LETTER TO THE EDITOR OF THE SAIPAN TRIBUNE February 26, 1996

Your readers have undoubtedly read or heard the Senate Legal Counsel raise apparently serious legal questions about the work of the Third Constitutional Convention. He has contended, for example, that (1) the Convention did not have the authority to recommend an "entirely new constitution;" (2) the 19 proposed amendments, each relating to a single article of the Constitution, may violate the "single subject" rule imposed by the enabling legislation; and (3) the Legislature has the authority to dictate how the proposed amendments should be placed before the voters. He is wrong on all counts.

Rather than cite the numerous legal precedents that support the Convention's position on these issues, we thought your readers might be interested in what the Senate Legal Counsel had to say on these exact questions in a memorandum dated July 11, 1985 when he was a consultant to the Second Constitutional Convention.

First, on the subject of the authority of the Convention, he stated:

> "The purpose of a constitutional convention is comprehensive review of the constitution and proposal of any and all amendments necessary to correct deficiencies in the constitution as they relate to the aspirations of the people and the conduct of their government. To perform this enormous responsibility, the people elect special representatives to address this single purpose. This purpose is quite different from that of legislative or popular initiative, which is to correct a limited, single deficiency. " (p.2)

We could not have stated it more eloquently or correctly.

Second, on the "single subject" rule, the Senate Legal Counsel in 1985 contended that no such "single subject" rule could apply to the work of a Constitutional Convention. As a matter of fact, in his memorandum (p.4) he stated that the Convention could propose amendments that covered more than one article:

> "In the instance of certain subjects, for example, local government, qualifications for office, ethics of government officials, etc. the subject appears in more than one article. It would be impossible to make an amendment treating the subject in general without amending more than one article. To require several separate amendments in order to address the subject would make no sense. Consequently, I do not believe [the current Constitutional provision applying to legislative initiatives]was intended to be an absolute prohibition even on the legislature, and to apply it to constitutional conventions as well would effectively prevent the people from changing the constitution to reflect their needs and desires."

Here, too, the Senate Legal Counsel's position in 1985 was directly contrary to his present position.

Third, the Senate Legal Counsel was very clear in 1985 that the Legislature had absolutely no authority to dictate to the Convention regarding the scope of the proposed amendments or the way in which they were to be presented to the people. He stated in the same memorandum (pp. 4-5):

> "...I do not believe the legislature has any constitutional authority to restrict the scope of amendments proposed by the convention. Amendments proposed by the convention are not subject to legislative approval." "I believe the Convention itself is the sole judge of what a proposed amendment is."

The Senate Legal Counsel was correct in 1985.

To be fair, the Senate Legal Counsel had not yet gone to law school in 1985. The wisdom of his views in 1985 and his serious errors in 1995 could lead one to question the value of a legal education.

Sincerely,

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