

## On My Mind

5/22/09

The governor's shenanigans (secret or dishonest activity or maneuvering, according to the *New Oxford American Dictionary*, 2d edition) in regard to Superior Court hearings on the suit filed by the CNMI Retirement Fund are embarrassing, to say the least. The hearings on how much the government owes the Retirement Fund in unpaid contributions have been going on for months, both sides having already agreed that the government does indeed owe the Retirement Fund money.

With only four more hearings scheduled - for the second week of June - and presiding Judge Govendo expected to file his decision and orders shortly thereafter, the governor suddenly announced, last Friday, that he wanted the suit dropped, and turned over to 9<sup>th</sup> Circuit Court mediators, who, he said, charge no fees. In an apparent effort to bolster his view, he nominated two people to the Board this last week, who were promptly approved by the Senate just days before the Board's monthly meeting on Tuesday, May 19<sup>th</sup>.

So far, Board members have not succumbed to the pressure. The 5/19 meeting was attended by a spill-over number of retirees - some were forced to sit in the hall outside the meeting room - who were given an opportunity to voice their concern at the start of the meeting. Most echoed the comments Chairman Juan Pan Guerrero had made in opening the meeting: that the Board members could wear only one hat, and that was as Trustee of the Board's assets. The retirees also spoke of the importance of their pensions to their survival, and of their hope that the Board members would allow the court procedures to run their course.

Later in the day, Board members are said to have all agreed to support the continuation of the court process.

Now, it would appear, pressure is being put on the Board chairman to resign, despite the fact that election rules clearly state that government positions do not have to be given up until candidates are officially certified by the election commission, and that is not scheduled to occur until July.

Though it may turn out to all have been a "tempest in a tea pot," as the saying goes, it has nonetheless been a rather disturbing series of events. In the first place, to attempt to halt a procedure in the courts would appear to be a clear violation of the separation of powers, particularly since the governor also tried to get the legislature to support his call for an end to the judicial process.

Secondly, judging from information from the 9<sup>th</sup> Circuit Court's web page, cases can come to its mediation service only on appeal - which means a decision and ruling would have to be issued first - which the governor had been trying to avoid. Moreover, while the 9<sup>th</sup> Circuit apparently doesn't charge for its mediation services, the attorneys involved on both sides would still be billing their respective clients for the work performed in submitting briefs to the 9<sup>th</sup> Circuit, and for the time involved in working with the mediators.

Of course, the big question is what panicked the governor now, at the last minute? Even if he did believe that the presiding judge in this case would hand down a ruling bankrupting the government, (which, in actuality, does not seem at all likely) wouldn't that have been a possibility all along? Who advised him to try stop matters only now? Why?

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A not unrelated question: how long can one survive while in a state of limbo (an uncertain period of awaiting a decision or resolution - from the same dictionary cited above)? Not only would mediation put the Retirement Fund issue in limbo, but the governor's position regarding immigration federalization puts the CNMI economy in limbo as well. It leaves potential investors, non-resident workers, local businesses, and local government, all of whom depend on an established, reliable immigration system to survive, in a state of suspended animation, unsure of how to proceed.

The governor's plea, during the Washington, D.C. hearings on the federalization bill this past week, to postpone implementation for another 12 months, can only damage the economy even more, as all the players will continue to be left in limbo for yet another year.

It has been reported from the hearing that federal officials stated they would have the foreign investor regulations out within a few weeks and the transitional guest worker program regulations out after that. When asked if they would have everything in place to start in November they said they would. Assuming that the agencies do not yield to pressure from the CNMI, that is good news indeed. Only when what the future holds is known - at least insofar as immigration policies are concerned - will it be possible for the CNMI economy, not to mention potential investors, to come up with realistic plans for their own survival.

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On the subject of keeping commitments, the Coastal Resource Management Office sure took a pretty slippery step in reversing an earlier decision by means of a mere letter. There are records in the files that show that CRM decided, when the Marpi Brownfield project application was submitted to CRM in January of 2008, that the clearing would require obtaining a major siting permit.

It is true that an earlier document in the files indicates that the clearing would require a major siting permit only when construction of proposed homesteads occurred, but the formal finding, signed off by all concerned in February of 2008, does not include this qualification - it simply declares that the project requires a major siting permit.

We all know that CRM's decision was not enforced. There have been no hearings, no preparation of environmental impact statement, no consultation with members of the public. The clearing has been allowed to proceed. Representative Tina Sablan called the February ruling to the attention of CRM, asking CRM to halt the clearing until major siting procedures were followed, to no avail.

Instead, as reported in the press (a requested copy of the letter not having been received by the time of this writing) CRM's director wrote a letter, dated May 15, 2009, stating that the Marpi Brownfield clearing did not require a major siting permit. This in itself is troubling - that a mere letter, with no input apparent from any of the affected parties, is thought to be adequate to over-rule an earlier properly-reached agency decision.

If this were legal, just think of the mayhem that would occur! All one would need, to overturn an agency decision, is a letter from the agency head saying the previous decision was wrong. No rules, no hearing, no discussion. Just a letter!

What makes the situation even more disturbing is that the U.S. Environmental Protection Agency's Region IX Brownfield coordinator, on the basis of this questionable letter, has endorsed and upheld the legality of continuing the clearing - with no written record of the decision or the reasoning behind it. That the feds would reach such a decision on the manner in which local government makes decisions without any due process is troubling indeed.

Makes one wonder whether if one did manage to get in writing from the governor on down that homesteads are not inevitable on that site, the document would have any validity whatsoever.

The question of what will happen to the area once the razing is finished is still unresolved. There has been talk of turning it into a public park, which seems pretty unrealistic given that groomed parks require maintenance, and the government's limited resources don't include money for such maintenance. The simplest thing to do would be to return it to its prior state of natural growth and forest, for the sake of the economy, for the sake of the local flora and fauna, for the sake of the tourists, for the sake of the local community.

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Short takes:

On a brighter note: Kudos to David Cohen, former Deputy Assistant Secretary of the Interior for Insular Affairs, for his testimony at the congressional hearing on the federalization of immigration earlier this past week. Cohen sounded the only note of flexibility, reasonableness, of understanding of the plight of non-resident workers, and was the only one to look beyond self-interest and lay out for the members of Congress the origin and intent of what he referred to as the 'Marianas Immigration Legislation'. The full text of his presentation can be found at Wendy Doromol's web site < <http://unheardnomore.blogspot.com/> >. Thorough and fair as she is, she also provides links to the testimony of everyone else at the hearing. Thanks, Wendy!

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Seems "Roilin' Froilan" is at it again - shooting from the hip, as he used to do as governor. This time, he wrote in a letter to the editor in this past Tuesday's *Saipan Tribune*, he wants to see the Retirement Fund board abolished. Could it be because he hasn't been receiving his special benefit retirement bonus as past governor? Doesn't he know that that is paid for not from Retirement Fund moneys, but from legislative appropriations? More interestingly, could that be why he's now supporting the Covenant

party (i.e., either it has promised to pay or is already paying him that benefit)?