

the first

CONSTITUTIONAL CONVENTION

of the territory of Guam

Postal address: Drawer I, Agana, Guam 96910

Convention hall: Robert F. Kennedy Memorial
Library Bldg., Univ. of Guam

Convention offices: Second Floor, Perez Bros.
Bldg., East Agana, Guam

Telephone number: 772-8014
772-8415

Officers

Antonio M. Palomo
President
Jose C. Quintanilla
Vice President
Betty S. Guerrero
Secretary
Jose R. Rivera
Treasurer
Joe T. San Agustin
Asst. Vice President
David S. Terlaje
Asst. Vice President
Howard G. Trapp
Asst. Vice President

Delegates

Agana
Mendiola, Tomas F.
Trapp, Howard G.
Agana Heights
Calvo, Rufo L.
Terlaje, David S.
Agat
Quintanilla, Jose C.
Toves, Charles F.
Nededog, Joe
Asan-Maina
Santos, Jose B.
Angoco, Vicente M.
Barrigada
Manibusan, Pedro A.E.
Blaz, Joaquin G.
Camacho, Jesus S.
Cepeda, Jose L.
Chalan-Pago-Ordot
Quitugua, Franklin J.
Lujan, Pilar C.
Dededo
San Agustin, Joe T.
Guerrero, Betty S.
Untalan, Enrique L.G.
Garrido, Jose M.
Inarajan
San Nicolas, Jose P.
Merrill, Malcolm H., Jr.
Mangilao
Siguenza, Lorenzo T.
Flores, William A.
Merizo
Barcinas, Jose T.
Mongmong-Toto-Maite
Nelson, Theodore
Rivera, Jose R.
Piti
Tuncap, Juan M.
Santa Rita
Borja, Gregorio M.
Cruz, Joseph B.
Sinajana
Santos, Francisco R.
Manibusan, Joaquin V.E.
Lujan, Frank G.
Talofofo
Lizama, Jose S.
Brooks, James R.
Tamuning
Palomo, Antonio M.
Sanchez, Adrian C.
Leon Guerrero, Robert E.
Ada, Joseph F.
Umatac
Aguon, Tomas T.
Yigo
Calvo, Antonio A.
Blas, Juan G.
Yona
Leon Guerrero, Lorenzo C.
Aguon, Francisco B.

David D.L. Flores
Executive Director

IN ADDRESS TO DELEGATES

Senator Calls for Curbing Guam Government Powers

Sen. Richard F. Taitano, author of the law which created the First Constitutional Convention and former Director of the Territories, addressed the delegates of the body recently and called for curbing the powers of the Governor of Guam, especially as the item vetoes of money bills, and elimination of the Government Comptroller provisions of the Organic Act as amended.

Sen. Taitano also generally endorsed the idea of a "code of ethics" for members of the Legislature, and he suggested that a legal way could be found, under the "One-Man-One-Vote" formula, to limit the basis for apportionment to "bona fide" residents — by which he was understood to mean more or less permanent residents of Guam and not military men on temporary assignment here.

(One complication of compliance with the rule that districts must be based on the census population, rather than the number of eligible voters, is that the military bases on Guam, in which there are virtually no voters — since a serviceman stationed here would lose substantial sums in allowances if he qualified as a voter — would necessarily get a substantial number of seats in the legislature.

The text of Sen. Taitano's remarks:

"When your legislature enacted the measure which authorized the calling of this constitutional convention, it did so with the conviction that the citizens here in our territory are prepared to shape their own destiny, that is, as citizens of the greatest democracy in the world today, the people of Guam could and should have a most meaningful role in the shaping of their constitution. We as free people are and should be active participants of that social compact which is "of the people, by the people, and for the people." And if I may make a general observation, the work of this Convention thus far has fully borne out the verities of the elements of this compact. You are to be commended for the progress and quality of your efforts and your sincerity.

"Too often during my three year assignment in Washington I heard remarks to the effect that local politicians had axes to grind whenever proposals were submitted for the consideration of the Federal Establishment. That these proposals in the main are the sincere aspirations of a growing territory was of secondary importance. Since, however, the advocates of these proposals were our first line politicians,

and since the capital of the nation is a continent and an ocean apart from our territory, it is perhaps not unreasonable that such an attitude did develop. I am confident that the end product of this convention will be a direct and primary manifestation of our community's aspirations—the aspirations of a free people — and will go far toward counteracting the further growth of such a suspicious attitude.

