

FILED

7/27/98

DATE

BY

[Signature]

CLERK, SUPREME COURT

POHNPEI

TRIAL DIVISION

JON M. VAN DYKE
2515 Dole Street
Honolulu, Hawaii 96822
Tel: 808-956-8509
Fax: 808-956-5569

ANDREA S. HILLYER
P.O. Box Drawer D
Kolonia, Pohnpei FM 96941
Tel: 691-320-6400
Fax: 691-320-6485

CYPRIAN MANMAW
Attorney General, State of Yap
P.O. Box 435
Colonia, Yap FM 96943
Tel: 691-350-2105

RICHARD C. MARTIN
Attorney General, State of Kosrae
P.O. Box 1301
Tofol, Kosrae FM 96944
Tel: 691-370-3043

MAKETO ROBERT
Attorney General, State of Chuuk
P.O. Box 645
Weno, Chuuk FM 96942
Tel: 691-330-4207

Attorneys for Plaintiffs

SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION - STATE OF POHNPEI

STATE OF CHUUK, STATE OF)
KOSRAE, STATE OF POHNPEI,)
AND STATE OF YAP)
)
Plaintiffs,)
)
vs.)
)
SECRETARY OF DEPARTMENT OF)
FINANCE, FSM, and the)
National Government of the)
FEDERATED STATES OF MICRONESIA,))
)
Defendants.)
)

CIVIL ACTION NO. 1995-085

PLAINTIFFS' MOTION TO
ALTER OR AMEND
JUDGMENT

Comes now the Plaintiffs in the above referenced action and hereby files with this Court this
Motion to Alter or Amend Judgment pursuant to Rule 59(e), FSM Rules of Civil Procedure.

MEMORANDUM OF POINTS AND AUTHORITIES

On July 17, 1998 this court entered an order and judgment thereon denying Plaintiffs Motion for Summary Judgment, granting Defendant's Motion for Summary Judgment, and dismissing the Second Amended Complaint with prejudice. That order and judgment was not received or served on counsel for Plaintiffs until July 24, 1998. See Affidavit of Counsel, attached as Exhibit A hereto.

Under Rule 59(e) FSM Rules of Civil Procedure, Plaintiffs must file this motion within 10 days after entry of the judgment. The tenth day after July 17, 1998 is today, Monday, July 27, 1998. Since counsel for Plaintiffs did not receive notice of the judgment or service of the judgment until Friday, July 24, 1998, Plaintiffs have been prejudiced in their ability to prepare a thorough motion under Rule 59(e) within the ten day period. However, in order to meet this strict time deadline, Plaintiffs are hereby filing this motion raising the grounds in support of the motion, and are respectfully requesting that this court establish a briefing schedule to allow Plaintiffs to completely set forth in detail the arguments and evidence in support thereof. Plaintiffs are aware that Rule 59(e) motions must be filed within the ten days after filing of the judgment, and that this deadline cannot be enlarged by the court. Kihara Real Estate v. Estate of Nanpei. 6 FSM Intrm. 354, 355-56 (Pon. 1994). Plaintiffs are meeting the deadline in filing this motion and are simply requesting this court to allow Plaintiffs additional time in which to supply the detailed memorandum in support thereof, due to the length of the decision (68 pages), the complexity of the issues involved, and the fact that Plaintiffs did not receive the decision until one working day before the deadline expired.

Given the magnitude of the decision in this case, and the fact that the carefully worded 68 page opinion covers many legal issues of great constitutional import, Plaintiffs are requesting that this court allow them a reasonable period of time to bring to the attention of this court those matters which require clarification, amendment, or alteration. This motion for reconsideration is based upon Plaintiffs' position that the following grounds are worthy of reconsideration by this court:

1. Plaintiffs request an opportunity to address in greater detail the reasons why fishing resources and mineral resources were treated differently in the FSM Constitution. The court in footnote 27 on page 66 of the opinion mentioned that this issue was discussed during oral argument but rejected counsel's statements as hearsay, while noting that it had not been directed to any competent evidence in the record or to any journals of the constitutional convention. There is no indication that the court attempted to or did engage in any independent review on this interpretation issue. Plaintiffs request an opportunity to explain this issue in detail.

