senate members, since the first Constitution set the salary level at \$8,000 in 1976.

Legislative expenses, however,

have been at a higher level for the Senate than the House.

The budget for the Legislature has been divided evenly between the Senate and the House, so that the 9 members of the Senate each get a larger share from the Senate's half than the 18 members of the House get from the House's half.

And members of the majority party get larger shares in each chamber than minority members.

"We considered all the possible justifications for the current system," Fleming said, "and we didn't think that the larger amounts for some members over others were based on good policy."

According to Fleming they consulted agreed that the larger amounts for the majority party members resulted in instability in the Legislature, with coups and counter-coups in the leadership at times.

No one testified or wrote to us in support of this system," she added.

When Speaker Benavente testified before the Committee on Legislative Branch and Public Finance, he supported a \$100,000 per member expense account, according to Tomas B. Aldan, who chaired that Committee. "The Speaker said, and I quote, 'A good figure for a member to have, even as a minority, would be about \$100,000.' When he testified, he told us that he supported giving majority and minority members the same amount and that he supported the downsizing of both the House and Senate that we were proposing," Aldan said.

"We adjusted the \$100,000 figure, recommended by the Speaker and Representative Hofschneider, a little bit to \$70,000 and we provided that the Legislative Bureau would meet

some of the expenses individual members now have to meet allowances," Aldan said.

"Our third objective was to ensure that the legislators have the support and the help they need to do their committees efficiently and make good laws," Fleming said.

The proposed Amendment No. 2 provides that the Legislative Bureau receive a little over \$2.0 million annually, with the \$800,000 in the current budget being eliminated.

The \$800,000 limitation was deleted under Amendment No. 2.

Aldan explained that the new appropriation, after taking into account expenses for the individual members are paid, goes to the Legislative Bureau.

With this funding, the Legislative Bureau is required to provide help for individual legislators in maintaining the daily journals and the staffing of each of the committees, the necessary legislative purposes to the Tinian, all the clerical needs of the House and the Senate, and other and day to day operational expenses of the Legislature, to Aldan.

Convention President H. Guerrero, who is also Chairman of the Post-Convention Committee, has served as a member of the House of Representatives said of Amendment #2: "I know that I would have been better off as a legislator if this provision in place, and I think legislators in the future would be better off. I am very proud that the Convention was able to consider amendments on Article 2 of the Constitution. I think that the public will benefit from them as well."

tomorrow at the Commonwealth Health Center. These will be held in two batches, one from 9 a.m. to 3 p.m. and 2 p.m. to 4:30 p.m.

During the public education campaign, committee vice chair Esther Fleming said there will be careful explanation on the proposal governing the Legislature.

"The Con-Con delegates were unanimous in approval of the proposed Amendment No. 2 on the Legislative Branch," Fleming said.

"Every single delegate voted in favor of Amendment No. 2 on the Legislative Branch on second and final reading except Mariano Taitano, who was in the hospital and could not come to the session, and Dr. Camacho who had to be absent that day on account of a death in his family.

The vote was 25 to 0 on Amendment No. 2. So now we need to

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"THE Constitutional Convention made some changes in the procedures under which the Legislature exercises its powers," Tomas B. Aldan said in response to questions raised during the public education campaign by the Post Convention Committee, "but we did not make any change in the Legislature's actual powers. The Legislature's powers are undiminished."

Aldan referred to the proposed Amendment #2 which would require joint hearings of the House and the Senate on all appropriation bills and on all bills involving public debt, taxation, or revenue.

Amendment #2 also provides that all expenditures of public funds must be authorized in an appropriation bill.

This means that authorizations for spending cannot be tacked onto resolutions or bills on other matters.

Everything on expenditure of public funds will be in one place so that the Legislature can see the full extent of its actions when it votes on the appropriation bill. "The Con-Con did not take away any of the Legislature's power to authorize the expenditure of public funds," Aldan explained. "We just provided that they should do it in a way that is easy for the government departments and the public to understand."

Aldan, who chaired the Committee on Legislative and Public Finance during the Convention, is a member of the Post-Convention Committee that is overseeing the public education campaign.

"It is part of our function to explain what we did, and how what we did would change the status quo," Aldan said.

"That is the basic choice before the voters. Do we think the Leg-



Tomas B. Aldan

islature works very well the way it is now? Or are we willing to vote yes on the changes offered by the elected Con-Con delegates after a lot of hard work in considering and weighing the options."

Amendment #2 also requires that each bill shall be read on at least two separate session days in each house before it is voted on.

Delegate Lillian A. Tenorio, who is a principal staff person for the House, said that this proposed amendment is designed to make sure the press and the public know what is being considered by the Legislature, so they can have adequate input to the members of the House and Senate before they act.

"This does not take away any power of the Legislature," Tenorio said. "This is a good procedure so that bills are not passed in a rush before anyone has had a chance to do the necessary staff work or to hear the public's views."

Amendment #7 deletes some language that was in the 1976

Constitution directing the Legislature to provide the criteria by which domicile and residence are determined for voting purposes, and specifying the length of residence within the Commonwealth required for registering to vote.

"We were advised by our legal counsel, Bernard Zimmerman and Jose Dela Cruz, that we could delete this language and allow the Legislature full latitude to deal with these subjects," Aldan reported.

Zimmerman is now a federal magistrate judge in San Francisco.

His appointment to that position was pending while the Constitutional Convention was in progress.

"Bernie Zimmerman taught U.S. constitutional law, and he is a real expert in the field," Aldan said. "Also Justice Dela Cruz was a big help to our committee as we considered these amendments."

