The Senate

SIXTH OLBIIL ERA KELULAU

(Palau National Congress)
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January 28, 2003

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Mr. Camsek Elias Chin
c/o Oldiais Ngiraikelau, Esq.
Attorney at Law
Koror, Republic of Palau 96940

Re: Senate Resolution No. 6-112

Dear Mr. Chin:

In the wake of the appellate opinion in Francisco v. Chin, Civil Appeal No. 02-25 (Civil Action No. 01-140), the above-referenced Resolution has been introduced in the Senate regarding your eligibility to be seated as a member of the Senate. The Senate will consider the adoption of this Resolution after January 31, 2003.

You are hereby most respectfully requested to submit your response to this Resolution in writing to the Senate by 4:30 p.m. on Friday, January 31, 2003. Your responses may be prepared by yourself personally or with the assistance of your counsel.

The Senate Committee of the Whole will take into consideration your responses to the proposed Findings of Fact and Conclusions of Law set forth in this Resolution before submitting it to the Senate for consideration and action.

Your understanding and cooperation with respect to this matter shall be most highly appreciated.

Sincerely,

Steven Kanai, Chairman
Senate Committee of the Whole

Attachment

cc: Oldiais Ngiraikelau, Esq.

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SIXTH OLBIIL ERA KELULAU

Ninth Regular Session, January 2003 Senate Resolution No. 6-112

A SENATE RESOLUTION

Rendering the final Judgment of the Senate that Senator-elect Elias Camsek Chin is ineligible to hold office in the Senate of the Sixth Olbiil Era Kelulau as he was not a resident of Palau for five (5) years immediately preceding the General Election held on November 7, 2000.

WHEREAS, Article IX, Section 6 of the Constitution of the Republic of Palau provides:

"To be eligible to hold office in the Olbiil Era Kelulau, a person must be:

1) a citizen;

2) not less than twenty-five (25) years of age;

3) a resident of Palau for not less than five (5) years immediately preceding the election; and

4) a resident of the district in which he wishes to run for office for not less than one (1) year immediately preceding the election"; and

WHEREAS, Article IX, Section 10 of the Constitution provides:

"Each house of the Olbiil Era Kelulau shall be the sole judge of the election and qualifications of its members . . . .", and

WHEREAS, for the nine (9) Senate seats, Senator-elect Elias Camsek Chin received the fifth highest number of votes cast in the General Election held on November 7, 2000 among the candidates who ran for the Senate of the Sixth Olbiil Era Kelulau; and

WHEREAS, there are pending unresolved questions regarding Senator-elect Chin's citizenship and residency qualifications to hold office in the Senate pursuant to Article IX, Section 6 (1) and (3) of the Constitution of the Republic of Palau; and

WHEREAS, the Senate Credentials Committee was directed to investigate and determine Senator-elect Chin's qualifications to be a member of the Senate and to submit its report and recommendation to the Senate; and

WHEREAS, the Senate Credentials Committee submitted its report and recommendation to the Senate; and

WHEREAS, the Senate reviewed the Credentials Committee report and recommendation and based thereon made findings and conclusions, but its determination regarding the

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qualifications of Senator-elect Chin was subjected to a challenge in court by Senator-elect Chin in Civil Action No. 01-140, *Chin v. The Senate, et al.*; and

WHEREAS, after protracted litigation in the *Chin* case, the Appellate Division of the Supreme Court of the Republic of Palau issued its Opinion on January 22, 2003, holding that Senate Resolution No. 6-42 indeed excluded Senator-elect Chin from taking his seat in the Senate pending further investigation of his qualifications as intended by the Senate and further held that *ipso facto* Senate Resolution Nos. 6-54 and 6-55 were to exclude, not expel, Senator-elect Chin from holding office in the Senate, thereby requiring for their adoption a simple majority vote, rather than a two-thirds (2/3's) vote, of the Senate, although these two (2) Resolutions were declared to be unconstitutional for defining the term "residence" in excess of its constitutional authority; and

WHEREAS, the Appellate Division further held that the factual determination of the qualifications of Senator-elect Chin remains with the Senate, but the Senate, in evaluating Senator-elect Chin's five-year residency qualification, must apply the standard established in *Ngerul v. ROP*, 8 ROP Intrm. 295 (2001); and

WHEREAS, the Senate as the sole judge of the election and qualifications of its members hereby ~~adopts~~ wishes the definition of "residence" as articulated in *Ngerul* as the standard to be applied in determining the residency qualification of its members; and

