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**TO:** Herman T. Guerrero, Chair

**FROM:** Howard P. Willens

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**MESSAGE**

Herman: Marian told us that the Governor told her this morning that he was going on TV Friday night, the I Tao Tao program, to air his views about the amendments and that he is currently planning to say vote "No" on Amendments ## 2, 3 and 11 because of very specific concerns that he has. We have prepared the attached memo for your review that might encourage him to change his mind about one or more of the amendments. What do you think? Are there other points that we should address in this memorandum?

 Howard

This is *de*.

Herman  
2/27/96

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PERSONAL AND CONFIDENTIAL

February 26, 1996

MEMORANDUM FOR THE GOVERNOR

FROM: The Post Convention Committee

SUBJECT: March 2 Vote on the Proposed Constitutional Amendments

The Post Convention Committee appreciates your decision to let the vote go forward on March 2 with respect to the proposed constitutional amendments. The delegates have worked very hard for the past several months to get the facts out to the voters, and it is now time for the voters to express their wishes.

We understand that you may have some concerns about Amendments ## 2, 3 and 11. We would like to address those concerns. The enabling legislation gives the Post Convention Committee the authority to add clarifications to the Analysis where necessary. We believe that certain clarifications will take care of some of your concerns.

**Amendment #2 (Section 12 - Sessions)**

The delegates have proposed no change to this section of Article 2, which provides for organizational meetings of the Legislature every two years. Specifically, the first sentence of Section 12 reads as follows:

“The legislature shall meet for organizational purposes on the second Monday of January in the year following the regular general election at which members of the legislature are elected and shall be a continuous body for the two years between these organizational meetings.”

Some question has been raised about this sentence because of the proposed change in the term of the members of the House of Representatives to four years.

After considering this matter the Post Convention Committee has approved the following addition to the Analysis of the Constitution under the authority granted it in Public Law 9-18:

“No change. Under this section, an organizational meeting will be held in each house of the legislature after each regular general election at which members of the Senate or the House of Representatives are elected. The legislatures would continue to be numbered in a two-year sequence as they are now. The 1998 Legislature would be the 11th, and the 2000 Legislature would be the 12th. The

Senate membership may remain the same after the election each two years, because the same Senator or Senators may be reelected. In this case, it is likely that the leadership of the Senate would remain the same when the organizational meeting is held after the mid-term election. Similarly, the House membership will remain the same unless there has been a vacancy, so it is likely that the leadership of the House would remain the same when the organizational meeting is held after the mid-term election."

The Committee does not see any practical problems resulting from this section of Article 2. As you know, each house of the legislature can change its leadership any time a majority wants to do so. Continuing to require an organizational meeting of both houses every two years still seems to make good sense politically and practically. Changes in the membership of the Senate may influence the choice of leaders in the House and, from time to time, it is likely that in fact there will be new members of the lower house elected at the mid-term election. But it does no harm to have the House meet for organizational purposes every two years.

We know that you understand the very substantial changes in Article 2 proposed by the delegates. A downsized legislature, with a reasonable budget, and a new role for the Lieutenant Governor offers the first opportunity since 1978 to make the Commonwealth's legislative and executive branches work more effectively together. Amendment #2 is strongly opposed by most of the current members of the legislature and, in particular, by the political leaders of Rota and Tinian. Its only chance of ratification is a substantial positive vote on Saipan, whose citizens will benefit especially from these proposed reforms. We hope you will support Amendment #2.

**Amendment #3 (Section 12 - Public Auditor)**

The delegates did not recommend any changes in Section 12 of Article 3 that relate to the appointment or the removal of the Public Auditor. In other words, the Governor still appoints the Public Auditor with the advice and consent of each house of the Legislature and the Public Auditor may be removed only for cause and with the affirmative vote of two-thirds of the members of each house of the Legislature. During the Convention it was never suggested by anyone that the Public Auditor had an indefinite term in office that would go on under successive governors unless it was removed for cause and with the approval of the required numbers of the members of the Legislature. It has always been assumed that the Public Auditor, like all other officials appointed by the Governor, could be replaced by a newly elected Governor without any showing of cause or involvement by the Legislature.

*Under the Constitutional provision,*

*The legislature has imposed a term of office for the Public Auditor, but that can be*

The requirement of removal only for "cause" does not change this general rule. That is made clear in other provisions of the proposed amendments to the Constitution. For example, the proposed amendment to Section 11 (Attorney General) states:

"The attorney general may be removed during the governor's term only for cause."