Amendment #8 deletes a similar provision that was in the 1976 Constitution pointing the Legislature to providing for the registration of voters, nomination of candidates, absentee voting, secrecy in voting, administration of elections, resolution of contests, and other matters relating to election procedures.

Since this guidance was given by the 1976 Constitution, the Legislature has acted and accomplished this task.

Aldan commented that under the very first section of Article 2, the Legislature is vested with the legislative power as to all rightful subjects of legislation.

Deleting provisions that were put in the Constitution

before there was any Commonwealth Legislature or any Commonwealth laws does not take anything away from the Legislature's general powers.

"Indeed, I suppose somebody could argue that the Legislature is limited by this language currently in the Constitution that we are proposing to delete," Aldan said.

"You know, if the Legislature has all legislative power except what the Constitution takes away, then maybe some lawyer could find a limitation here that was not intended by the Founding Fathers.

The record is very clear that we want the Legislature to have all necessary power in these areas, and there are no limitations implied by the deletion of these provisions," he said.

Another new procedure included in Amendment #2 involves the Lieutenant Governor in the opening of the Senate session.

"This is like the way the Vice President of the United States works with the U.S.

Senate. This is for the purpose of getting the Senate into session promptly," Aldan said.

"We want them to get right to work. If they cannot agree on who should be the President of the Senate, and this is holding things up, then the Lieutenant Governor will break the tie and get things going." Aldan noted that this does not take anything away from the Senate.

If the Senators can agree on a President of the Senate, at any time during the session, they can make a change.

"Say for example that the Senate cannot agree on who should be elected President at the beginning of the session, and they are split 3-3. The Lieutenant Governor comes in and casts a tie-breaking vote.

Then later on, four Senators decide that they can agree. At that point, they can substitute a new President of the Senate. This doesn't take anything away from the Senate; it just prevents delays," Aldan explained. "We think this is a more efficient way to go about it."

## Clinton set to sign

*Marianos Varela*  
2/5/96, p.6

**THE 3rd CON CON AND THE PUBLIC**  
 By: Stephen C. Woodruff

**On doing the research**

RECENTLY, Post Convention Committee chairman Herman T. Guerrero accused critics of the work of the Third Constitutional Convention of "speaking from the top of their head[s] without doing [the] research."

I agree that "doing the research" is essential if one is to make sound decisions. In that light, let's examine some of the work of the Third Constitutional Convention and the Post Convention Committee.

**Control of Public Funds**

The Convention deleted the constitutional requirement that the Department of Finance "promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes." The committee report stated that this constitutional mandate "was legislative in nature and has been accomplished."

The truth is that the Department of Finance has never promulgated the required regulations. That fact is even acknowledged in a formal opinion by the legal counsel for the Department of Finance, dated July 5, 1994, less than a year before the convention.

Plainly, nobody bothered to check before asserting that the constitutional requirement "has been accomplished." Yet this is the information the delegates relied upon in approving the proposed change. The substantive effect of the change will be discussed in another article.

**The Abortion Ban**

During the course of the convention, the delegates were repeatedly told that the Attorney General had declared Article I, Section 12, which prohibits abortion "except as provided by law," to be unconstitutional. The committee report on the proposed new Article I contained this claim. Legal counsel Howard Willens and Deanne Siemer both stated on the floor of the Convention that the attorney general had issued an opinion to that effect. Most recently, Post Convention Committee Chairman Guerrero repeated the claim in a published response to columnist Ruth Tighe.

But did the Attorney General really declare that the abortion provision is "unconstitutional and

cannot be enforced," as claimed? The truth is, no, the Attorney General never rendered any such opinion. This fact would have been known to the responsible individuals if they had bothered to "do the research," that is, actually read the opinion and the correspondence received from the Attorney General.

The opinion was published in the March 15, 1995 Commonwealth Register. What it says is that the decisions of the United States Supreme Court concerning abortion are part the provisions of law which, by the terms of Article I, Section 12 itself, define the scope of the CNMI's constitutional prohibition on abortion.

The AG's opinion is, in fact, entirely consistent with the intent of the delegates to the Second Constitutional Convention. The Second Con-Con included the "except as provided by law" language in the abortion amendment for this very reason—to avoid having this provision found unconstitutional.

Even more significantly, the Attorney General wrote to Pre-Convention Committee Chairman Herman T. Guerrero on May 22, 1995, responding to inquiries made by Mr. Guerrero. In that letter, the Attorney General stated, in no uncertain terms, "the Attorney General's Office has not issued any opinions declaring any portion of the CNMI Constitution 'unconstitutional'."

Further, had the convention leadership and advisors read the AG's opinion, they would have known that their new "right to life" provision is inconsistent with the federal court decision invalidating the Guam law making abortion a felony.

In that case, the court held that Guam could not justify its abortion restrictions "on the basis that such regulation embodies Guam's view of when life begins." Yet the heart of the Convention's amendment is its statement that "[t]he right to life . . . from conception through old age is respected, honored and protected in the Commonwealth." (Emphasis added).

The only thing that saves the convention's proposed amendment from being unconstitutional is the fact that it has no force or effect. It is nothing more than a declaration of principle, a bare opinion, an expressed ideal. But that is a subject for another article.

*This piece appears in the Variety as a guest column.*  
 Stephen C. Woodruff has been a resident of Saipan for 20 years, living here since 1974, except for three years in Hawaii when he returned to school for a law degree. He was Chief Consultant to the Second Constitutional Convention. He presently is Senate Legal Counsel. The views expressed in this column are his own.