2. Plaintiffs request an opportunity to clarify whether fishing fees can be as high as 11% as claimed by Bernard Thoulag in this affidavit, versus the accepted figure of 5% as mentioned by the court. Plaintiffs respectfully request an opportunity to either depose Mr. Thoulag or to submit written interrogatories to Mr. Thoulag, in order to clarify this factual issue which is inconsistent. The foreign fishing agreements provided to Plaintiffs by Defendants as part of the discovery process did not contain any agreements with the 11% formula. In fact, Plaintiffs believe that the 11% formula was apparently utilized by MMA only in agreements negotiated during the years after initiation of this case.

3. Plaintiffs request an opportunity to explain to the court how the revenues from the fishing fees are being expended by the defendants. See Exhibit B, an excerpt from Congressional Advisor, 11th Issue, June 1998, pages 8-11.

4. Plaintiffs request the opportunity to clarify the following legal issues which were addressed only summarily or incompletely by the court:

- a. The relevance of customary rights to the question of ownership of offshore resources;
- b. Whether the States existed prior to the creation of the federation (FSM);
- c. Whether the States have *parens patriae* rights to represent their citizens regarding the ownership of the offshore resources;
- d. Whether, if the fishing revenues were a "tax" they would be an unconstitutional tax because they were not uniform; and
- e. Whether the fishing revenues can be characterized as the sale of a resource given that they constitute a renewable resource unlike the resources in the mining cases cited by and relied upon by the court.

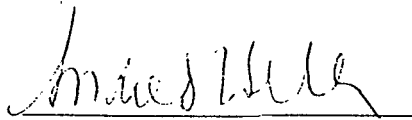
Plaintiffs submit that full clarification of these issues by this court will aid and promote finality in the event of appellate review. Rule 59(e) motions are within the discretion of the court, and do include motions for reconsideration. See, Wright and Miller, 11 Federal Practice and Procedure, Section 2810.1. There are four basic grounds upon which a Rule 59(e) motion may be granted (correct manifest errors of law or fact, present newly discovered evidence, prevent manifest injustice, intervening change in controlling law). *Id.* The issues listed above by

Plaintiffs all qualify on the ground that reconsideration is necessary to correct manifest errors of law or fact upon which the judgment is based. Another ground that is applicable to two of the issues listed above is the fact that Plaintiffs want to present newly discovered or previously unavailable evidence, i.e. the recent appropriation by Congress of the fishing access fee revenues into "pork barrel projects", see attachment B, and the clarification of the 11% formula.

Granting of this motion will serve a useful purpose in that the complex legal issues involved will be clarified for any subsequent review or reliance by policymakers and lawmakers in taking any corrective or remedial action. Judicial resources will be conserved by the granting of this motion, as the court most familiar with the issues will be addressing them.

Wherefore, Plaintiffs respectfully request that this court grant Plaintiffs a reasonable period of time in which to submit a detailed brief on the issues raised above.

Dated: July 21, 1998

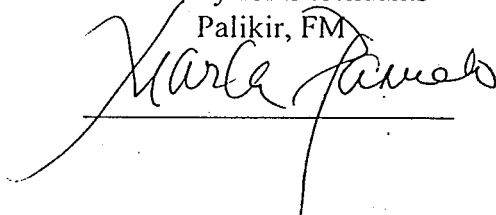


JON M. VAN DYKE
ANDREA S. HILLYER
CYPRIAN MANMAW
RICHARD C. MARTIN
MAKETO ROBERT
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of Plaintiffs' Motion to Alter or Amend Judgment was served by Hand on this 27th day of July, 1998 on

Julia Freis
Assistant Attorney General
FSM National Government
Attorney for Defendants
Palikir, FM



JON M. VAN DYKE
2515 Dole Street
Honolulu, Hawaii 96822
Tel: 808-956-8509
Fax: 808-956-5569

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SUPREME COURT OF THE
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Defendants.)
)

CIVIL ACTION NO. 1995-085

AFFIDAVIT IN SUPPORT OF
PLAINTIFFS' MOTION TO
ALTER OR AMEND
JUDGMENT

The undersigned, being duly sworn and under oath, states:

1. My name is Andrea S. Hillyer and I am a resident of Pohnpei. I am admitted to practice

EXHIBIT "A"

law before the Supreme Court of the Federated States of Micronesia and am a member in good standing of that bar. I am a co-counsel admitted in the above case. I have personal knowledge of the facts stated herein and am competent to testify to the same.

