THE 3rd Con Con AND THE Public

By: Stephen C. Woodruff

Control of Public funds?

Yesterday I explained how Amendment 10 weakens the taxpayer's right of action. Amendment 10 also alters the public purpose provision in a way that is likely to engender litigation, deletes the requirement that the governor report on tax exemptions (for no reason other than the fact that the governor has never complied), and makes it easier to approve property taxes on undeveloped land and private residences.

Amendment 10 also changes the provisions concerning deficits, may make government employment ceilings unenforceable, and eliminates the requirement that the exercise of the department of finance's power to control and regulate the expenditure of public funds be pursuant to regulations.

Control of Expenditures

Section 8 of Article X of the current Constitution states: "The Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes."

Amendment 10 deletes the language requiring the department of finance to "promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes".

The language the Third Con-Con would have us delete is what gave meaning to the mandate that the department "control and regulate" the expenditure of public funds. Without it, the department's mandate is unacceptably vague. It could even be read as vesting all expendijure authority in the Secretary of Finance. The language to be eliminated made clear that the department's control and regulation must be pursuant to properly promulgated regulations, not the unfettered discretion of the Secretary of Finance.

The deleted language also helped clarify the overall intent of the 1985 convention and provided guidance as to what sort of regulations were to be issued. Amendment 10 also undesirably institutionalizes the title "Secretary of Finance" in the constitution. The Second Constitutional Convention, like the First, carefully avoided this sort of rigidity.

Employment Ceilings

The current Constitution requires that employment ceilings for every part of Commonwealth government be set as part of the budget process. It also provides that "no public funds may be expended for personnel in excess of the ceilings so established."

Amendment 10 deletes the prohibition on expenditure of public funds for personnel in excess of the ceilings. Thus, the amendment makes the ceilings directory only and not enforceable in court. This is especially true in view of the change in the taxpayer's right of action also proposed in this amendment.

Debt and Deficits

Amendment 10 adds new language stating that public debt may not be used to retire a deficit. In my opinion, the constitution already prohibits this. The problem with adding language prohibiting something that is already covered is that it implies that the existing language does not prohibit it. Otherwise, there would have been no need to add it. As a result, the most likely practical effect of the new language proposed by the convention would be to provide a defense for prior use of public debt to fund deficits.

I do not believe that any previous illegal use of public debt to finance deficits should be, in effect, ratified by constitutional amendment. To guard against this possibility, I recommended that language be inserted in the Analysis stating that the convention believed that use of public debt to retire a deficit was already prohibited by the Constitution but wanted to make this prohibition explicit. This recommendation was ignored.

Public Purpose

Under the Constitution, "A tax may not be levied and an appropriation of public money may not he made, directly or indirectly, except for a public purpose." This language has been unchanged since the original Constitution. The Second Constitutional Convention added a requirement that the legislature provide a definition of public purpose.

Amendment 10 would replace that requirement with a constitutional definition. The convention's definition is consistent with the generally understood legal meaning of "public purpose." Therefore, on the surface this may seem like a good idea. Unfortunately, it is not that simple.

The Second Constitutional Convention left the definition of public purpose up to the legislature because they were acutely aware that a specific definition might engender litigation. The convention felt that some appropriations had been made in the past that perhaps could be considered for private rather than public purposes. They wanted to focus the legislature on the issue without hamstringing the ability of the government to commit resources to real needs.

Ordinarily, the constitutional requirement that appropriations be for public purposes presents no problem because there is a presumption that any expenditure authorized by the legislature is for a public purpose. The presumption can be overcome and egregious expenditures enjoined or recovered, but day-to-day government operations are not disrupted by nuisance suits.

The danger of this amendment is that it may eliminate the presumption of constitutionality, precisely what the Second Con-Con carefully avoided. By providing a specific definition of public purpose, the amendment invites lawsuits to enforce that definition. Suits can he brought questioning whether an expenditure really is "directly related to the functions of government and benefits the people as whole."

There is always somebody who feels some particular expenditure doesn't really benefit the public at large. This could be essentially any expenditure, because not every expenditure benefits everybody.

The risk of engendering lawsuits is the main reason the legislature has not enacted a formal and permanent definition of public purpose. Attempts have been made, and some appropriations acts may have included a temporary definition in one form or another, but no viable general definition that would not either encounter the litigation problem or simply look like legislative evasion of the issue was ever found.

LETTERS TO THE EDITOR

About US senators' recent visit

Dear Editor:

PLEASE permit me to voice some personal thoughts regarding the recent fact finding mission of the Honorable Senator Murkowski and Senator Akaka I begin with an account of a meting that took place between local business leaders and the respective Senators.

I had the privilege as a director of the Saipan Chamber of Commerce along with other Chamber directors and members, local industry leaders (Garment, Hotel and Contractors Association) to attend the meeting with the Honorable Senators.

During the course of the meeting, the Contractors and Hotel Association repeated their positions in support of the minimum wage increase. The Garment Association strongly reemphasized their stand that a 30 cents hourly increase would force their local industry into extinction due to global competitiveness. Mr. Pedro R. Guerero commented that although a lcoal contractor, his position regarding the minimum wage was contrary to the Contractors Association and that other local contractors also share the same opinion. Judge Villagomez and Mr. Tony Pellegrino pleaded for more federal assistance verses control. Mr. Dave Hawkins ask for a dialogue of understanding as to what the Federal Government expected of the CNMI and hopefully arrive at an agreement acceptable to both entities.

