

November 14, 1977

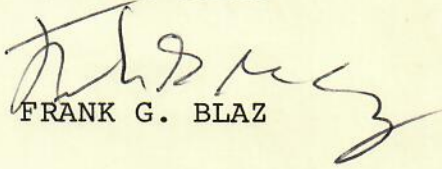
MEMORANDUM

TO: Chairman, Committee on Finance and Taxation

FROM: Chief Fiscal Officer

SUBJECT: Transmittal of Analysis of the Draft Constitution

Attached for your information is an analysis of amendments to the proposed final draft of the Constitution of Guam. Relating to the Committee on Finance and Taxation

  
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ANALYSIS OF AMENDMENTS TO THE  
PROPOSED FINAL DRAFT OF THE CONSTITUTION OF GUAM  
RELATING TO THE  
COMMITTEE ON FINANCE & TAXATION

I. Introduction.

On September 14, 1977, the Guam Constitution Convention (ConCon) published a proposed draft of the Constitution for the Territory of Guam. In a letter to ConCon President Carl Guitierrez, dated September 29, 1977, Senator Tanaka responded to the draft proposal with comments and specific objections directed to Articles III, IV, and IX. Following a round of public hearings, and some amending, the convention was reconvened and the Purpose Final Draft was passed on October 31, 1977.

II. Analysis.

A. Submittal of budget by Executive Branch. The proposed draft effectively voids our major objections to Article IV, Executive Branch, Section 4.f:

1. Budget submittal date. Section 4.f. requires the Governor to submit the budget at a "date set by law", rather than March 1, as originally proposed. Assuming that the Legislature sets an appropriate date (the third Monday in January, as we will recommend), this change is well regarded.

2. Type of budget to be submitted. Also in Section 4.f., the Governor is required to submit a budget for the "succeeding two fiscal years," although no further reference is made to that second fiscal year budget. While there is no apparent rationale for this requirement in the Constitution, we have no objection to it and, in fact, we may ultimately gain considerably by having the second year forecast.

3. Balanced Budget. Despite our urging to the contrary, the proposed final draft contains no language to require the Governor to submit a budget with expenditures not exceeding expected revenues. Being a primary base for good government, such a "balanced" budget would be an appropriate inclusion in the constitution, and its absence is questionable.

4. Consequence of failure to enact a budget before the start of the fiscal year. Our objection to the original statement was well received and the new Section 4.f. now adds an additional phrase to the effect that if the annual budget is not approved by the first day of the fiscal year then governmental operation appropriations will be at the previous year's level "until a new budget is enacted." This additional phrase is reasonable and in accordance with accepted budgeting practices. No further objection is realized.

B. Taxation. Despite our strong objections, taxation was left as a separate article (Article X) and not included under Article V, Legislative Branch. This distinction is maintained in contradiction to the language of Article X that specifically empowers the Legislative Branch with tax levy authority. Article X was, however, extensively modified and many of our suggestions were incorporated:

1. Revenue by taxation. The original draft was interpreted to limit the Legislature to taxation as the sole method of generating revenue ("...the Legislature has the exclusive power to raise revenue by taxation..."). That language is deleted in the final draft and although the present language is structured in the negative ("may not") form, the resulting interpretation appears substantially less restrictive.

2. Public purpose. A noteworthy amendment to Section 1, Tax authority, is the statement: "A tax may be levied or an appropriation of public money made only for a public purpose."

3. Tax laws and exemptions. The original Section 2 of this Article was overly specific in stating that the "Legislature shall enact an income tax identical to the income tax laws in force in the United States applicable to Guam..." the proposed final draft did attempt to achieve a more flexible statement-but in the process the entire section became confused, possibly contradictory, and potentially dangerous. Section 2 reads:

"Laws shall be enacted to administer and enforce the income tax, including tax exemptions, and other related federal laws applicable to Guam."

Since Section 1 specifically empowers the Legislature to levy "all taxes," there is no reason to include another section for any particular tax. Also, given the power to enact laws to levy a tax, there is an inherent capacity to enact an exemption to that same tax, or even to repeal it. Section 2 therefore, effectively states only that "Laws shall be enacted to administer and enforce... federal [tax] laws applicable to Guam," a statement which, if even necessary, could be included in Section 1.

4. Earmarking tax revenues. The final draft retains a restriction that tax revenues may be earmarked by law for public purposes, except income tax revenues. This Section 3 of the final draft contains no further explanatory language.

5. Public debt ceiling. Section 4 (Public debt limitation) of the proposed final draft must not be allowed to stand in its present form. Our comments and objections to this section were effectively ignored and the final statement remains overly specific and fails to relate to previous provisions of the Constitution. The final draft not only retains a percentage of the previous fiscal year's revenues as a ceiling, but also increases the percentage from 25% to 50% of the

"total revenue collected in the previous fiscal year." This, of course, totally ignores possible revenue fluctuations due to our relatively volatile economy and the fact that the previous Section 3 allowed tax revenue (with no limit, except income tax revenue) to be earmarked. Referring to our comments of September 29, 1977:

"There are two basic considerations which must be weighed in placing a debt-ceiling on the government. Both must be given due consideration; the first being the long-term capital expansion needs of the government and the second being the repayment capability of the government. Using the previous year's revenues as the base has several deficiencies. Using it as a measure of repayment capability is deceiving. Revenues from year to year could fluctuate so that a debt-service calculated in a "high" revenue year may not be able to be met during a "low" revenue year or otherwise force a curtailment of current services. Repayment capacity is best measured by the value of property and income which may have taxes levied against them in future years. Placing a debt-ceiling using the previous years' (or any year's) revenues would leave the government with insufficient borrowing powers and render it incapable of funding its long-term capital expansion needs.

### III. Conclusion.

Although the proposed final draft successfully incorporates many of our suggestions, the taxation article remains a problem area that should be closely monitored, and challenged when possible, as the Constitution progresses towards ratification.