2. On July 24, 1998 I called the Clerk's Office at the FSM Supreme Court to ask whether any decision had been entered by the court yet in the above styled case. The reason I called was because earlier that morning one of my clients had indicated that a court employee had told him that a decision had been entered. The clerk's office then notified me that a decision had been entered and that a copy of the decision was ready to be picked up. This was at approximately 11:15 a.m. on Friday, July 24, 1998.

3. I immediately drove to the FSM court to pick up my copy of the decision. At the court, I saw opposing counsel Julia Freis, who also was on her way to the clerk's office to pick up her copy of the decision. She indicated to me that she did not know which case had been decided and had been told to pick up a decision. To the best of my knowledge, neither one of us had been notified prior to that day that a decision had been entered by the court on July 17, 1998.

4. Exhibit B attached to the Motion contains a true and correct copy of the Congressional Advisor, 11th Issue, dated June 1998, obtained by my office.

WHEREFORE THE AFFIANT SAYETH NAUGHT.

Andrea S. Hillyer
Andrea S. Hillyer

7/27/98
Date

Sworn to and Subscribed to before me this 27th day of July, 1998.

Marla Panuelo
Notary Public

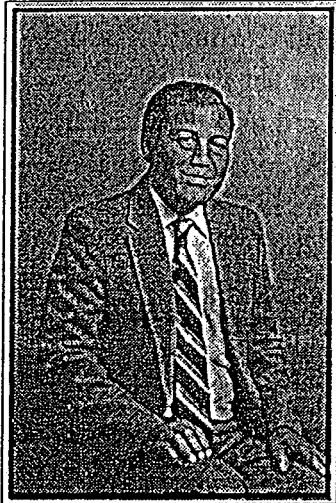
MARLA P. PANUELO, NOTARY PUBLIC
Federated States of Micronesia
Pohnpei State
MY COMMISSION EXPIRES ON THE
DAY OF January 19 2000





Congressional Advisor

Sen. Resio S. Moses



CONGRESSIONAL ADVISOR
11th ISSUE, JUNE 1998
THE FSM CONGRESS
PALIKIR, POHNPEI 96941

THE THIRD REGULAR SESSION OF THE 10th FSM CONGRESS ENDS ON JUNE 12th WITH THE ENACTMENT OF 33 BILLS AND ADOPTION OF 17 RESOLUTIONS, INCLUDING OVER \$43,000,000 IN NEW APPROPRIATIONS. In general, the new monies have been earmarked as: \$32,599,758 for the FY 99 operation of the national government, \$10,000,000 for FY99 state projects, \$801,566 for FY 98 operation supplementals, \$270,000 for NFC, \$100,00 for EMPAT contributions, \$54,000 for Immigration and Labor overtime compensation. Eighteen of the thirty three measures merely extended the lapse dates of funds

already appropriated, changed alloteeships, or made modifications as the Senators saw fit, mostly relating to infrastructural and political projects in the district and at-large constituencies.

Only 9 bills were devoted to non-appropriation matters and even those are not on matters that could be considered urgent national priorities. Nonetheless, they include:

1. Act no. 10-96: re the exemption of export sales of domestic products from the gross revenue tax.
2. Act no. 10-93: re the allowance of proxy votes for corporation share holders.
3. Act no. 10-91: re the creation of Chuuk State Commission on improvement projects, a new structure for project administration and alloteeship of project funds for the state.
4. Act no. 10-105: re a new approach to overtime compensation under the present law.
5. Act no. 10-107: re a new salary differential for sea duty.
6. Act no. 10-108: establishing new guidelines for the Early Retirement Program.
7. Act no. 10-114 : allowing Pohnpei State to redesignate its Compact Inflation Adjustment Funds for its current account, but limiting the amount to \$1.2 million for FY 98 and conditioning the matter upon the

EXHIBIT "B"



Congressional Advisor

Sen. Resio S. Moses

approval of all States and the National Government.

8. Act no. 10-116: requiring air carriers to file flight schedules with the Secretary of T & C with a 30 day notice.

9. Act no. 10-117: re the recomposition of the Board of Directors of Caroline Islands Air, a public corporation.

Of the 17 adopted resolutions, 7 were approval of Presidential nominations: Messrs. Pelep (Pohnpei), Nedlic (Kosrae), Sana (Chuuk), and Gilmar (Yap) to the IDF Board; Mr. Esiel as the National Government's representative to the Social Security Board, and Messrs. Fritz and Naich as Deputy Heads of Mission to Ambassadors Alik and Marehalau in Tokyo and Washington, D.C., respectively.

