Memorandum

To: Floor Leader Jackson

From: Legislative Counsel for the Kosrae State Legislature

Re: Constitutional limit on term of office for Lt. Governor.

Date: 26 March 2002

Summary

Kosrae Constitution, Article V, Section 6 establishes the qualifications and term guidelines for the Office of Lt. Governor. The language of Section 6 specifies that the Lt. Governor is elected at the same time and for the "same term" as the Governor. Section 6 has no explicit language on the issue of consecutive term limits.

When analyzing constitutional provisions, Courts first look to the plain language of the provision. If the language is clear and unambiguous, the Court will look no further. Therefore, whether or not the Lt. Governor is limited to two consecutive terms depends on the interpretation of "same term."

"Same term" can be interpreted two ways. It can be interpreted to mean "term of office," which is defined in Article V, Section 3 as running from noon on the second Monday of January following a general election until noon on the second Monday of January four years thereafter. Or, it can be interpreted as an adoption of all "term" guidelines applicable to the Governor, including the two consecutive term limit.

If the Court concludes the constitutional language is clear and speaks only to the "term of office," the Lt. Governor has no term limits. If the Court looks beyond the plain language of the constitutional provision, the Lt. Governor may be limited to two consecutive terms.

There are no Kosrae or FSM Court decisions on this issue, so it is a case of first impression. Consequently, one cannot predict with any degree of certainty how a Court will decide the issue if it arises. Therefore, if the Senate wishes to make certain the Lt. Governor is limited to two consecutive terms, the Senate should immediately propose an Amendment to Article V, Section 6 to include the explicit language found in Article V, Section 3.

Detailed Analysis

When interpreting a constitutional provision, the Court should first look to the plain language of the applicable provision. FSM v. Tipen, 1 FSM Intrm. 79, 82 (Pon. 1982) (Analysis of the Constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the Court should go no further.).

However, if the Court is not certain about the meaning of language in a constitutional provision, it may resort to Constitutional Convention Journals for guidance on its meaning. See Nena v. Kosrae (III), 6 FSM Intrm. 564, 568 (App. 1994) ("A litigant, in order to make arguments based on the legislative history of the constitutional provision, must first show the ambiguity in the constitutional provision. Only if the constitutional language is unclear or ambiguous can a court proceed to consult the constitutional convention journals and the historical background.").

Plain Language of the Constitutional Provisions:

Kosrae Constitution, Article V, Sec. 6 establishes the qualifications for Lt. Governor. This clause also specifies the election time and term for the Lt. Governor. The Clause states:

> The Lt. Governor has the same qualifications as the Governor. The Lt. Governor is elected at the same time, and for the same term.

Since the Lt. Governor qualifications are linked to those of the Governor, one must look to the provisions relating to the Governor for further guidance. Kosrae Constitution, Article V, Sec. 3 is the relevant provision relating to the Governor's qualifications and term guidelines.

Kosrae Constitution, Article V, Sec. 3 states:

> The term of office of the Governor begins at noon on the second Monday of January following the general election and ends at noon on the second Monday of January four years thereafter. A Governor may not hold the same office for more than two consecutive terms and is eligible to hold the office only after one full term has interrupted since his last day in office.

This Constitutional provision does two things: 1) it establishes a four year "term of office" for the Office of Governor, and 2) it sets a limit to the number of consecutive terms a Governor may serve.

Kosrae Const., Article V, Sec. 6, however, states only that the Lt. Governor serves the "same term" as the Governor. Therefore, the question arises whether Articulate V, Sec. 6 also adopts the Governor's consecutive term limitation. The answer depends on the interpretation of the language "same term."

"Same term" can be construed as relating only to the first clause of Article V, Sec. 3, defining the Governor's "term of office." Under this interpretation, the Court may conclude that silence regarding a consecutive term limit means there are no term limits for the Lt. Governor. Arguably, if the Constitutional Convention Delegation put the consecutive term limit in Section 3, they could have put it in Section 6 if they had wanted to do so. Consequently, a Lt. Governor could feasibly serve an indefinite number of terms.

Constitutional Convention History:

Where constitutional language does not provide an unmistakable answer courts may look to the journal of the Constitutional Convention for assistance in determining the meaning of the constitutional words. FSM v. Jonathan, 2 FSM Intrm. 189, 193 (Kos. 1986). Since there are two possible interpretations of the language "same term," the Court may consult the Constitutional Convention History to determine the drafter's intended meaning. Kosrae has had two constitutional conventions; in 1983 and in 1995.

a) 1983 Constitutional Convention

In the 1983 Constitution, the term limit for the Governor was found in Art., V, Sec. 5. That section said:

> The Governor may not hold another public office or public employment during his term of office. No person who has been Governor for two terms may be again eligible to be elected Governor until one full term has intervened.

The Committee Report for that section illustrated the Committee's concern over unlimited terms for the Governor. The report lists the following reasons for limiting the Governor to two consecutive terms:

1) Unlimited re-election gives the Governor the opportunity to build a political machine which could be used to perpetuate re-election. Unlimited continuation in office would allow a Governor to amass too much political power.

2) The Office of Governor would be available to new persons with new ideas more often, and keep the Governor more responsive to the wishes of the people.

3) In fostering self-perpetuation, a Governor may do what is necessary to win re-election rather than what is right.

