

US argues: 'Constitution has limited application on Guam'

By Mar-Vic Cagurangan
For Variety

THE U.S. Constitution has limited application on unincorporated territories such as Guam, according to the U.S. government, citing Supreme Court precedent rulings that interpreted the constitutional provision on territories.

The limited applicability of the Constitution on Guam was among the arguments raised by Principal Deputy Assistant Attorney General Stuart F. Delery in seeking the dismissal of the lawsuit filed by former employee Guam Public Defender Dustin O'Brien in a New York federal court.

Now a New York resident, O'Brien has challenged the validity of the Organic Act and the local governor's authority to collect taxes from U.S. citizens residing on Guam in a lawsuit that tackled multilayered issues.

Misplaced theories



Principal Deputy Assistant Attorney General Stuart F. Delery, in seeking the dismissal of the lawsuit filed by former employee Guam Public Defender Dustin O'Brien in a New York federal court, said the U.S. Constitution has limited application on unincorporated territories such as Guam. DOJ photo

In seeking the dismissal of the lawsuit, Delery said O'Brien relied largely on "misplaced or invalid constitutional theories."

Delery argued that "under the Territories Clause of the Constitution, Congress may treat Guam differently from

states so long as there is a rational basis for its actions."

"Because binding Supreme Court precedent establishes that the Constitution has limited application in unincorporated territories such as Guam, [O'Brien] has not and cannot allege that the structural constitutional provisions he raises have been extended in the Organic Act of Guam," Delery said.

New Yorker

Noting that O'Brien lived on Guam for 292 days in 2011, Delery also argued that the plaintiff lacks a "prudential standing to raise his structural claims regarding the constitutional rights of Guam residents," considering he is no longer a resident of Guam.

"[O'Brien] simply has not alleged that he has been or is likely to be injured in any way by the inability to exercise a constitutional right as a citizen and resident of New

York," Delery said.

Moot

O'Brien's lawsuit stemmed from his tax refund claim while he was a Guam resident.

Delery said the lawsuit is moot because O'Brien has since received his tax refund in the amount of \$492.13 with interest.

"Furthermore, [O'Brien] states he is a permanent citizen and resident of New York, with no intention to return to and earn income on Guam," Delery said. "Accordingly, he is no longer subject to the authority that created the injury which gave rise to this suit in the first place, and there is no reasonable expectation that the alleged violation will recur."

Delery said O'Brien failed to explain "how, as a New York resident with no plans to return to Guam, an order invalidating the Organic Act of Guam would affect him in any legally cognizable way."

Mayors support bill to raise gaming tax



Sens. Christopher Duenas and Tony Morrison explain to the Mayors' Council of Guam that village bingo games in churches and senior citizen centers will not be affected by their legislation. Joy White / Variety

By Joy White
joy@mvguam.com
Variety News Staff

THE Mayors' Council of Guam yesterday expressed support for Sen. Christopher Duenas' bill that seeks to raise the gross receipt tax on gaming establishments from 4 percent to 20 percent.

At yesterday's meeting, the council voted in favor of the motion made by Piti Mayor Ben Gumataotao expressing support for Bill 19, which is being opposed by the Guam National Olympic Committee.


Council President and Agaña Humberto Miron Paul MacLennan and Councilor Robert Hoffman also expressed support for the bill.

but offering no program to train young athletes.


Along with Sen. Tony Morrison, Duenas met with the mayors to explain that charity and recreational bingo at senior citizen and community centers will not be affected by Bill 19.

The bill is aimed at licensed gaming facilities, Duenas said.

The funds to be raised from additional tax revenues would be used to improve sports facilities, Duenas told the mayors. Sinajana Mayor Robert Hoffman added tourism would also benefit from visiting sports teams who would likely visit more often if village and water sports facilities.



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Ray Tenorio
Lieutenant Governor

INVITATION FOR BID

IFB #GHURA 1-31-2013-AMP3

This ad is paid with HUD Funds by GHURA

Guam Housing and Urban Renewal Authority (GHURA) will receive sealed bids for the Modernization of Units at AMP 3 in Agat until 2:00 pm on Feb. 26, 2013 in the Board Room located at Main office in Sinajana. On Feb. 11, 2013 at 10:00 am, GHURA will conduct a pre-bid conference at GHURA office at GCIC, room 306 in Agana. Site visits will be arranged by GHURA staff after the pre-bid conference to anyone who desires an onsite visit. All interested bidders are encouraged to attend both the pre-bid conference and the site visit.