Resolution 10-103 continued the El Nino Disaster declaration for another 90 day period. With the endorsement of all 14 Senators of Resolution 10-106, the Congress has condemned the Governments of India and Pakistan for the testing of nuclear weapons in defiance of the Comprehensive Test Ban Treaty (CTBT) declarations. In eight other resolutions, the Congress acceded to the International Standards of Training, Certification and Watchkeeping for Seafarers Convention, continued its participation and

membership in the Multilateral Fisheries Treaty between the US and certain Pacific Island Countries, adopted a Tourism Plan for the FSM, acknowledged and thanked the Sasakawa Foundation for its contributions into the FSM Leprosy Program, approved a foreign fishing agreement between the MMA and the National Fisheries Corporation, set the budget ceiling for FY 99 at \$42,600,000, increased the FY 98 budget ceiling to \$46,000,000, and finally appointed Ms. Liwiana Ramon as Chief Clerk to replace Henry Asugar who has retired under the ERP Program.

TIEPENE KOSONDI KESILIPAK EN CONGRESS KEISEK, MAY 13 LEL JUNE 13, KAMANALAH R KAMWOMWADAHN KOSONED 33 OH ALEDAHR RESOLUTION 17, NAN PWUNGEN IRE PWUKAT TALA MILLION \$43,205,296 KODAH R PWEHN DAPWIN DOADOAK EN 1998 OH WIA DOADOAK EN 1999. Wen mwohni wet kosondi nan bill 6 oh iet keiredien mepwukat:

1. Act 10-97, kiheng NFC \$270,000
2. Bill 10-214, kiheng EMPAT \$100,000
3. BILL 10-235, kihda \$54,000 ong pwepweihn overtime ong palihkan en immigration oh labor.



Congressional Advisor

Sen. Resio S. Moses

4. Act 10-94, \$2,599,758 budget en 1999

5. Act 10-115, \$801,566 en dapwin budget en 1998

6. Act 10-120, \$10,000,000 ong project nan state kan

Likin bill en mwohni kapw pwukat, bill 18 doke kepidek kei nan bill en mwohnih mahs akan, me rasehng wekidekpen ihs ihs me pwukoaki mwohnih kan, kereireilahn ahsoun doadoangki mwohnih kan, oh wekidek tohrohr teikan. Irehkan likin kohdahn mwohni kapw de kepidekpen mwohnih mahs pwarada nan kamwomwadahn kosoned te 9 oh ekei irehpwukat sohte nohn mwomwen karwaru mehlel oh iet irehkan:

1. Act 10-96, kihsang tax pohn dipwisou me netila likin FSM.

2. Act 10-93, koasondi kapw ong wiepen usuhs en shareholder en corporation kan.

3. Act 10-91, kokoudahn Commission ehu nan wein Ruk me pahn pwukoaki mwohnih Congress kan nan State-o.

4. Act 10-105, me pid wiepen over-time pahn kosoned kapw en FSM.

5. Act 10-107, pweipwei tohrohr ong tohn doadoak en nan sed (sea duty).

6. Act 10-108, iengen kosoned in Early Retirement Program (ERP).

7. Act 10-114, mweimwei ong wein Pohnpei en doadoangki mwohnih inflation adjustment ong operation en FY98, en sewese epwel en mwohni nan State en Pohnpei, met sohte pahn laudsang \$1,200,000. Oh irewet pahn manaman ahsou me state koaros oh FSM pahn ahneki pwung pene ieu.

8. Act 10-116, me pid pipihr en sompihr nan wewehn FSM.

9. Act 10-117, me pid kosondi kapw ong Board of Directors en Caroline Islands Air (a public corporation).

Resolution 17 alahadahr, oh 7 kamana idihddahn President pwukat: Nedlic (Kosrae), Pelep (Pohnpei), Sana (Chuuk), oh Gilmar (Yap) ong Investment Development Fund Board of Advisors, Mr. Mohner Esiel weliepen National Government ong Social Security Board; Oh kesepwildahn John Fritz (Chuuk) en wiala Ambassador keriou nan Tokyo oh James Naich (Chuuk) ong pil doadoak wet nan Washington. Resolution teikan, iet audapahr akan:

1. R. 10-103, kereirei lahn disaster declaration en El Nino.

2. R. 10-106, me pid kupwur toutou en FSM ong kapos kensi pakudang nan wehi kan en India oh Pakistan.

3. R. 10-107, alahladahn International Convention on Standards



Congressional Advisor

Sen. Resio S. Moses

of Training, Certification, and Watchkeeping for Seafarers.