4) It could be difficult to defeat an incumbent regardless his qualifications.

SCREP No. 1-83-10, J. Kos. Con. Con. (1983) (Comm. on Gov. Structure and Functions), 481. The report makes no reference to the Lt. Governor.

In the 1983 Constitution, Article V, Sec. 6 established the Lieutenant Governor's qualifications and term. That section said:

> The Lieutenant Governor shall have the same qualifications as the Governor. The Lieutenant Governor is elected at the same time, for the same term, and in the same manner, as the Governor.

The Committee Report on that provision is silent about term limits for the Lt. Governor, stating only "[s]ince the Lieutenant Governor becomes the Governor when the Governor leaves office, is absent from the State, or unable to perform his duties, the Lieutenant Governor should have the same qualifications, term, and be elected in the same manner as the Governor." SCREP No. 1-83-10, J. Kos. Con. Con. (1983) (Comm. on Gov. Structure and Functions), 482.

Consequently, the history of the 1983 Constitution provides little guidance. The proposal for these provisions was titled "Proposal No. 1-83-41 Relating to the term of office of the Governor and Lieutenant Governor." Since the provisions were introduced together, arguably, everything that applied to the Governor was intended to apply to the Lieutenant Governor. But, the language of Section 6 does not explicitly adopt the consecutive term limit. Therefore, an equally strong argument can be made that the entire Delegation rejected term limits for the Lt. Governor.

The Constitutional provisions relating to the Governor and Lt. Governor's terms of office were re-visited during the 1995 Constitutional Convention. The

1995 Constitutional Convention Committee Reports present an argument that the drafters intended to establish a consecutive term limit for the Lt. Governor.

b) 1995 Constitutional Convention

In 1995, the Constitutional Convention proposed several amendments relating to the Governor and Lt. Governor's terms of office. Most of the amendments, however, simply streamlined Article V, leaving the substance of the provisions the same. The relevant amendments changed Article V, Sec. 2, 3, 5, and 6.

Proposed Amendment No. 3, "amending Section 4 of Article IV and Section 3 of Article V, to change the terms of office of the Governor, Lt. Governor and members of the Kosrae State Legislature" moved the Governor's term limitation clause from Article V, Section 5 to Section 3, with little substantive change in the language. Comm. Proposal No. 2-95-031, (D.P. No. 2-95-079), J. Kos. Con. Con. (1995) (Comm. on Gov. Structure and Functions).

The Committee Report for that Amendment proposal states:

> . . . The subject proposal would also limit the ability of the Governor and Lt. Governor to hold the same office for two consecutive terms, and would only be eligible to hold the same office after one term has lapsed. . .
>
> Your Committee fully embraces the concept of limiting the terms of these public offices, taking into account the numerous times this issue was brought up in our community meetings. The public is desirous of limiting the terms of our elected officials. The concerns that we heard relating to the problems associated with the "career" politicians, and the unfair advantages such situations present, are appropriately addressed by the subject proposal.

SCREP No. 2-95-059, J. Kos. Con. Con. (1995) (Comm. on Gov. Structure and Functions).

Several Floor Amendments were submitted on the original amendment proposal. The Floor Amendments included purpose statements which likewise showed intent to apply the term limitation clause to the Lt. Governor. See e.g. Floor Amendment No. 35 ("The purpose of this amendment is to allow the Governor (and Lt. Governor) to hold the same office for no more than two consecutive terms) (internal parenthesis in original) and Floor Amendment No. 38 (same). These reports and purpose statements indicate that the Committee of

Government Structure and Functions, at least, intended the consecutive term limitation to apply the Lt. Governor.

Kosrae Const., Art. V, Sec. 6, relating to the qualifications and term for the Lt. Governor was also amended in 1995. However, the amendment, again, was not substantive. The amendment to Section 6 dropped the language requiring that the Lt. Governor be elected "in the same manner as the Governor." The amendment proposal for Section 6 was combined with an amendment proposal for Section 2, changing the manner in which both the Governor and Lt. Governor are elected. (C.P. No. 2-95-036). Therefore, the "in the same manner" language was no longer necessary in light of changes to Section 2.

The Committee Reports for Section 6 are, once again, silent about consecutive term limits for the Lt. Governor. Consequently, although the Committee Reports for Section 3 present an argument in favor of applying the consecutive term limit to the Lt. Governor, explicit language was never adopted. Therefore, arguably, again expressing an implicit intent by the entire delegation to exclude such a limitation on the Lt. Governor.

Conclusion

The plain language of Article V, Section 6 sets no term limitation for the Lt. Governor. The clause applies the "same term" to the Lt. Governor as for the Governor. Whether or not the Governor's term limitation also applies to the Lt. Governor depends on the interpretation of the language "same term." The 1995 Constitutional History presents the argument that Article V, Section 6, relating to the term of the Lt. Governor, was intended to adopt all term guidelines established for the Governor, including the two consecutive term limit. However, a Court could as easily conclude that regardless of the language in the Committee Reports, the Constitutional Convention Delegation would have included the same explicit language in Article V, Section 6 if they had intended the term limit to apply to the Lt. Governor. If the Senate wants to make sure the Lt. Governor has the same two consecutive term limit of the Governor and Senators, the Senate should immediately propose a Constitutional Amendment to include the explicit language in Article V, Section 6.