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the first

CONSTITUTIONAL CONVENTION

of the territory of Guam

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Dear

The time has come for the people of Guam to begin looking at their island in a new light. With increasing expressions of good faith, the United States Congress has granted to Guam more and more sovereignty, culminating last year in the passage of the Elective Governorship Act.

If these steps are an indication, the future of Guam most certainly promises increased autonomy. How is this autonomy to be shaped? What political status will Guam assume? Now is the time to begin thinking about these questions so that preparations may be made and the legal groundwork may be laid for taking on a new role.

The Political Status Committee of the First Constitutional Convention has been studying alternative courses of action which Guam might take in the future and has proposed five such alternatives: incorporating the territory, becoming a commonwealth, becoming a state, affiliating with another nation, or assuming complete independence.

The consequences of each of these will be discussed at a public hearing to be held in your village. The committee members hope that you will come to express your thoughts on the future of our island. The hearing will

COMMENTS ON BILL NO. 335, A BILL TO ESTABLISH
THE OFFICE OF OMBUDSMAN FOR THE GOVERNMENT OF GUAM

Section 1400. Short title.

The word "Ombudsman" is a Swedish word which has broad meaning and embraces almost any kind of deputy or agent. For the purpose of this bill, he could be designated as an agent of the Guam Legislature whose main responsibility is to serve as a "grievance man". As such, he receives complaints from the citizens of Guam concerning grievances which they have against any administrative action.

Section 1401. Definitions.

The Ombudsman's jurisdiction under Section 1405 extends to the investigation of the administrative acts of any agency. Since "administrative agency" and "agency" are often referred to in the bill, they are defined in this section for convenience. Six governmental entities have been omitted so that it will encompass only the territory's administrative agencies. Giving the Ombudsman jurisdiction over courts serves no useful purpose and might interfere with the functioning of the legal system. The Governor and the Legislature are excluded to avoid the intrusion of the Ombudsman into political process. Also, since he will need the cooperation of both to perform his duties, investigating them might prejudice his working relationship with them. Federal entities are excluded for obvious reasons.

The definition of "agency" includes personnel of the agencies acting or purporting to act in the exercise of their official duties. The purpose is to ensure that the Ombudsman does not investigate such personnel even in cases of grave misconduct, unless official duties are involved.

The definition of "administrative act" covers an entire spectrum of agency activity. It includes not only agency

process of formulating legislation, after an investigation he can recommend that a statute on which an administrative act is based be changed.

Section 1402. Ombudsman -- office establishment, appointment, tenure, removal, qualification, vacancy.

This section provides for the appointment of an Ombudsman by a majority of the members of the legislature. This is recommended since the Ombudsman will be investigating executive agencies.

This section also provides that no person may serve as an Ombudsman if he has been a member of the legislature at any time during the two preceding years. This deters from using the office as a payment for past political favors and detaches the office from politics to that extent. It also makes the Ombudsman ineligible to serve if he is a candidate for, or holds, any other office. The prohibition to engage in any other occupation for reward of profit does not prohibit the Ombudsman from engaging in sporadic activities such as writing articles and giving lectures as long as if they do not conflict with the duties of his office. A six-year term gives sufficient time for the Ombudsman to become acquainted with the office, provides a measure of independence from politics and is long enough to interest qualified persons in the office. A three-year term limitation prevents an individual from becoming so identified with the office that it will not be able to function effectively after his departure.

A two-thirds vote of the members of the legislature could remove, or suspend, the Ombudsman but only for neglect of duty, misconduct or disability.

This section also provides for filling a vacancy should it exist. It does not automatically provide that his assistant will succeed him.

Section 1403. Assistance, staff, delegation.

The Ombudsman is authorized to appoint his staff without the intrusion of any agency or government in order to insure the independence of his office. Any such appointment, however, is always subject to the limits of available appropriations. This section also allows the Ombudsman to delegate any of his duties except his duties to make recommendations to the agency, the Governor, the Legislature, or the public. These are the Ombudsman's only means for securing changes in administrative acts, and this section assures that such reports will be his responsibility.

Section 1404. Procedure.

This section gives the Ombudsman broad discretion in regulating his office and complaint procedures, although he may not charge a fee. One of the purposes of the Ombudsman is to aid people who through ignorance or limited finances cannot seek their own redress through the agency. This objective will be defeated by permitting fees, since even a nominal amount discourages people from filing bonafide complaints.

Section 1405. Jurisdiction.

This section specifies that the jurisdiction of the Ombudsman extends to the investigation of all administrative acts of agencies. Section 1401 should be consulted for definitions of those terms. Section 1405 also allows the Ombudsman to investigate even though the agency action is deemed final by statute or law. However, as will be seen in the discussion of Section 1413, the Ombudsman has no power to revise any agency action or impose any sanction on any agency that disagrees with his recommendations. He can only send his opinion, along with the agency's reply, to the Governor or the Legislature and make it public.

Section 1406. Investigation of complaints.

In general, the Ombudsman has the duty to investigate any complaint which discloses the existence of an appropriate

are other complaints more worthy of his attention. He may also decline to investigate if another remedy is available to the complainant. Since the number of complaints the Ombudsman would receive is an unknown quantity, such a provision is necessary to enable him to make most effective use of his powers. They in no way preclude from investigating any agency under his jurisdiction. Often the Ombudsman will prefer to investigate in a case where the statute permits him to refuse. For instance, if he believes that recourse to a legal remedy would be futile or overly burdensome he might wish to render assistance. He might also want to proceed on a public-spirited citizen who discloses administrative inefficiency, even though the complainant is not personally injured. These examples are not exhaustive. However, in the vast majority of cases, the Ombudsman can be expected to rely on the standards implicit in this section.

This section also empowers the Ombudsman to investigate on his own motion. However, since he must have reasons to believe an agency action comes within Section 1408, he does not have power to conduct a "fishing expedition" through agency files. An implied corollary of this power is the right of the Ombudsman to continue on his own motion if he discovers another agency action not mentioned in the complaint which he believes justifies investigation.

Section 1407. Notices to complainant and agency.

This section requires the Ombudsman to inform the complainant when he decides whether or not to investigate. With one limited exception, this requires that notifications of a decision not to investigate be accompanied by a statement of the reason for the Ombudsman's decision. In cases where the Ombudsman declines to investigate because the complain shows on its face that the agency's action was proper, this explanation could lead to better relations between agency and the complainant in any future dealings between them. However, there may be cases when an explanation will serve no useful purpose. In such cases, the Ombudsman is authorized to omit the reasons for his decision. However, the language of the bill is designed to inform the Ombudsman that his duty to give