4. R.10-112, alahladahn Plan en Tourism nan FSM.

5. R. 10-113, kepingpen Sasakawa Foundation ong sawasepen soumahu tukutuk nan FSM.

6. R. 10-114, kamanlahn inoun laid nan pwungen MMA oh NFC.

7. R. 10-117, kamanepen kereireilahn FSM en ieiang towe Multilateral Fisheries Teaty between the US and certain Pacific Island Countries,ong pahr 5.

8. R. 10-118, me kalaudehla mwohnihn doadaok nan 1998 en mihla ni we wet : \$46,000,000.

9, R. 10-119, koasonedieng mwohnihn doadaok en 1999 en mi ni we wet: \$42,600,000.

10. R. 10-120, pilipildahn Ms. Liwiana Ramon ong Chief Clerk en FSM Congress.

Congress rahn mweledier ni 12 en June oh ele pahn pwurehng tiepene nan sounpwong en October nin duen koasonien poasoan en kosoned en FSM.

PRESIDENT NENA VISITS THE STATE OF YAP. Accompanied by nine National Government officials, the President and his party departed Pohnpei at 2:30 a.m. on June 24th, arriving in Yap the same morning.

The President and his party were given an honor's guard welcome by the State police and received by the State officials.

An officials' meeting was held at the State Legislature in the afternoon of the same day in which formal statements were exchanged by the President, Governor Figir and the traditional leadership. In the formal exchanges the agenda of the President's visit was established which included the following topics: Yap's 1998 Japan Foreign Aid Request; MMFA, US obligation to fund the reconstruction of Yap airport, division of fisheries access fees between the National Government and the States; the need for a National-State leadership conference; assignment of a patrol boat to Yap; computer migration program; and other topics.

Official discussions were held on all of these issues in the morning of June 25th, but it was unclear to the ADVISOR the decisions reached.

The President along with four members of his party departed Yap for the outer islands of Woleai and Ulithi with a fly-by on the island of Fais, to enable the President an aerial view of the effects of the El Nino on the outer island. The President and his party held



Congressional Advisor

Sen. Resio S. Moses

discussions which local officials on impact of El Nino as well as other issues relating to the outer islands in Yap. Senator Moses was unable to participate in the Woleai leg of excursion but joined the President on Ulithi on June 27th. The entourage returned to Yap the evening of June 27th and on to Pohnpei the following day.

The CONGRESSIONAL ADVISOR congratulates President Nena for taking the initiative to visit Yap and encourages the President or the Vice President to do the same in the other States, including Pohnpei, Palikir excepted, on a more regular basis.

PRESIDENT NENA PWAREK WEIN YAP. President oh ienge 9 ieu mwelesangehr Pohnpei ni sohrahn en June 24 oh pil kerediengehr Yap ni mensengohte nan kosomw waun ehu sang soumas akan oh koun teikan en Yap.

Mwurin komoal mwotomwot ieu, tuhpenen nan pwungen President Nena, Kepina Figir oh weliepen soumas akan wiawiher oh koasonhedi me mahmahsen pahn toke: En Yap pekipek foreign aid en Japan nan 1998, kosondien school en kepiden oh laid (Micronesian Maritime and Fisheries Academy and Fisheries Training Center) nan wein Yap, wiepen onohn sapahl en

wasahn sokedien sompihr, nenehpen mwohni me kin rikirikdangsang license en laid FSM nan pwungen National Government oh State kan, anahn karuwaru en mihting nan pwungen FSM oh State kan, pekipepen ehu patrol boat en mihla Yap, kosonepen computer nan FSM sang pahr 2000 kohla, oh ire tohrohr teikan me iangahki labor, immigration, taxation, bonded warehouse nan Yap, FEMA, US federal program kan me mwomwomwen pahn lopila, en Guam policy kapw ong mehn FSM kan me soulahr and pahn soula Guam oh territory in America teikan.

Mahmahsen en irepwukat wiawiher oh imwseklahr June 25, ahpw e sohte dehde ieng CONGRESSIONAL ADVISOR duwen sondien kupwur kan.

