

Remeliik v. The Senate, 1 ROP Intrm. 1 (Tr. Div. 1982)

**HARUO I. REMELIHK and
ALFONSO OITERONG,
Plaintiffs,**

v.

**THE SENATE OF THE FIRST
OLBIIL ERA KELULAU,
Defendants.**

CIVIL ACTION NO. 62-81

Trust Territory of the Pacific Islands
Trial Division of the High Court
Republic of Palau

Declaratory Judgment

Decided: August 17, 1981

Counsel for Plaintiffs: Ronald W. Stock, John K. Rechucher

Counsel for Defendants: Richard L. Johnson

BEFORE: MAMORU NAKAMURA, Associate Justice.

This matter came regularly before this Court for trial on Monday, August 10, 1981. The issues having been tried, the Court hereby states its findings of fact and conclusions of law.

The facts in this case are not in dispute, and they have been stipulated to by the counsel through the admission of Exhibit Nos. 1 through 21. The pertinent background information regarding this case is as follows:

1. The Palau Constitutional Convention commenced on January 28, 1979, and ended its deliberations on April 2, 1979, a total number of fifty-five (55) days.
2. As a result of that historic Convention, the Constitution of the Republic of Palau was passed by the Convention and finally adopted by the people of Palau on **L2** July 9, 1980.
3. On November 4, 1980, a general election was held, whereby the President, Vice President, and members of the legislature were elected to office by the people of Palau.
4. The Constitution of the Republic of Palau became effective by its own terms on January 1, 1981.

Remeliik v. The Senate, 1 ROP Intrm. 1 (Tr. Div. 1982)

5. On or about March 11, 1981, the Plaintiff, President Haruo I. Remeliik, submitted to the Senate, First Olbiil Era Kelulau, for its advice and consent, the names of those persons selected by the President, to serve as the members of his cabinet. (Exhibit No. 17).

6. In a letter dated May 11, 1981 from Kaleb Udui, President of the Senate, to Haruo I. Remeliik, President of the Republic of Palau, the Senate delivered a message to the President that it had failed to confirm any of the President's nominations for members of the cabinet. It stated that the primary reason that no nomination was confirmed was that the Vice President had not been appointed to head a ministry of the cabinet and the Senate believed that by confirming any nominations, the Senate would be infringing on the President's constitutional prerogative to choose which ministry the Vice President would head. (Exhibit No. 20).

7. On May 20, 1981, in a letter from the President to the President of the Senate, the President acknowledged receipt of the Senate's letter dated May 11, 1981, and notified the Senate that he disagreed with the Senate's position and that he had instructed the Acting District Attorney to immediately petition the court to request a declaration setting forth the Constitutional provisions and their meaning. (Exhibit No. 21).

8. Subsequently, on May 21, 1981, the President filed a complaint with the court, requesting that the court declare the legal duties of the President under Section[s] 2 and 5, Article VIII of the Constitution of the Republic of Palau.

9. On June 26, 1981, the Senate, Defendant, filed a motion to dismiss the action.

10. The Senate's motion to dismiss was heard on June 30, 1981. In support of its motion, the Senate essentially argued that the complaint did not establish the jurisdiction of the court in that a) it failed to allege an **L3** actual, justiciable controversy between the parties; b) it called for the issuance of an advisory opinion on purely hypothetical facts and abstract propositions; and c) it presented a political question not susceptible to judicial resolution. Further, the Senate argued that the Vice President was the proper party, rather than the Senate, and that non-joinder of the Vice President compelled the dismissal of the action.

11. The court issued its ruling on the motion on July 2, 1981. After considering the parties' written and oral arguments, the court denied the Senate's motion. The court found that an actual, justiciable controversy existed between the parties, and therefore, did not call for an advisory opinion. Secondly, the court found that the action did not involve a non-justiciable political question, and that the court could not avoid its constitutional responsibility to interpret the law.

12. On July 2, 1981, pursuant to Rule 19(a) of the Trust Territory Rules of Civil Procedure, the court entered an Order joining the Vice President as a party

Remeliik v. The Senate, 1 ROP Intrm. 1 (Tr. Div. 1982)

defendant because in his absence the court could not accord complete relief between the present parties.

13. On July 16, 1981, the Vice President filed his response, indicating therein that he was properly a plaintiff rather than a defendant.

14. Therefore, on July 31, 1981, the court entered an order realigning the Vice President as a plaintiff in this action.

15. On August 6, 1981, a pre-trial conference was held wherein it was agreed upon by counsel that the primary issue at trial was the interpretation of Sections 2 and 5, Article VIII of the Constitution of the Republic of Palau. Therefore, the action would be tried as a matter of law.