WHEREAS, the Senate's Findings of Fact previously enumerated in Senate Resolution No. 6-55 are hereby deemed final and conclusive and sufficient to constitute the factual basis for the Senate's final judgment on Senator-elect Chin's five-year residency qualification, which Findings of Facts are further specified herein; NOW, THEREFORE,

BE IT RESOLVED by the Senate of the Sixth Olbiil Era Kelulau, Ninth Regular Session, January, 2003, that the Senate, pursuant to Article IX, Section 10 of the Constitution, hereby adopts as final and conclusive on the question of the eligibility of Senator-elect Camsek Elias Chin the following Findings of Fact and Conclusions of Law:

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Senate Resolution No. 6-112

FINDINGS OF FACT

1. Senator-elect Chin was born in Palau on October 10, 1949 and left Palau in 1960 when he was ten (10).

2. Senator-elect Chin lived in Guam for about three (3) years from 1962 to 1965.

3. Senator-elect Chin took up residence in Hawaii in July 1965 when he was fifteen (15) and lived there for about nine (9) years. He attended high school and college in Hawaii, and then took a commission in the United States Army in 1974, at age twenty-four (24), when he was still living in Hawaii.

4. In Senator-elect Chin's formal appointment letter as an officer of the U.S. Army dated June 11, 1975, Senator-elect Chin's address is listed as "803 Isenberg Street, Apartment 401, Honolulu, Hawaii 96814." It is evident that this is the address that the U.S. Army viewed and that was acknowledged by Senator-elect Chin as his permanent address, because the formal Army appointment letter says in its Paragraph 5 "that [a]fter acceptance of this appointment, any change in *your permanent home address* of more than thirty (30) days duration will be reported by you to the custodian of your military personnel records." (Emphasis added.)

5. On August 12, 1974, Senator-elect Chin obtained an Alien Registration Receipt Card from the United States and was granted *permanent resident* status in the United States (colloquially known as having "Green Card" status).

6. When Senator-elect Chin was also asked in Interrogatory No. 2 (in the Civil Action entitled *Chin v. Senate*, et al., Civil Action No. 01-140) whether his status as a permanent resident of the United States has "come to an end," his answer was *"I don't know,"* but the warning on the alien registration card states that it will not be honored if the holder is absent for more than one (1) year." (Emphasis added.) He thus testified that he does not know whether *he is or is not still a "permanent resident" of the United States. He himself thus acknowledged that he does not know what his residency status is.* Evidently he has not surrendered his permanent resident document (his "Green Card") to the appropriate agency of the United States government.

7. In a cable dated December 28, 2000 which was not disclosed to the Senate until April 26, 2001, the U.S. Department of State reported that the computer record maintained by the U.S.

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Immigration and Naturalization Service "indicates that [Mr. Chin] is in Legal Permanent Resident status."

8. Senator-elect Chin registered to vote in 1983 in one of Palau's elections. In the affidavit he filed in support of his application to register for this election, he lists his "current address" as "7288-C FT. CARSON COLORADO 80913."

9. In his answers to Interrogatories 8 and 12 in the aforementioned civil action, Senator-elect Chin lists the places where he lived during his Army career between 1974 and 1997 as Germany, Colorado, Ohio, Kentucky, Korea, Kansas, California, and "Kwajellin" (sic), but makes no mention of Palau.

10. In 1994, Senator-elect Chin came to Palau for a visit with at least some members of his family, but he did not intend to take up residence in Palau at that time, because he was still an active duty member of the U.S. Army and was awaiting his next duty assignment. In Paragraphs 4 and 10 of his Answer to *Ngerul* Complaint, (Civil Action No. 00-223), Senator-Elect chin explains his return to Palau as follows:

> 4. With respect to the allegations contained in paragraph numbered 3 of the Complaint, Chin admits that he was a commissioned officer in the U.S. military, ***that upon his retirement in 1997 he joined his wife who had earlier, in 1994, returned to live in Palau*** pursuant to their wish to come home, and that he was a candidate for the Senate in the Palau national general election of November 7, 2000. ... (Emphasis added.)
>
> 10. Upon his retirement in 1997, Senator-elect Chin came to Palau and joined his wife as previously planned

Senator-elect Chin did not maintain a residence in Palau and did not come to live in Palau until after his retirement from the U.S. Army on September 1, 1997. He purchased for the first time a house in Airai for his family in about March 2000. He also obtained his Palau driver's license for the first time in 2000.

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11. In the *Ngerul* case, the Supreme Court drew no conclusion from Senator-elect Chin's United States permanent resident status regarding his intent to be a resident of Palau.