Ni menseng en June 26, President oh ienge kan iangahki Speaker en Yap oh weliepen Kepina mweasel lahnger dekehn Woleai oh Ulithi pwehn dawih wasa pwukat oh tehk ohlahn sahpw sang El Nino me ahpwtehn imwisekla oh ire teikan. Pwei iek di pahn wiawi pohn deke Ulithi oh sahi pahn sahpahle Yap ni 27. President oh iengehkan pahn pwuralahng Pohnpei ni 28 en June.



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THE US STATE DEPARTMENT ISSUES A STRONGLY WORDED DIPLOMATIC NON-PAPER CONCERNING THE TREATMENT OF AN AMERICAN ENTREPRENEUR ENGAGING IN BUSINESS IN POHNPEI, FSM. In a two page document, the US Government has advised the FSM of its deep concern about the State of Pohnpei's direct business competition with Island Traders, a company owned and operated by an American citizen which processes and markets Pohnpei pepper. The paper claimed that Pohnpei State drove the Island Traders out of business last March and noted that the competing Government pepper plant has not been able to provide foreign buyers with quality products, thus seriously damaging a once profitable local industry.

Sadly, the US State Department has threatened that the matter will have implications on the impending Compact Negotiations on continuing economic cooperation between the FSM and the US and on the special relationship that has existed between the two governments for over a decade. Specifically, the document named certain concerns which will strain FSM-US bilateral relations, including, among other things:

1. Discrimination against an

American investor's (Island Traders) participation in the local economy.

2. Violation of the Compact's spirit of a special relationship between the FSM and the US which called for mutual cooperation in undertaking unfettered participation in the local economy.

3. Provision of political ammunition to the critics of the FSM-US special Compact relationship.

4. Key members of Congress are already aware of the problem and have demonstrated great concerns about it.

5. Undercutting foreign investment and eroding confidence of the donor community in the FSM.

6. Contradiction of commitments made by the FSM last January in Tokyo to the donors' community that the government is determined to reduce its dominant role in the domestic economy so as to strengthen the private sector.

7. Negative publicity of the Island Traders' case has given a black eye to investment in the FSM, characterizing the area as risky for capital investment, an issue that has been raised by the American Private Sector Associates.

8. The non-paper concluded by strongly urging the FSM to resolve the matter soon to restore international confidence in its business investment climate.



Congressional Advisor

Sen. Resio S. Moses

In addition to this diplomatic statement, former US Senator Johnston and Samoa Congressman Faleomavaega, both strong advocates of the FSM in the US Congress, have written strong letters to FSM high officials, expressing their concerns and asking for resolution of the problem sooner rather than later. In view of the intensity of language at which the the State Department has circulated this non-paper and the letters from influential friends of the FSM in the US, the ADVISOR urges the FSM, specifically Pohnpei State, to give priority consideration to damage control measures, to avert negative implications in FSM's bilateral and multilateral relations with the US and others.

The damage that could result from this incident and from an earlier case of the Government forcing PMA out of air service in Pohnpei, among other cases, should not be underestimated.

AMERICA KASALEDAHR IREHIEU ME E KASAPWUNGE NAN FSM. Nan kisin likou ngor kelail ieu America kairekihier FSM duwen e kasapwunge Government en Pohnpei e kaikaiton oh pelipelian palien private sector ahpw mehlel business ieu me en mehn wahi me wiewia podohkepen wiada oh netkihla pepper likin FSM.

Doadoak en business wet inenen pweida mwahu nan pahr ngeder me samwalahr, ahpw sang uhweng en Government en Pohnpei, business wet melahr nan March en parwet. Ahpw me kopwuriamei oh kapahtou iei en Pohnpei State e sohte kakehng wia doadoak wet ahpw sikisiken me kak. Met eledahr luwetahn de melahn business en netkihla paper, pwe irail kan me kin pwain pepper solahr alehda dipwsou wet pwe dahme Pohnpei State kakehng wiada sohte lel standard en business likin FSM.

America kadedehiengehr FSM me dahme wiawiheing Island Traders kakete elehda ohlahn miminim me miher nan pwungen FSM oh America, pil kakete kahpwalihala koason sapahl en Inoun Minimin Saledek nan pwungen wehi riau pwukat. Ire pwukat kasansalada nan mehn kair ngor kelail ieu sang US State Department oh iet orelepe:

1. America pahtouki koasondi sapairair me Island Traders alehsang Government en Pohnpei nan FSM.

2. Pungpene pahn inoun minimin saledek koasonehdi me pali riau pahn kak wia doadoak en sohpai nan FSM oh e pahn mie utuht pahrek ong pali koaros ong pwukoan kairada pien en wehi en FSM.