"In the present era of non-colonialism, the calling of this convention is both appropriate and opportune. We could be of great service to our country by providing a first-hand evidence that Guam is not a colony as our critics are wont to charge. Our constitution would be of our own design and desire. On the other hand, I am mindful that under the present rules, the ultimate decision on this matter rests in the hands of those who are not of our community.

"I have been made to understand that it is your wish to hear my views as to which parts of our Organic Act should bear your close study. To detail these would, as you have found out, take several sessions of this convention. With your kind indulgence, however, I would suggest the following areas for your deliberation:

(a) The power and authority of the Governor: The power of the Governor under the present Organic Act will delight any person who is a strong executive. While in general this may be desirable for a fast developing community, I submit that certain provisions of the Organic Act need toning down somewhat. For example, the power of the Governor "... to issue executive orders and regulations not in conflict with any applicable law" could be somewhat too broad for comfort. I submit that this is quite different from the power "to issue executive orders and regulations pursuant to applicable laws." At the risk of being facetious, this proposition, in effect, says that in the absence of a law to the contrary, the Governor is empowered to do anything via the route of executive orders or regulations, or both.

In the same vein, the Governor's reorganization power under Section 7 (c) could negate any legislative enactment on the subject. These two provisions—part of Section 6 and Section 7 (c) give the Governor too much legislative power..

The Governor's authority to portion—or item—veto money measures under Section 19 deserves a re-evaluation. This, in

my humble opinion, tends to reverse the doctrine that the "Executive proposes and the Legislature disposes". As a corollary, it encourages legislative irresponsible appropriation actions.

To those of you who are education-oriented, you may want to examine the extent of the Governor's authority under Section 29 (b). He is given sole responsibility for the public educational system including but not limited to the establishment, maintenance, and operations of public schools. No doubt, you are already familiar with this plenary power and its possible implications.

(b) Power and authority of the Legislature: Given our Bill of Rights and the first sentence of Section 11 of the Organic Act, one could easily assume that we are on sound ground insofar as the power of the Legislature is concerned. I suspect, however, that though you have found few substantive restrictions on the exercise of normal legislative powers, you do have misgivings on the conduct of the legislative processes and on the conduct of individual legislators.

On the former, the uniformity clause on the power to tax does deserve a re-examination. This requirement for uniformity goes back to the days when property ownership was the principal voter qualification. As an instrument for the achievement of social justice and development, the uniformity principle has extremely little virtue, particularly when it is narrowly constructed.

The ten per centum ceiling on public debts has been outdated. Such a ceiling should be tied on to the community's ability to finance the servicing of public debts. A prudent businessman's approach is more appropriate than the existing arbitrary ceiling, particularly when the government's real estate tax revenue is rather small. Taxable realties on the island constitute, I guess, not more than a third of the island total.

On the latter, let me point out that our statutes now require that no bills may be enacted without eleven affirmative votes and that every bill must be given a public hearing before it may be enacted except under certain emergency conditions. But to some of us, statutory enactments do not provide a constitutional guarantee against rash actions and may see the desirability of constitutional provisions for these and other procedural requirements which would en-

sure the democratic handling of the legislative business. With these, then, you may want to consider the appropriateness of requiring several readings of any measure, the time element between such readings, and the requirement for any measure to include single legislative subject. This last one would tend to off-set the legislative propensity to include non-related riders to measures.

I think that consideration should also be given to the timely publication and dissemination of the legislative journal together with a minimum requirement for the contents of that journal.

It delights me to know that as part of your "right to know" approach, the imposition of code of ethics has been discussed by one of your working committees. General provision along the line of Section 15 of the Organic Act may indeed be in order. Objections to this proposal conjures a divine-right-of kings vision.

No doubt, you have discussed quite extensively the apportionment formula for legislative districts. Personally, I believe that such an apportionment formula should be based on the Federal population census of bona fide residents. Section 10 (e) of the Organic should be so clarified.

(c) The judiciary: As regards the courts of Guam—excluding the District Court of Guam—I commend to you the Missouri Plan, or something similar to it, for the selection of local judges. I do have an axe to grind here for I was the author of the short-lived reform plan adopted by the Ninth legislature and abolished by the Tenth.