16. On August 10, 1981, oral arguments by both counsel were presented to the court.

The President and Vice President have requested that the court declare the legal duties of the President arising from Sections 2 and 5, Article VIII of the Constitution. Sections 2 and 5 read as follows:

Section 2. The Vice President shall serve as a member of the cabinet and such other responsibilities as may be assigned by the **L4** President.

Section 5. The cabinet shall consist of the heads of the major executive departments created by law. The cabinet members shall be appointed by the President with the advice and consent of the Senate and shall serve at the will of the President. No person may serve in a legislature and the cabinet at the same time.

The President and Vice President contend that a construction of Sections 2 and 5 requires that the Vice President be a member of the cabinet by virtue of his position as Vice President and further claim that the Vice President could be named to serve as one of the major department heads, but is not required to be so named.

The Senate takes the position that Sections 2 and 5 mandate that the Vice President be appointed by the President to serve as the head of one of the major executive departments created by law.

The interpretation of the Palau Constitution is a case of first impression in the Republic of Palau.

The threshold question presented to the court is whether Sections 2 and 5, Article VIII of the Palau Constitution require that the Vice President be appointed by the President to head a major executive department. The Senate has interpreted the Constitution in a manner at variance

Remeliik v. The Senate, 1 ROP Intrm. 1 (Tr. Div. 1982)

with the construction given to it by the President and Vice President of the Republic of Palau.

It has been well-settled that “[it] is emphatically the province and duty of the judicial department to say what the law is.” *United States v. Nixon*, 418 U.S. 700, 703, 94 S.Ct. 3090, 3105, 41 L.Ed.2d 1039 (1974); *Marbury v. Madison*, 1 Cranch. 137, 177, 2 L.Ed. 60 (1803).

As the United States Supreme Court stated in *United States v. Nixon, supra*, 418 U.S., at 704, 94 S. Ct., at 3105-3106:

[D]eciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional **L5** interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.

Under Section 5, Article X of the Constitution of the Republic of Palau, the ultimate interpreter of the Constitution is the responsibility of the Judicial Branch.

Notwithstanding the respect each branch of the government must accord the others, the court reaffirms that it is not only proper, but the responsibility of the judiciary to ultimately determine “what the law is”.

Constitutional construction is not required in every case. In fact, it is a cardinal rule of constitutional construction, that if a constitutional provision is positive and free from all ambiguity, it must be accepted by the courts as it is written. *United States v. Sprague*, 282 U.S. 716, 51 S. Ct. 220 (1931); *Spears v. Honda*, 51 Hawaii 1103, 449 P.2d 130 (1969); 16 Am. Jur. 2d *Constitutional Law*, § 85 (1979). The court is, “not permitted to construe that which requires no construction.” *State ex rel. Summerfield v. Clark*, 21 Nev. 333, 31 P. 545, 546 (1892).

However, it is just as well established that where the meaning of constitutional provisions is not entirely free from doubt, resort may be had to preceding facts, surrounding circumstances and other forms of extrinsic evidence, to ensure that the provisions are interpreted in consonance with the purposes contemplated by the framers of the constitution and the people adopting it. *Knowlton v. Moore*, 178 U.S. 41, 44 L.Ed. 960, 20 S.Ct. 747 (1900); *Helping Hand Home for Children v. County of San Diego*, 26 Cal. App. 2d 452, 79 P.2d 778 (1938); *Riley v. North Star Mining Co.*, 152 Cal. 549, 93 P. 194 (1907); 16 Am. Jur. 2d *Constitutional Law* § 48.04 (4th ed. 1973).

Sections 2 and 5 of Article VIII, on their own terms, appear to be clear and unambiguous. It is only when the two provisions are read together, as they must be, that their meaning concerning the role of the Vice President in the cabinet becomes doubtful, and the intent of the framers uncertain.

Consequently, the court must resort to the records of the Constitutional Convention in order to determine the role of the Vice President in the national government of the Republic of

Palau.

The genesis of Sections 2 and 5, Article VIII of the Palau Constitution was Proposal No. 486 “Relating to the **16** National Executive”. This Proposal was submitted to the Constitutional Convention by the Standing Committee on the Executive, after it had deliberated upon numerous proposals and had conducted extensive public hearings.

