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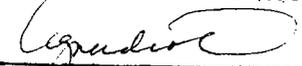
2 APR 14 1997

3 CNMI  
4 SUPREME COURT

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4/4/97

Clerk  
Superior Court  
Northern Marianas Islands

By:   
Deputy Clerk of Court

7 IN THE SUPERIOR COURT  
8 FOR THE  
9 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

9 JOSEPH S. INOS,  
10 Mayor of Rota in his official capacity,  
11 for himself and on behalf of the People of Rota, )

11 Plaintiff, )

12 v. )

13 FROILAN C. TENORIO,  
14 Governor of the Commonwealth of the  
15 Northern Mariana Islands, et al. )

15 Defendants. )

Civil Action No. 94-1289

**ORDER GRANTING GOVERNOR'S  
MOTION FOR SUMMARY JUDGMENT  
ON THE REMAINDER OF COUNT FIVE**

16 At the close of the May 2, 1996 hearing, and at the request of both parties, the Court agreed  
17 to review its determination of Count Five of the Mayor's Fourth Amended Complaint, and to render  
18 a summary judgment determination on any portion thereof not previously addressed in this case. After  
19 a brief recount of the rather complicated history of Count Five, the Court informed the parties that it had  
20 yet to decide whether the Governor's Directive 164 issued on July 12, 1995, constituted a proper  
21 revocation of the Mayor's authority over the Department of Public Safety (DPS) on Rota. The Court  
22 further explained that this question could be answered through a resolution of the following issue:

23 Whether DPS constitutes a department primarily functioning to administer public services, or to  
24 execute the law.<sup>1/</sup>

25 **FOR PUBLICATION**

26 \_\_\_\_\_  
27 <sup>1/</sup> See *Inos v. Tenorio*, Civil Action No. 94-1289 slip op. at 16-18 (Super. Ct. June 14, 1995)  
28 (hereinafter *June 14th Decision*), wherein the Court interprets Article III, Section 17(a) of the  
Commonwealth Constitution, as amended by Amendment 25 at the 1985 Constitutional Convention, for  
a more thorough explanation of the issue decided here today.

1 The Court has reviewed this issue, including all pertinent memoranda timely filed<sup>2/</sup>, and now renders its  
2 decision.

3  
4 **1. Executive Order 94-3 and Procedure**

5 Before addressing the nature of DPS's primary function, the Court must address a procedural  
6 question regarding the Governor's attempt to revoke the Mayor's authority over DPS Rota. On June  
7 14, 1995, this Court held that the Office of the Governor's Representative on Rota operated in violation  
8 of Article III, Sections 14 & 15 of the Commonwealth Constitution and Title 1, Section 2053 of the  
9 Commonwealth Code when it attempted to *directly* oversee and assist in the delivery of public services  
10 on Rota. *June 14th Decision* at 27. The Mayor contends that this Court's holding prohibits the Governor  
11 from communicating directly with resident department heads on all topics including the determination  
12 to revoke a Mayor's authority over certain resident departments. In essence, the Mayor contends that  
13 each respective department secretary has the power to revoke mayoral authority over each resident  
14 department. The Mayor concludes that Directive 164 should be struck down as an unconstitutional  
15 revocation of mayoral authority because it circumvents a necessary line of communication between the  
16 Governor and the resident department heads (i.e. department secretaries).

17 The undisputed facts and circumstances in the *June 14th Decision* which prompted this Court to  
18 determine, as a matter of law, that the Governor's Representative on Rota had acted unconstitutionally  
19 on Rota are not present in the instant matter concerning DPS. The *June 14th Decision* concerned the  
20 Office of the Governor's Representative on Rota, which admitted to micro managing the daily functions  
21 of the individual resident departments on Rota. In doing so, the Court found that the Governor side-  
22 stepped a constitutional mandate to delegate day to day operations of the executive departments to his  
23 secretaries.

24 In sharp contrast, Directive 164 does not constitute a gubernatorial attempt to micro manage DPS  
25 on Rota. Rather, Directive 164 is a clear statement revoking any past delegated authority which the

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26 <sup>2/</sup> Defendants' original memorandum has been stricken, and portions of their response have been  
27 disregarded by this Court. *See Inos v. Tenorio*, Civil Action No. 94-1289 (Aug. 22, 1996).