Congressional Advisor

Sen. Resio S. Moses

3. Pahn inoun minimin saledek, e dehde FSM sohte pahn kiheng koasondi sapa irair ong mehn America oh arail business kan me daur kosoned.

4. Dahme Pohnpei wiaiengehr business en wahi ieu kak kakehlaka iren uhweng minimin saledek nan America, sang irail me sohte utung minimin pene me miher nan pwungen wehi riau.

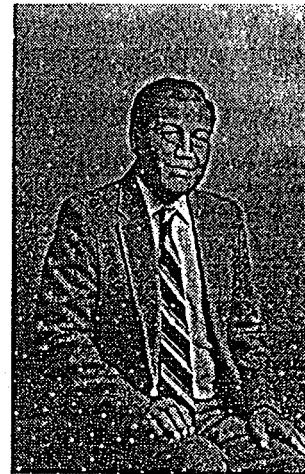
5. Ire wet pil mihier mwohn Congress en America oh wiaier iren kapwunod ehu rehn towehkan me kin utung FSM.

6. Dahme wiawhiengehr Island Traders nan Pohnpei kakete elehda e sohla business en liki en men iang doadoangki (invest) neiral mwohni FSM oh pil kak elehda wein sawas akan ar sohla pahn men sewese FSM. Met pil uhweng adahr koasondi me FSM kairehkihier ADB oh wein sawas akan me e pahn inenen kakehlaka private business kan oh pahn keisang nan pwukoa wet pwe aramas akan en men wia doahk wet. Dahme pwarehr Pohnpei kasalehda me FSM sohte idawehn dahme e inoukiheng ADB oh wein sawas akan nan January en parwet, nan Tokyo, Japan.

7. Dahme wiawieng Island Traders kahd suedihalahr FSM oh kak elehda e sohla me men business ieng FSM, de wia business nan FSM.

America kangongehki FSM en sewese kapwungala ire wet pwehn

mwahu weng minimin penehn kakairada FSM sang met kohla, ni ahnsou mwadang. Nan kisin likou tohrohr riau sang Senator Johnston oh Congressman Faleomavaega koangongong pil kokouwengehr koun en FSM kan ong kopwungpwung lahn ire wet. (Ohl reimen wet kin iang utung mehleh irehkan me pid FSM nan Congress en America). ADVISOR utung mehleh kopwungpwunglahn ire wet en wiawi ni ahnsou mwadang.



AN EDITORIAL ON FSM'S ECONOMIC REFORM AND RESTRUCTURING.

Rhetorics seem clear, at least in writing about FSM's commitment to reform in the public sector and the economy as laws have been enacted and programs implemented to down-size the government and set a new stage for economic development. Yet, it has been heard said that the government hasn't



Congressional Advisor

Sen. Resio S. Moses

been putting its money where its mouth is. Visavis this seeming pessimism, what could be gleaned from actions of the government, e.g., legislation enacted during the 3rd Regular Session of the 10th Congress and the President's actions thereon point to interesting interpretations. The legislative and the executive branches, by law and policy, have declared their commitment to reform in response to declining fiscal resources and absence of economic development. But, an analysis of the latest actions of the Congress and the President tells a different story.

In all, 33 pieces of legislation were enacted during the May 13th-June 12th Regular Session. Eighteen concerned earlier Congress appropriations, primarily changing allotments, extending lapse dates, redesignating district project funds and making technical corrections. Nine measures pertain to non-money matters whose purposes and intent do not seem critical to reform. The one act that pertains to reform exempts export sales from the Gross Receipts Tax. One other measure on restructuring pertains to an insignificant amendment of the ERP, which makes early retirees ineligible for advise and consent positions. All others were non-reform related. One created a Chuuk State Commission to administer

Congress funded projects, but the question is why isolate the President and the Governor, who are accountable to the people, from a responsibility that is theirs by law? Two acts relate to a special salary differential and overtime pay and another two concern airlines: one requiring a 30-day flight plan filing period while another reconstituted the Board of Directors of the Caroline Islands Air, a public corporation which now fills the void created by the ousting of PMA by Pohnpei. One measure allowed proxy votes in corporate meetings and finally a somewhat controversial act reauthorized Pohnpei to again use its Compact inflationary adjustment funds to meet its FY98 shortfalls which is seen by some as a step backwards in Pohnpei's public reform efforts.