Copies of the bidding documents may be purchased by qualified contractors from the GHURA Main Office. A non-refundable deposit of \$55.00 is required for each set of bidding documents. Copies of the bid packet are available at the GHURA Procurement Office starting Jan. 31, 2013 between the hours of 8:00 a.m. and 12:00 p.m. and between 1:00 p.m. and 4:00 p.m. Monday through Friday except on holidays.

A Bid Guarantee in the amount of 5% of the total base bid must accompany each bid, which exceeds \$100,000. Bid guarantee shall be a Bid Bond secured by a surety company authorized to do business in Guam and listed in the latest Department of Treasury Circular 570 published in the Federal Register, or a permitted by state law a certified check, bank draft, or U.S. Government Bond at par Value. If bid security is not submitted with the bid, GHURA shall reject the bid. All Bid Guarantees must be made payable to GHURA. Personal checks will not be accepted. In addition, a Non-Collusive Affidavit must be supplied with each bid that exceeds \$10,000. GHURA reserves the right to waive irregularities and to reject any or all bids. Failure to submit a bid properly shall result in rejection of the bid.

For all contracts, which exceed \$100,000, the successful bidder will be required to furnish and pay for satisfactory Performance and Payment bonding for 100% of the contract price. Attention is called to the fact that not less than the minimum of salaries and wages as set forth in the specifications must be paid on this project. The Contractor must not discriminate on the basis of race, color, religion, gender, age, disability, or national origin in employment or the provision of services. Restriction Against Contractors Employing Convicted Sex Offenders from Working at Government of Guam Venues. (§5253 of Title 5 Guam Code Annotated).

The successful bidder will be required to the best possible and greatest extent feasible accomplish the following:

1. A goal of awarding at least 50 percent of the dollar value of construction contracts to Minority and/or Women Business Enterprises (MBE/WBE) or General Contractors with MBE/WBE participation.
2. In accordance with Section 3 of the U.S. Department of Housing and Urban Development Act of 1968, all construction contractors, to the maximum extent feasible, shall provide training, contracting, and employment opportunities to low income residents residing in GHURA.

GHURA intends to award a contract on the basis of the lowest and most responsible bid for the work described in the bid documents. No bid shall be withdrawn for a period of sixty (60) days subsequent to the opening of bids without the prior written consent of GHURA.

GHURA is an Equal Opportunity Employer
By: Michael J. Duenas
Procurement Director

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Our View

Educate

Decolonization commission has a big task ahead of it

This is a historic year for people living on Guam. It's significant because 1998 is the 100th anniversary of the U.S. flag flying over Guam.

This is also the year that some Guam voters will be asked to decide on the territory's future political status.

The Commission on Decolonization, which is required to come up with the education campaign to explain the choices, has been given a task it may not be able to accomplish before voters go to the polls this fall.

People have to talk about the proposal among themselves and ask and get answers to their questions.

before voters go to the polls this fall.

The same law that created the commission also set up the requirement for Chamorros to decide whether they want to pursue statehood, free association or independence.

These are complicated issues, and the commission has an enormous education job to do.

First, most people aren't sure why these political options are up for a vote. Island leaders have spent a decade and millions of dollars petitioning Congress for commonwealth status.

People will also want to know a lot more about the pros and cons of statehood, free association and independence before they'll feel comfortable voting for or against those options.

People have seen how the current relationship with the United States works. But they can only guess how other political options will affect the culture, the economy and their families.

An even bigger challenge for the commission will be getting people to agree on who will be allowed to vote on these choices.

Not everyone — including Chamorros and non-Chamorros — is convinced it's legal or even right to conduct a Chamorros-only vote.

The commission will have to contend with these challenges or people won't be satisfied.

The commission's plan to invite residents to join task forces to get the word out is a good starting point.

But education isn't just a quick media blitz. It takes thorough research and presentation of the full range of facts. And it must focus on issues that need discussion and resolution.