1 Mayor may have received<sup>3/</sup> regarding DPS. Thus, Directive 164 conveys a message to the Resident  
2 Department Head of DPS Rota that he should disregard the Mayor's authority and heed the directives  
3 of the Secretary of DPS. The Governor's authority to direct such action himself is rooted in the language  
4 of Article III, Section 17(a) of the Commonwealth Constitution: "The governor shall delegate to a mayor  
5 . . . responsibility for the execution of Commonwealth laws as deemed appropriate and the administration  
6 of public services . . ." As the Court has already held, this constitutional mandate to delegate carries  
7 with it an implicit right to revoke such delegation. And, unlike the authority to run the daily  
8 administration of the executive departments, the executive authority to revoke mayoral authority is  
9 reserved to the Governor.

## 11 2. The Primary Function of DPS

12 While construing the constitutional demarcation between the "execution of Commonwealth law"  
13 and the "administration of public services," this Court recognized that each executive department both  
14 executes law and administers public services. In order to give effect to this somewhat intangible  
15 distinction, the Court employed a primary function analysis of the executive departments at issue in this  
16 case, including the Department of Labor and Immigration and the Department of Finance, classifying  
17 them respectively as primarily "executive" and "administrative" in nature. *See Inos* at 19 & 33. Since  
18 that time, the Mayor has taken issue with the Governor's attempt to revoke his authority over DPS Rota  
19 through Directive 164.

### 21 A. History and Analysis

22 Prior to the passage of Amendment 25, the framers made no effort to distinguish between "the  
23 execution of law" and "the delivery of public services" as these two phrases appeared in Article III,  
24 Section 17 of the Commonwealth Constitution. Rather, in the original Constitution, the two phrases

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26 <sup>3/</sup> In the Court's view, prior to Directive 164, the Mayor derived his authority over DPS Rota from  
27 past grants of authority conferred by former governors on the Office of the Mayor on Rota. By winning  
28 the 1994 mayoral election, the Mayor essentially inherited the authority over DPS which had been left  
undisturbed by the current Governor until July 12, 1995.

1 appear side by side as a complete statement of the breadth of authority which the governor could delegate  
2 to a mayor at his discretion. This original statement of the executive power (the execution of law and  
3 the delivery of public service) follows the powers traditionally bestowed upon state executives  
4 throughout the United States. The executive power constitutes the power to execute the laws, that is,  
5 to carry them into effect, and is distinguished from the powers of the legislature and the judiciary. *Tucker*  
6 *v. State*, 35 N.E.2d 270, 291 (Ind. 1941) (*Tucker*). The executive power includes both administering and  
7 enforcing the law. *Richardson v. Young* 125 S.W. 664, 668 (1910). The framers followed these  
8 traditional concepts by describing the executive power as that of administration and enforcement.

9 Ten years later, under mounting pressure to resolve the growing conflict between Rota, Tinian  
10 and the seat of the central government on Saipan about the amount of government services reaching Rota  
11 and Tinian, the Con Con delegates resolved to create a unique distinction within the executive power in  
12 order to reach a compromise. Specifically, the delegates chose to distinguish the Governor's power to  
13 execute the laws from his administrative power: the Governor's power to delegate matters concerning  
14 the execution of law to the Mayors of Rota and Tinian remained discretionary while the delegation of  
15 administrative matters became mandatory.

16 Although the terms "executive" and "administrative" are often loosely viewed as synonymous,  
17 there is a vital distinction. *See Tucker* at 290 (Ind. 1941). First, "administrative" is more precisely  
18 synonymous with "ministerial," as both these terms stem from the word "minor," meaning "inferior in  
19 bulk, degree, importance, etc.; less, smaller; as minor divisions; of minor importance." *Id.* at 290 (quoting  
20 WEBSTER'S INT'L DICTIONARY). A "ministerial" act has been defined as "one which a person performs  
21 in a given state of facts, in a prescribed manner, on obedience to the mandate of legal authority, without  
22 regard to, or the exercise of, his own judgment upon the propriety of the act being done." *Id.* (quoting  
23 *Gray, Governor, et al. v. State ex rel. Coghlen*, 72 Ind. 567, 578 (Ind. 1880). At the heart of this  
24 definition is the concept that administration generally is attainable "without regard to, or exercise of

1 judgment . . .” or discretion. *Tucker* at 290.<sup>4/</sup> For instance, the Department of Finance’s act of assessing  
2 taxes, or the Department of Public Works’ act of repairing a road or a sewer line correctly fall within the  
3 “administrative” category of the responsibilities of the executive branch. On the contrary, an executive  
4 act is one which can only be attained through the exercise of judgment or discretion.