The final category of legislative enactments (six bills) appropriated over \$43,000,000 in new monies, to meet FY98 shortfalls and to fund FY99 operational and development programs, including the so-called State development projects. An analysis of these bills shows where the Congress stands on reform and style-change. As of June 19th, the FY98 supplemental became law, but the ADVISOR suspects that the President was cursory and proforma in his review of the bill as



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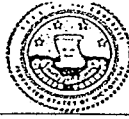
line items not consistent with on-going reforms have all been accepted, e.g., government travels, spiraling representational allowances for Congress members, questionable approaches to funding FSM's participation in the Micro Games, the Rural Housing Program, extra assistance to COM-FSM students' unpaid tuition, etcetera. A clearer glimpse of where the government is in restructuring and reform should emerge after the President has completed his review and executed actions on these legislations.

The so-called State development budget for FY99 appropriated \$10,000,000 for infrastructure and other projects, earmarking \$5,000,000 for Chuuk, \$3,000,000 for Pohnpei, and \$1,000,000 each for Kosrae and Yap. Using population as an index for distribution, the middle-sized States of Pohnpei and Yap were short-changed. With 50% of FSM's population, Chuuk's \$5,000,000 is fair, while Kosrae's million is too generous; Pohnpei's and Yap's per capita shares are far lower than either Chuuk's or Kosrae's. Also disturbing is the non-participation of the executive branches of the FSM and the various States in the planning process. Only Yap and Chuuk have designated projects to be funded. Yap has piece-mealed its shares, while

Chuuk's remains tentative: \$500,000 for Airport, \$100,000 for unnamed State-wide projects, \$950,000, \$800,000, and \$700,000 to Districts 1, 2, and 3 respectively and the balance (\$1,950,000) to be deposited into an Education and Health Trust fund from which no fund can be withdrawn until after September 30, 2001. So far these projects have the aroma of roast pork. The earmarking for Pohnpei and Kosrae will most likely take place in October, or earlier in a special session, if there is to be one.

There is no telling whether the use of \$10,000,000 will directly support the on-going reforms of the economy and the public sector or strictly be used for all the political and electoral agenda of the members of Congress. Thus, it is all the more important that the President rise above politics and be more candid and firm in convincing the Congress to be sober in allocating diminishing resources. The ADVISOR believes the government should now more than ever, be careful in husbanding diminishing resources and limiting investment efforts, at least temporarily, to projects that can quickly return economic benefits. Other worthy projects could be delayed for later. How the President will handle this delicate matter will be of interest to the people and donor community.

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The ADVISOR is hopeful that a way will be found for constructive dialog on the issue of financial sustainability. At least a veto is called for where necessary, even if only to make a political statement.

The Budget act for FY99 operations as enacted by Congress contains \$32,599,758: \$12,915,006 for the Executive Branch; \$2,757,345 for the Congress; \$1,006,030 for the Judiciary; \$475,700 for the Public Auditor; \$1,259,442 for agencies of the National Government; \$304,152 for energy; \$882,000 for TeleCom; \$118,000 Compact section 216 (a)(2) programs; \$2,960,000 COM-FSM; \$989,700 Post Secondary Education; \$4,505,184 Other programs, grants, subsidies, contributions, and refunds; \$390,200 Compact section 221(b) programs; and \$3,737,000 National Government development programs.

In general, while the operations budget is slightly less than last year's and in most instances bare-bone in nature, there are line items that ought to be removed. The ADVISOR urges the President's review process to ensure that programs and activities not in line with the on-going economic and public reforms and related matters are removed, by item disapproval.

Should President Nena approve all enacted appropriations, there will be over \$43.5 (MILLION DOLLARS) in new money for the National Government to work or play with. In addition to the States, the figure might exceed the \$100,000,000. For a population of 100,000 this is a lot of money. Thus, given good and responsible leadership planning and management, the nation could grow and develop economically.

Thus, the problem may not be money, perhap something more fundamental. The editor has his own ideas, but what about the larger public?

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The Pohnpei At-large Constituency

Sen. Resio S. Moses