

A F a n a
Guam, USA

Dear Sirs,

The Guam Chamber of Commerce is said to have established, in 1967, a local citizens commission to study the feasibility of Guam changing its status from a territory to a commonwealth. For research purposes we should like to learn the recommendations or proposals made by said commission.

Thanking you in anticipation,
sincerely, yours


(Dr. Heinz Kloss)

P R O P O S I T I O N

Introduced by:

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A PROPOSITION TO REPEAL AND REENACT THE
FOURTH PARAGRAPH OF SECTION 6 OF THE ORGANIC
ACT OF GUAM RELATIVE TO THE REQUIREMENTS AND
QUALIFICATIONS FOR ELECTION TO THE OFFICE OF
GOVERNOR OR LIEUTENANT GOVERNOR.

1 BE IT PROPOSED BY THE FIRST CONSTITUTIONAL CONVENTION
2 OF THE TERRITORY OF GUAM:

3 Section 1. The fourth¹ paragraph of Section 6 of the
4 Organic Act of Guam is hereby repealed and reenacted to read
5 as follows:

6 "No person shall be eligible for election to the
7 office of Governor or Lieutenant Governor unless he is an
8 eligible voter and has been a resident of Guam and a citizen
9 of the United States for twenty consecutive years immediately
10 preceding such election and said person will be, at the time
11 of taking office, at least thirty ^{five} years of age. The
12 Governor or Lieutenant Governor shall maintain his official
13 residence in Guam during his incumbency."

The procedure here proposed is derived from California Government Code 11325. In all probability, the need to enforce subpoenas will not in fact arise. Information already in the possession of an administrative agency will be freely accessible to the Ombudsman. Information in a complainant's possession will of course be readily supplied. Occasions on which data must be dragged from reluctant third parties are not likely to occur.

Section 19. Obstruction. A person who willfully obstructs or hinders the proper exercise of the Ombudsman's functions, or who willfully misleads or attempts to mislead the Ombudsman in his inquiries, shall be fined not more than \$1,000.

COMMENT. If the enactment be by a municipality, counsel should determine whether the local legislature has power under state law to create an offence punishable by fine. Counsel must determine in each state whether necessity exists for indicating the court in which proceedings are to be brought, and upon whose initiative.

Section 20. Relation to other laws. The provisions of this Act are in addition to and do not in any manner limit or affect the provisions of any other enactment under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision in any enactment to the effect that any administrative action shall be final or unappealable.

Section 21. Appropriation. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

COMMENT. The appropriations section must be shaped in accord with local practice and fiscal regulations. In some jurisdictions it need not be included in an organic statute like the one now proposed. In other jurisdictions a specific amount may have to be shown as the appropriation.

If inclusion of an appropriation section is not absolutely necessary, its omission is recommended.

Section 22. Effective date. This Act shall take effect immediately.



Appendix:

Annotated Model Ombudsman Statute

This paper is exempted from the copyright regulations applied to the other chapters in the volume. No permission is necessary for reproducing all or parts of the statute. However, it is requested that users notify The American Assembly of their intention.

What follows is a "model" bill to establish the ombudsman system in American states and cities. The bill can be adapted to the needs of various states with little change. It is also suitable as a local enactment by a municipality that has constitutional or statutory authority to create its own governmental instrumentalities. The extent of allowable home rule must, of course, be considered closely by local counsel.

This draft builds upon foundations others have laid. Ralph Nader drafted the first ombudsman bill for consideration by an American legislature; it was introduced in Connecticut in 1963. The first model bill was creditably prepared by the Harvard Student Legislative Re-

WALTER GELHORN, one of the nation's leading authorities on the Ombudsman, is Betts Professor of Law at Columbia University. He has had extensive experience in public administration, having served the Justice and Interior Departments, the Social Security Administration, the Office of Price Administration, and the War Labor Board, among others. Professor Gellhorn has written numerous volumes on law and administration, the most recent being When Americans Complain, a study of governmental grievance procedures, and Ombudsmen and Others, a work on citizens' protectors in nine countries.

man S. William Green to create an office of public redress in the State of New York.

A BILL

To establish the Office of Ombudsman

in [Enactment clause in locally appropriate form]

Section 1. *Short title.* This Act may be cited as The [insert name of state, city, or other entity] Ombudsman Act.

COMMENT. The "foreign-sounding word" *ombudsman* has gained wide usage in America and many other countries. Its distinctiveness makes it preferable to more usual official titles such as "commissioner" or "director." The position, new in American experience, deserves a new identification.

Section 2. *Definitions.* As used in this Act, the term (a) "Administrative agency" means any department or other governmental unit, any official, or any employee of [state, city, or other entity involved] acting or purporting to act by reason of connection with [state, city, or other entity]; but it does not include (1) any court or judge or appurtenant judicial staff, (2) the members, committees, or staffs of the [e.g., City Council] or (3) the [insert name of the legislative body, executive] or his personal staff.

COMMENT. Traditional immunization of courts against extra-judicial scrutiny argues against permitting an American ombudsman to inquire into a judge's behavior. Legislators and the chief executive are directly answerable to the electorate; their conduct in office tends in any event to be conspicuous and subject to continuous political examination. Other elected officials (such as, in some jurisdictions, members of regulatory bodies, law enforcement officials, and educational administrators) are less immediately involved in policy making and are engaged chiefly in administrative matters, indistinguishable from those performed by non-elected officials generally. Their inclusion within the reach of the Ombudsman Act therefore seems desirable.

¹ "A State Statute to Create the Office of Ombudsman," *Harvard Journal of Legislation*, 2 (June, 1963), 213-24, reprinted as an appendix to the March 7, 1964, Hearing on Ombudsman of the United States Senate Judiciary Subcommittee on Administrative Practice and Procedure, at pp. 325-61.