12. It is evident that Senator-elect Chin did not live in Palau between 1960 and 1997 (a span of 37 out of 52 years of his life), that he did not maintain a residence here during that time, and that he became a legal permanent resident of the United States in 1974. Senator-elect Chin maintained U.S. legal permanent resident status until at the earliest December 28, 2000.

13. Counting from September 1, 1997, the date Senator-elect Chin retired from the United States Army, until November 7, 2000, the date of the last General Election, during which period he lived in Palau, Senator-elect Chin had been physically present in Palau on a reasonably continuous basis only for a period of approximately three (3) years, two (2) months and six (6) days.

14. The General Election in which the members of the Senate were elected was held on November 7, 2000. At that time, Senator-elect Chin maintained the U.S. legal permanent resident status he has obtained in 1974, and he had not renounced that status as of January 28, 2000.

CONCLUSIONS OF LAW

1. In *Ngerul*, supra, at 298, the Appellate Division of the Supreme Court discussed the meaning of residency as follows:

> "For the purposes of this Constitution, a resident is a person who maintains a residence in Palau for an unlimited or indefinite period of time and to which the person intends to return, whenever absent, even if absent for an extended period of time."
>
> . . . .
>
> This alone [the Con-Con Standing Committee Report No. 60] clearly demonstrates that the framers did not intend that "resident" requires continuous physical presence in Palau. Further evidence of the framers' intent is found in RPPL No. 1-67, a law passed by the First Olbiil Era Kelulau to serve under the Constitution. See 23

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PNC §101, et seq. That statute defined residency for both voting and candidacy purposes to mean some physical presence and an intent to establish a permanent home in the jurisdiction. 23 PNC §103(h). Intent is determined by considering ten (10) factors, including "[t]he amount of time the individual is physically present within the jurisdiction," [w]hether the individual maintains a home" in the jurisdiction, and "[t]he existence, and maintenance, or close ties with family, relatives, and friends who are physically present" in the jurisdiction. Id., §107(c)(4)(A-C). Nowhere does it require that a person live continuously within the jurisdiction to maintain the status of resident.

Pursuant to the Appellate Opinion in the *Chin* case, the Senate is bound by this construction of the term "resident of Palau" in Article IX, Section 6 of the Palau Constitution.

2. The Senate concludes that under the *Ngerul* standard, Senator-elect Chin was not a resident of Palau between 1960 and 1997, because Senator-elect Chin's "physical presence" in Palau ~~has been~~ was quite limited during that period, and no evidence exists that he ever maintained a home in Palau during those years "to which he intends to return, whenever absent, even if absent for an extended period of time." When he returned for a short visit in 1994, he and his family stayed with his mother-in-law. The only evidence of his ownership of a house in Palau was when he purchased a house in Airai in about March 2000.

3. Concerning his intent to return to Palau, Senator-elect Chin was a "Permanent Resident Alien" of the United States of America from 1974 up to and including at the earliest December 28, 2000. Senator-elect Chin's status as a permanent resident alien of the United States, for as long that status lasts, negates the requisite element of intent to make Palau his residence.

4. Senator-elect Chin does not meet the residency requirement of Article IX, Section 6(3) of the Palau Constitution and, therefore, is not qualified to be sworn into office as a Senator of the Sixth Olbiil Era Kelulau.

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Senate Resolution No. 6-112

5. Based upon the above findings it is not necessary to reach the other issues regarding Senator-elect Chin's qualification; and

BE IT FURTHER RESOLVED that it is the Judgment of the Senate, Sixth Olbiil Era Kelulau, that Senator-elect Camsek Elias Chin does not meet the five-year residency qualification to be a Senator prescribed in Article IX, Section 6 of the Palau Constitution and thus is not eligible to be seated as a Senator of the Senate, Sixth Olbiil Era Kelulau, and that all prior resolutions and actions of the Senate in conflict with this Resolution are hereby repealed and superseded to the extent of the conflict; and

BE IT FURTHER RESOLVED that there is a vacancy in the Senate which should be filled pursuant to Article IX, Section 7 of the Palau Constitution by special election to be conducted by the Palau Election Commission in accordance with 23 PNC Chapter 16 on March 25, 2003; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to: Mr. Camsek Elias Chin; the Palau Election Commission; the President of the Republic; the Chief Justice of the Palau Supreme Court; all state Governors; and the President of the Senate and the Speaker of the House of Delegates of the Sixth Olbiil Era Kelulau.

Date: 1.28.03

Introduced by: Joshua Koshiba, Senator

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