5 In a manner consistent with these definitions, this Court has previously issued decisions classifying  
6 the Department of Finance as “administrative” and the Department of Labor and Immigration as  
7 “executive.” The Court now turns its attention to the Department of Public Safety. According to DPS’s  
8 enabling legislation, DPS must perform the following duties:

- 9 (a) To provide effective police protection to inhabitants of the Commonwealth;
- 10 (b) To provide effective fire protection to inhabitants of the Commonwealth;
- 11 (c) To manage facilities for persons accused of crimes pending trial and to provide  
12 correctional training for the rehabilitation of those persons sentenced to prison
- 13 (d) to enforce traffic laws and regulations;
- 14 (e) To safeguard public property and buildings, public officials, and to keep the peace  
15 at public ceremonies and official meetings;
- 16 (f) To inspect motor vehicles and enforce motor vehicle registration laws;
- 17 (g) To provide for the civil defense of the Commonwealth;
- 18 (h) To report the presence of dead animals on public property;
- 19 (i) To establish and participate in training and educational programs relating to  
20 criminal justice, crime prevention, fire prevention, and other related matters;
- 21 (j) To assist the courts in service of process, unless otherwise provided by law.

22 1 CMC § 2504. The Mayor contends that out of the 10 functions enumerated in DPS’s enabling  
23 legislation, only two, subsections (d) and (f), concern enforcement of law. In the Court’s view, other  
24 than the administrative duties described in subsections (b), (f), and (h), all of DPS’s duties either directly  
25 concern the execution of Commonwealth law, or are incident to such execution. The job of a DPS law  
26 enforcement officer is essentially to make difficult decisions on a case by case basis about whether or not  
27 the laws of the CNMI have been violated. These decisions often need to be made in a matter of seconds  
28 and the individual civil rights of the citizens and residents of the CNMI almost always hang in the balance.  
Although the Mayor claims that most DPS employees have administrative responsibilities, it is the  
Court’s view that most of these “administrative employees” exist to assist law enforcement officers as

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<sup>4/</sup> The Court has cited to *Tucker* to demonstrate the plausible distinction between the executive and  
the administrative aspects of gubernatorial responsibilities which certain state governments have  
established in order to sanction the dispersal of executive branch responsibilities to officials other than  
the governor.

1 they use their discretion to enforce Commonwealth law. Therefore, this Court holds that DPS primarily  
2 functions to execute the laws. Accordingly, the Court finds that the Governor's Directive 164 issued  
3 *without cause* on July 12, 1995, constituted a proper revocation of the Mayor's authority over the DPS  
4 on Rota. The remainder of the Governor's motion for summary judgment on Count Five is hereby  
5 **granted**. In order to preserve Rota's right to decentralized services, the Governor must see to it that the  
6 central government policies associated with DPS reach the people of Rota through the authority of the  
7 resident department head until such time as he deems it appropriate to delegate such authority to the  
8 Mayor.

9  
10 **3. Conclusion**

11 This Order decides the last of the Mayor's multi-count complaint. Amendment 25 requires  
12 the Governor to include the Mayors of Rota and Tinian in the administration of the central  
13 government policy regardless of a mayor's political alignment so that central government policies shall  
14 reach the People of Rota and Tinian through their respective locally elected leaders. However, when  
15 mayors attempt to frustrate the central government policy set by the Governor through his Secretaries,  
16 Amendment 25 grants the Governor the right to relieve those mayors of their delegated responsibility.  
17 When the Governor finds such action necessary, he must be careful not to violate Rota's or Tinian's  
18 constitutional right to decentralized services by preserving the authority of resident department heads.

19  
20 So **ORDERED** this 4 day of April, 1997.

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24 EDWARD MANIBUSAN, Associate Judge