Education isn't a one-way street. People have to talk about the proposal among themselves and ask and get answers to their questions.

If we rush the process, people may not be given the time they need to make up their minds.

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Commission on Decolonization hasn't met

By Leo Babauta

Pacific Daily News

Seven months before it is scheduled to hold a Chamorro-only vote to determine the future political status of Guam, the Commission on Decolonization hasn't met once.

The law that formed the commission, passed by the Legislature in early 1997, mandates that the commission hold a plebiscite with this September's primary election.

Before the plebiscite, the commission has to conduct public information campaigns on three political status options: independence, statehood and free association with the United States.

It hasn't discussed any of those activities yet because a meeting hasn't been called by the commission's chairman, Gov. Carl Gutierrez.

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Gutierrez said he wanted to give Guam's interim status proposal, the 1987 Guam Commonwealth Act, a chance for closure before proceeding with the decolonization commission.

"I vetoed the decolonization commission bill last January because I wanted to give Congress a chance to address our commonwealth bill," Gutierrez said. "Although the congressional process is not complete, there are issues which the decolonization commission needs to address this year. I have directed staff to set up a meeting next month."

A meeting will probably be held in the next couple of weeks, said Leland Bettis, executive director of the Commission on Self-Determination.

LOCAL

Guam status vote may be postponed

By Hiroshi Hiyama

Pacific Daily News

The Chamorro-only vote to determine the future political status of Guam might be postponed because officials only now are preparing for the September plebiscite.

The Chamorro Registry Advisory Board held its first meeting last week to prepare for the plebiscite, which will ask voters whether they want independence, free association or statehood in regard to self-determination.

The board is responsible for registering all the names of Chamorros on and off-island, said Elizabeth Blas, deputy director of the Guam Election Commission. The commission provides administrative support to the advisory board, which was created at the end of 1996.

The board, which met last week despite a lack of funding, suggested a budget of \$300,000 and planned to request the amount from the Legislature. But Joseph Mesa, chairman of the Election Commission, said yesterday the budget seems too high for the project and suggested that the board review the budget.

Board members, who had been appointed by the governor last summer, said that they may not be able to prepare the registry in time for the plebiscite, Blas added.

Also before the election, the Commission on Decolonization must conduct a massive education campaign for Chamorro voters to discuss the benefits of the three options in the plebiscite, Mesa said.

However, the decolonization commission hasn't met once yet and it doesn't have an operational budget, said Leland Bettis, executive director Commission on Self-Determination. Bettis said many members of his commission are also on the decolonization commission.

"I am sure they will have a meeting soon," Bettis said.

"Doing (an) election is no problem with us," said Mesa of the Election Commission. He added that he isn't sure the other two groups could be ready for the plebiscite by September.

Pacific Daily News, Friday, February 13, 1998

Nieves M. Flores Memorial Library

Effect of New Caledonia status on Guam unclear

By Brad Wong

Pacific Daily News

The executive director of Guam's Commission on Decolonization welcomed France's decision to grant a Pacific colony greater freedom, but he said the effect on Guam's political status remains unclear.

On Tuesday, France signed an agreement permitting a 20-year transition toward independence for New Caledonia, the Associated Press reported.

The first vote of the process will take place in December. There will be a second vote on self-determination in 2018.

France gained control of the territory, about 1,115 miles east of Australia, in 1853.

Leland Bettis said yesterday that he had not read the accord but that it looks promising.

"At least France has provided a process for transition and self-determination in New Caledonia," he said.

But it's uncertain if the decision will spark any interest in Washington, D.C., he said.

On an international level, Bettis said there are standards and definitions that would give Guam greater freedom to pursue self-determina-

tion.

"The whole international process gives a moral framework for responsible parties to work," he said. "Again, one would have hoped that the United States would have addressed the moral obligations and would have done what's right."

He pointed to U.S. foreign policy and said the federal government has supported independence for many areas overseas. "But for their own, there seems to be a different standard," he said.

He added that U.S. representatives have told the United Nations that Guam is already self-governing.

Late last month, Puerto Rico's Gov. Pedro Rossello said the United States is "inconsistent" when it calls for more liberty in Cuba but not in his commonwealth.