With respect to the Secretary of Finance, the Analysis provides that the requirement of cause for

*the legislature. As far as the Constitution, itself, is concerned,*

this officer's removal "is not intended to eliminate the right of the incoming governor to appoint a new secretary." (Analysis, p.62)

In order to meet any concern you may have on this point, we are recommending that the Post Convention Committee add the following sentence to the discussion of Section 12 (Public Auditor) in the Analysis:

**"NOTHING IN THIS SECTION IS INTENDED TO ELIMINATE THE RIGHT  
OF THE INCOMING GOVERNOR TO APPOINT A NEW PUBLIC  
AUDITOR"**

If this change is made, we hope that you can endorse proposed Amendment #3. There is much in this amendment that is very supportive of the executive branch of government.

#### **Amendment #11 (Commonwealth Lands)**

We understand that you have some concern about the impact of this proposed amendment on pending commercial leases of public land. Amendment #11 does propose changes in the procedures that need to be followed in connection with the commercial leasing of public land after August 4, 1995.

Over the long term, the new requirements in Amendment #11 will help the Executive Branch administer public lands and limit the intervention of the Legislature. We can understand the concern about pending matters, however. Our suggestion is that, if this Amendment #11 is approved, a single public hearing be announced at which all pending leases can be considered. If well organized and staffed, this could be done within 30-45 days. Leases of not more than 25 years and not more than 5 hectares would then be approved, and would have complied with Amendment 11. Leases of more than 25 years or more than 5 hectares would have to go to the Legislature. Under the new provisions, of course, the Legislature has a fixed time within which to act and can only approve, or reject, a proposed commercial lease. We recognize that this seems burdensome, at least at the beginning, but we think it will help you defend these leases in the media and in the courts if someone tries to challenge a particular lease of public lands.

We request only that you consider this particular aspect of Amendment #11 with its many other proposed changes keeping the public lands within the regular line authority of the executive branch, affecting the homestead program, preserving some lands for future generations, and doing much more to protect this limited resource while still permitting economic development to go forward.

If there are any other questions that you have about any of the proposed amendments, we are available to meet with you at your convenience.

the shortfall is allocated on a proportionate basis to each activity funded during the last fiscal year. This marks a clear difference from the system currently in place under which expenditures can go forward at the same level as the estimated revenues for the past fiscal year irrespective of the anticipated revenues for the current year. In making this calculation, all extraordinary or non-recurring expenditures are first subtracted from the appropriations for the past fiscal year. After this subtraction, the allocation of funding to remaining activities during the past fiscal year is followed in the allocation of the lower level of funding anticipated for the new fiscal year.

This change corrects a typographical error and a punctuation error. It also adds to the explanation of the procedure covered by the amendment.

**Article 3, Section 12 (Public Auditor) (p.20)**

A question has been raised as to an incoming Governor's authority to replace the Public Auditor with his own nominee upon confirmation by the Legislature as required under Section 12 of Article 3. ~~With respect to other officials who can be removed only for cause, like the Attorney General and the Secretary of Finance as recommended by Amendments 3 and 10, either the amended Constitution itself or the Analysis makes clear that the official involved, like other appointees of the Governor, can be replaced by a newly-elected Governor. In order to make this clear with respect to the Public Auditor, the following sentence will be added to the Analysis at the end of the discussion regarding the Public Auditor:~~

The Legislature has provided on a term of office and may continue to do so or may delete this requirement

"Nothing in this section is intended to eliminate the right of the incoming governor to appoint a new public auditor."

The Constitution itself,

**Article 3, Section 13 (Education), subsection (d) (p. 23)**

Section 13(d): This section provides for Commonwealth funds to be provided for local schools. This section makes clear that the decentralization intended by the Convention applies at the school level. Each school receives its share of the appropriation for instruction and the principal, as the executive head of the school, is responsible for the expenditure of that appropriation. This decentralization is intended to empower principals to do site-based management. They are allocated funds for their school and they are responsible for the best and wisest use of those funds. Principals are the key to the success of a decentralized system.

it there is no statutory limitation. Nothing in this section is intended to limit the Legislature's authority to prescribe terms of office for the Public Auditor.

The legislature makes an annual appropriation for instruction (actual classroom teaching and teaching materials and related student activities). The legislature also makes appropriations for administration (procurement, research, teacher training, facilities maintenance, transportation, freight, communications, and related services), for capital improvements (building schools and related facilities), and for other, additional, or supplemental purposes. The annual appropriation for instruction (but not other funds) must be divided among the local schools on a per enrolled student basis. For example, if the annual appropriation for instruction is \$30 million and there are 10,000 students enrolled in the elementary and secondary schools system, \$3,000 per student