



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

B-59-2096.16

Hon. George Cochran Doub
Assistant Attorney General
Department of Justice
Washington 25, D. C.

MAR 2 1959

Attention: Mr. George S. Leonard

Re: Claim against the Micronesia Metal
and Equipment Company

Dear Mr. Doub:

This will refer to the Navy Department's letter to you of February 4, 1959, relating to certain claims arising in the Saipan District of the Trust Territory of the Pacific Islands against the Micronesia Metal and Equipment Company, and to discussions on February 12, 1959, between representatives of your Department, the Navy Department, and this Department concerning such claims. As you are aware, the Micronesia Metal and Equipment Company is also indebted to the Government of the Trust Territory of the Pacific Islands, for which this Department has administrative responsibility.

Before describing further the claim of the Trust Territory Government, I should like to provide you with certain information concerning the nature of the Interior and Navy responsibilities in the Trust Territory. The area known as the Trust Territory of the Pacific Islands comprises the Caroline, Marshall, and Mariana Islands (except for Guam, which is a territory of the United States and thus not a part of the Trust Territory), which were mandated to Japan under the League of Nations prior to World War II. Pursuant to a Trusteeship Agreement with the Security Council of the United Nations, the United States is now the administering authority for the Trust Territory. The Trusteeship Agreement, (61 Stat. 3301), which was entered into pursuant to Chapter XII of the Charter of the United Nations and pursuant to the Joint Resolution of July 18, 1947 (61 Stat. 397), describes the powers and obligations of the United States.

From July 18, 1947, until July 1, 1951, responsibility for the civil administration of the Trust Territory was delegated

to the Secretary of the Navy, "on an interim basis", under Executive Order No. 9875 of July 13, 1947. Effective July 1, 1951, administrative responsibility for the Trust Territory was transferred to the Secretary of the Interior by Executive Order 10265 of June 29, 1951. Subsequently the islands of the Northern Marianas, except for Rota, were restored to the administrative responsibility of the Navy Department (Executive Orders Nos. 10408 of November 10, 1952, and 10470 of July 17, 1953). The principal island so restored to the Navy was Saipan, which is now the seat of the Navy's government in the Northern Marianas.

In the portion of the Trust Territory remaining within the responsibility of the Interior Department, the Department's administration is carried out by means of a governmental unit known as the Government of the Trust Territory of the Pacific Islands. Authority for the existence of this government is found in the Act of June 30, 1954 (68 Stat. 330), which provides in pertinent part that "until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct or authorize". Pursuant to Presidential directives contained in the Executive orders cited above, the Secretary of the Interior issued Order No. 2658 on August 29, 1951 (16 F.R. 9052), the purpose of which was "to delimit the extent and nature of the authority of the Government of the Trust Territory of the Pacific Islands".

Under this order, the chief executive of the Trust Territory Government is the High Commissioner, who is appointed by the President. The High Commissioner holds all executive authority, subject to the supervision and direction of the Secretary of the Interior. Legislative power is vested in him as well, and he is authorized by existing law (section 23 of the Code of the Trust Territory, confirmed by Secretarial Order No. 2658), to promulgate new laws for the Trust Territory and to change existing law. There exists a judiciary independent of the High Commissioner, the principal members of which are appointed by the Secretary of the Interior.

For your further information, this Department does not consider that the Government of the Trust Territory is, in the usual sense of the term, an agency of the United States. Despite its lack

of organic legislation, the Government of the Trust Territory has most of the attributes of a government: an executive, appointed by the President, who has legislative as well as executive authority; an independent judiciary; revenues which are locally collected, which are deposited in the local treasury, and which are expended under the authority of the laws of the Trust Territory; and Federal grants, which are mingled with local revenues, which become a part of the local treasury, and which are regarded as Trust Territory property. In addition, funds made available to the Trust Territory Government for administration (i.e., the Federal grants referred to above), are not subject to the limitations which apply to appropriations for the executive branch of the Federal Government, and most of its employees are not employees of the United States. On the basis of these factors, we consider that the Government of the Trust Territory is not an agency or instrumentality of the United States, as that term is generally employed in the laws of the United States.

For this reason, the claim of the Trust Territory Government against the Micronesia Metal and Equipment Company does not, in our judgment, constitute a claim of the United States; but in view of the direct relationship between such Government and this Department, we hope that you will be able to act on behalf of the Trust Territory Government in aiding in the satisfaction of its claim against the corporation.

With its letter of February 4 to you, the Navy Department enclosed a copy of the basic contract between the Trust Territory Government and Micronesia Metals (designated as Contract Number TT 17), and two amendments to it (TT 17A and TT 17B). The basic contract was entered into when the Interior Department was responsible for the entire Trust Territory, including the Northern Marianas. Two other amendments exist, copies of which are enclosed (a letter of March 12, 1953, and Contract No. TT 17C of December 15, 1953).

According to our most recent information from the High Commissioner, the corporation currently has debts in the Interior portion of the Trust Territory totaling \$110,000. Of this sum, \$86,000 represents past due royalties under the contract referred to above, and \$5,000 represents "current" royalties. Additionally, \$6,000 is owed in the Truk District and \$13,000 in Palau. With respect to these two last figures, we do not know whether the sums are owed to laborers in those Districts, to local trading companies (private stock companies organized by Trust Territory natives), or to others. We have requested a detailed breakdown of these figures and will transmit it to you when it is received.

The High Commissioner also advises us that the corporation has, by way of assets in the Trust Territory, the following: scrap prepared for shipment valued at \$150,000 (such value being based upon the current scrap price of \$50 per long ton, CIF Japan); and equipment the estimated value of which is \$10,000. The estimated cost of shipping such scrap to Japan and marketing it is \$45,000. Under these approximations, it appears that corporate assets in the Interior portion of the Trust Territory total \$115,000. We have also requested further data on these figures.

We have directed the High Commissioner to take all steps necessary to prevent the corporation from removing the foregoing assets from the area. We have also requested data concerning other corporations which have been created by officers of Micronesia Metal. We know that some such corporations exist.

We understand that Mr. Bruce Aitchison, the President of the corporation, and apparently its sole stockholder, has agreed to enter into a stipulation admitting his indebtedness in the Saipan District. We further understand that he has indicated a willingness to do so with respect to the Interior portion of the Trust Territory as well. We would be grateful if you would prepare and have executed such a stipulation on behalf of the Government of the Trust Territory, if Mr. Aitchison will agree to the following conditions:

- (a) that he will not attempt to remove any corporate assets from the Trust Territory;
- (b) that all corporate assets in the Trust Territory are assigned by him to the Trust Territory Government for appropriate distribution among his creditors;
- (c) that his execution of the stipulation will not preclude any action by the Government of the Trust Territory to protect its rights in his assets;
- (d) that corporation records will be available for inspection by auditors of the Government of the Trust Territory;
- (e) that the stipulation will relate to all of the corporation's debts to persons and companies in the Trust Territory, in addition to debts to the Trust Territory Government; and

(f) that the amount stipulated will be without prejudice to such greater amount as may subsequently be determined to be due.

We note that in its letter to you, the Navy Department suggests that it would be desirable if Mr. Aitchison were required to answer under oath questions concerning his financial assets and his ability to discharge the indebtedness. We fully concur, and urge that before the entry of the stipulation, Mr. Aitchison's deposition, both as an individual and as an officer of the corporation, be taken as if on cross examination.

We shall communicate with you further when we have received more detailed information from the Trust Territory. Should you have any questions concerning the foregoing, please let me know.

Sincerely yours,

(s/ George W. Abbott

Solicitor

Enclosures