Senator Murkowski primarily responded to the many comments of the local business leaders. In general, his comments emphasized that the well publicized labor abuses have unfortunately focused unwelcome federal attention to our islands and the delay in the minimum wage may be perceived as a continuing promotion of such abuse. He admits that the Federal Government may have not had the necessary presence in our islands which could have prevented some of our present problems or the degree to which they have risen. Their promised support of a nonvoting delegate in Congress should assist in promoting, the necessary federal assistance to the CNMI. In conclusion, he (Senator

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Reader challenges RP Sen. Macapagal-Arroyo

Dear Editor:

I WISH to comment on the issues made by Sen. Gloria Macapagal against the CNMI government and the alleged abuses committed by CNMI employers, to include, Koreans, Filipino residents and other nationalities that hires Filipino overseas contract workers.

The issue made by the lady Senator is unfounded, considering that in the CNMI governmental procedural process, investigations is made thru the due legal process. If and when, a prima facie case is evident, there and then that a resolution is made.

Having spent the productive years of my life in the CNMI and as a Filipino who left his country due to political turmoils and corruptions, please do allow me to state my opinion, with no bias to whoever will be the main subject of this concern.

Sen. Gloria Macapagal does not deserve to represent the Filipino overseas workers. She has not resolved what had happened in Singapore and the Middle East, whereby human rights abuses had and is still existing. She was not able to resolve the problems of her pitiful "cabalens" who were victims of the Pinatubo Explosions and the anomalies that happened under her own nose. She was not able to make a concrete defense regarding the claim of a lady police officer that she was one person that was supported by the dreaded gambling lords from Pampanga.

Now then, her unethical character as a politician. AG Aloot lowered his ego and instead sought audience with the lady Senator but instead, it was the Press Officer that met our Attorney General. Sen. Macapagal should have coferred with the CNMI AG Aloot, hence, to bridge the communication gap that had exists between the two (2) governments.

In conclusion to the above, I do challenge, not only Macapagal, but the Philippine government con-

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Willens writes on Woodruff

Dear Editor:

Mr. Woodrufffs comments on the taxpayers right of action call attention to a problem created by the Second Constitutional Convention, which added the provision now in the Constitution.

Judge Bernard Zimmerman and I worked as counsel to the Committee on Legislative Branch and Public Finance. We advised during the discussions and debates on Article X. Delegate Proposal #206 proposed to change the somewhat vague phrase lexpenditure of public funds for other than public purposes or for a breach of fiduciary dutyl to a clear statement that taxpayer actions under the CNMI Constitution were for the purpose of enjoining lexpenditure of public funds in violation of this Constitution.i That proposal was submitted on May 11, 1995, well before the Convention began, and all delegates had an opportunity to study and debate it.

One problem with the 1985 version, defended by Mr. Woodruff, is that the phrase lpublic purposel was never defined. The Second Con-Con provided in Article X, Section 1 that the legislature was to define this term, but it never did. Another problem with the 1985 version is that the term lfiduciary dutyl is quite elastic and could cover things that the delegates did not intend.

The delegates were advised that there are several levels of taxpayer actions. There are taxpayer actions under the U.S. Constitution. Those are not affected by proposed Amendment #10. There are taxpayer actions that may be provided by the

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Open letter to Sen. Villagomez

Dear Senator,

I AM writing in response to reports that you would support legislation extending the sunset provision for non-citizen government workers, in specific agencies, if an emergency existed. I believe that is precisely the case at PSS. While much recent attention has been focused on personnel at CHC, few have recognized the impending crisis in the school system. My concern is that without your support for new legislation that includes PSS, whole departments

at some schools will be decimated. Simply observing that 35 teachers

out of 80 employed at Marianas High School will not be renewed and therefore will need to be replaced, should be proof enough that a gradual transition would be a more pragmatic policy. Such a drastic change-over in teachers can only translate into the loss of quality education for the students.

Perhaps what is needed though is an example a little closer to your heart. As the Agriculture instructor at Marianas High School I have had the pleasure to teach your nephew in one of my classes. He is an exceptional student. Academically his interests seem to be in the Sciences. A subject area in which he has excelled. Unfortunately this discipline will be hit particularly hard by the present law.

Currently the Science department is staffed by an impressive group of hard working, talented,

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Tinian, Rota games sends thank you

Dear Editor:

FIRST of all, we would like to thank the Tinian and Rota kids for their sportsmanship during the games. We would like to thank Councilman Villagomez, Senator San NIcolas, and Senator Cing for providing the meals. We value your commitment to our kid's spot activities.

We would like to thank Mr. Pato and SGM Kyoshi for their tireless efforts j supporting the games. We thank Rudy Borja and the Community and Culture staff for getting the gym in order and officiating the games.

There were so many people from the Tinian community who helped and we apologize if we failed to recognize you.

We would also like to thank Board member, Don Farrell, and PSS officials, Patrick Tellei, Nike Remson, for their efforts for getting sporting events on Tinian and Rota.

Finally, we thank the Rota Buck's basketball team and volleyball team, for coming to compete in Tinian. We would like to invite Rota's Boy;s Flag Football Team to our beautiful Island. we hope you take the challenge.

Tinian/Rota Games Coordinators