As regards the District Court of Guam, I would defer my major changes until we are ready to change the political status of the territory—to a capital T, to a commonwealth, or to a state.

(d) The Government Comptroller: There is no need to dwell too long on this unwelcome pet of mine except to associate myself with those of you who still believe in its elimination. You may, however, want to review the provisions of Sub-sections 9-A (d) and (e). These to me are vestigial remains which perhaps ought to be buried.

In conclusion, let me say that I look forward to receiving a copy of your final report. Thank you again."

Comptrollers Office Wins

Approval From Residents

The existence of the office of the Federal Comptroller was favored by some residents of Chalan Pago and Ordot Wednesday night during the public hearing held by the Executive Council of the Constitutional Convention in that district.

The delegates of the Convention, after hearing the Comptroller's presence assailed time after time at hearings, listened to a different point of view expressed by Marvin Zamorra, Florencio T. Ramirez, Jr. and Jesus Santos.

Zamorra stated, "I believe that the Government of Guam needs an audit system of some sort which is not answerable to the government itself...50% of our budget is made up of federal funds, so I don't see why the U.S. Government shouldn't have its own auditor here. However, I feel that he should be paid with federal--not with local--funds."

Ramirez stated that he was in favor of the comptroller because of the federal money spent on Guam. He felt that Guam should be accountable for that money to the federal government.

Santos expressed his concern that the federal government may tend to limit the amount of money coming to Guam if there is no method of control over the fate of that money here, as vested in the office of the comptroller.

Delegate Franklin Quitugua asked Santos if he felt that the Government of Guam's auditing branch and the private firm which audits the funds each year provide sufficient protection. Santos replied that internal auditors were not primarily concerned with auditing the books but with establishing methods and practices of procurement and payment. "Also," he said, "the staff is not large enough to spread out and audit every department as can the comptroller."

With regard to the private au-

ditig firm he said, "Many of their recommendations in the past have been ignored. We are spending a great deal of money for nothing as long as their recommendations are not carried out."

The residents of Ordot-Chalan Pago who spoke on gubernatorial qualifications had contributions to make which were, once again, significantly different from those made in other villages.

A viewpoint stressing equality was expressed by Marvin Zamorra, who stated that he was opposed to those who had proposed that the Governor must be born on Guam. He regarded this as a form of discrimination.

Jesus Santos recommended a residency requirement of five years for off-islanders who wish to run for the office of Governor, while Lorenzo Ramirez suggested only six months. These are in contrast to requests heard in other villages for residency requirements of eight, ten, and fifteen years.

Other statements made effecting the area of the Convention's Gubernatorial Powers Committee were these: (a) The tenure of the department heads should expire at the same time as the Governor's term.

(b) The Governor's power is too great: "He has more power than the governor of any state in the union," said Florencio Ramirez, Jr.

(c) The Governor should prescribe the duties of the Lieutenant Governor.

(d) The Governor should make a financial disclosure to the people of Guam.

(e) In the absence of the Governor and Lieutenant Governor, the Speaker of the Legislature should not become Acting Governor. Both Florencio T. Ramirez, Jr. and Marvin Zamorra stated that the three branches of the government--the legislature, the executive, and the judiciary--

should be kept separate from each other.

(f) Ignacio Charfauros said that the Governor's salary should be determined by the Legislature, and that (g) Guamanian students studying abroad and those in the military should be allowed to vote for the Governor by absentee ballot.

When the subject of taxes was discussed, Jesus Santos told the delegates that if the political status of Guam were to change, the people may be required to pay federal income tax and that it

would be necessary to establish local taxes--- perhaps a local income tax --to support the island's economy.

Zamorra added that he felt a referendum should be required before the government instituted new taxes. He also complained that the taxes are not being "uniformly provided," as is specified in the Organic Act, and he cited the instances of tax rebates given to large hotels on Guam as an example.

Public aid to private schools was opposed by Santos and Zamorra. Santos said, "We don't have ample funds to provide public education with the necessary facilities. We should first clean our own back yard before we tell other people to do likewise." He emphasized that the public schools must be properly maintained before private schools should ever be given money.

Zamorra agreed saying, "Church and state should be kept separate...Direct aid to private schools is unconstitutional."