Puerto Rico also is pushing for a vote for statehood, independence or continuing its commonwealth status.

In the Pacific, the United Nations considers New Caledonia, East Timor and Guam as colonies, according to Bettis.

Guam is one of 17 colonies worldwide, he said.

JUNE 2, 1998 (3)

Group scrutinizes applicants for task force vacancies

By Brad Wong

Pacific Daily News

The Commission on Decolonization's task force committee met yesterday to discuss five applicants who want to study and advocate for statehood and independence.

The commission is assembling three task forces to help educate the public about political status options for the island. The free association task force is already full with seven members.

Executive Director Leland Bettis said the names will be given to the committee at its meeting Friday.

Ron Aguon and Ron McNinch have applied to serve on the statehood task force. Tony Pangelinan, Patrick San Nicolas and Maria Teehan have applied to serve on the independence task force.

The statehood task force still needs one member.

Under the law, each group needs seven members and will help the public understand each option prior to the Chamorro self-determination plebiscite.

The vote is scheduled for September, but Bettis said the commission may need additional time to prepare.

TO VOLUNTEER

▲ For information about serving on the statehood task force, contact Vicky Cruz of the Commission on Decolonization at 472-2829.

At the meeting yesterday, commission member Chris Perez Howard said it's important that people who serve on a task force have a strong relationship with the island and its history and culture.

"If we don't have criteria for ties to Guam, we might as well recruit on the mainland for Chamorro self-determination," he said.

McNinch, who teaches public administration and legal studies at the University of Guam, said he understands the concerns over something he calls the "suitcase" attitude, where people live briefly on the island and then leave.

"That's a legitimate concern. But we've established ties," McNinch said, referring to his life on Guam.

U.N. can shine light on colonial injustice

I found the article, "Today is the 210th birthday of our lighthouse — the U.S. Constitution," by John S. Unpingco, chief judge of the U.S. District Court of Guam, to be informative, historically accurate and well written (PDN 9-17-99).

What was not voiced, was that the lighthouse does not shine equally for all U.S. citizens.

We, the colonized Chamorro people, are governed by the U.S. Organic Act for Guam wherein only certain provisions of the U.S. Constitution apply. Our political authority is subject to applicable U.S. laws. Of the constitutional provisions not applicable to us are the rights given by the 10th and 11th Amendments that limit federal authority and provide protection for our laws.

We also were not granted the 14th amendment protection of our U.S. citizenship. According to Robert F. Rogers, Ph.D., "In other words, the Congress could still legislatively remove U.S. citizenship from the descendants of present Guamanians (col-

onized Chamorro people) resident on the island.

"This could not happen to U.S. citizens in the 50 states and also not even to U.S. citizens residing in foreign nations and not to the new U.S. citizens in the CNMI where the 14th applies fully."

The unequal treatment of us as U.S. citizens is purposely done. By administrative control, the U.S. government can continue to occupy our lands.

Chamorros, Chamorus, Guamanians, indigenous people or people of Guam, whatever we are called or call ourselves, as the colonized we should be looking forward with anticipation for the decolonization vote under the light of the United Nations. It is

the only lighthouse we, the colonized have. It is our light to equality.

Should the 55 men who decided against revising America's Articles of Confederation in favor of an entirely new constitution be alive on Guam today, I doubt if they would opt to continue living under the Organic Act.

CHRIS PEREZ HOWARD
Chairman, OPI-R

Member, Decolonization Commission

PDN 9/25/99 9615515e1b

LOCAL BRIEFS

Decolonization group to select task force

A Commission on Decolonization committee met yesterday and is making progress on naming members to three task forces, its executive director said.

Leland Bettis said the Committee on Task Force Selection will meet again today at 10 a.m. at the Ricardo I. Bordaño Governor's complex.

The committee has interviewed 25 to 30 people for positions on the three task forces. He said the potential participants come from a variety of backgrounds, including business and education.

When formed, the groups will become advocates of statehood, free association or independence. The task forces will study the merits of each option and provide information to the public.

"The task forces are the heart of the advocacy process," Bettis said.

The groups also will issue economic impact reports, showing how each option might affect federal and private funding, he said.