What eventually became Sections 2 and 5 were originally Sections 6 and 7 of Proposal No. 486. Those sections read as follows:

Section 6. Vice-President. There shall be a Vice-President elected in the same manner as the President and having the same qualifications and terms of office as the President. The President shall appoint the Vice-President to head a Cabinet-level executive department.

Section 7. Cabinet. There shall be a Cabinet consisting of the heads of major executive departments. The cabinet members will be appointed by the President with the advice and consent of a simple majority of the legislature. A person cannot be a legislator and a cabinet officer at the same time. The cabinet members serve at the will of the President. The executive departments will be determined by law. (Exhibit No. 10).

The above cited sections passed first reading on February 22, 1979, and Proposal No. 486 was then referred to the Standing Committee on the Executive for its consideration. Twenty-Sixth Day Summary Journal. (Exhibit No. 5).

On February 24, 1979, the Standing Committee on the Executive issued its Committee Report No. 14 concerning Proposal No. 486. (Exhibit No. 2). The Report discussed at length the type of governmental system Proposal No. 486 was intended to create. The Committee stated that,

[I]t seems clear that everyone wants a system of government that is tailored to Palau and not just a carbon copy of one of the classical systems. So although the system chosen might tend to be patterned after either the parliamentary or presidential system -- the system has to be modified to fit Palau.

Committee Report No. 14 also discussed the above stated Sections 6 and 7. With regard to Section 6, the **17** Committee Report states:

Your Committee was concerned about a Vice-President who had nothing to do and who would be an expensive burden on the government. Consequently, this section obliges the President to appoint the Vice-President to a Cabinet-level post.

In regard to Section 7 of Proposal No. 486, the Committee stated that, “the language of this section and the choice implied are self-explanatory.” (Exhibit No. 2).

Remeliik v. The Senate, 1 ROP Intrm. 1 (Tr. Div. 1982)

On February 25, 1979, Proposal No. 486 was considered by the Convention floor for second reading. In addition, Committee Report No. 14 was adopted that day. Twenty-Ninth Day Summary Journal. (Exhibit No. 6). Initially, there was some debate as to whether a Vice President was necessary at all. One delegate considered the establishment of a traditional Vice President as an expensive concept, unnecessary in Palau. However, it was quickly pointed out by another delegate that Proposal provided that the Vice President would be appointed to head a cabinet-level executive department and would be paid at that level, a move which would help keep costs at a minimum. Others stated that the position of the Vice President was included to give the President companionship and a Vice President was necessary to help relieve the President of matters which the President could delegate. Twenty-Ninth Day Summary Journal. (Exhibit No. 6).

Proposal No. 486 was passed on second reading[,] and it was referred to the Committee on Style and Arrangement on February 26, 1979. Thirtieth Day Summary Journal. (Exhibit No. 7). That Committee redrafted Proposal No. 486, and Sections 6 and 7 thereof became Sections 2 and 5.

According to Committee Report No. 38 by the Committee on Style and Arrangement, Sections 1, 2, 3, 4, and 5 of Proposal No. 486 were redrafted to “consolidate the President and the Vice President into logical sequence.” The Committee specified that the amendments to the provisions were made “. . . in the interests of clarity and consolidation and questions of substance have been left for discussion by the Convention on the floor.” Standing Committee Report No. 38. (Exhibit No. 3).

After the amendments and redrafting, the two sections read as follows:

Section 2. Vice-President. There shall be a Vice-President who shall have such power **18** as may be delegated to him by the President. The President shall appoint the Vice-President to serve as a member of the Cabinet.

Section 5. Cabinet. There shall be a cabinet consisting of the heads of the major executive departments. The executive departments shall be created by law. The cabinet members shall be appointed by the President with the advice and consent of the legislature. No person may serve in the legislature and the cabinet at the same time. The cabinet members shall serve at the will of the President. (Exhibit No. 11).

On March 22, 1979, the Convention made some non-substantive floor amendments to the sections which resulted in the following language:

Section 2. Vice-President. There shall be a Vice-President who shall have such powers as may be delegated to him by the President. The President shall appoint the Vice-President to serve as a member of the Cabinet.

Remeliik v. The Senate, 1 ROP Intrm. 1 (Tr. Div. 1982)

Section 5. Cabinet. There shall be a cabinet consisting of the heads of the major executive departments. The executive departments shall be created by law. The cabinet members shall be appointed by the President with the advice and consent of the legislature. No person may serve in any legislature or cabinet at the same time. The cabinet members shall serve at the will of the President. (Exhibit No. 12).

Proposal No. 486 as amended above was passed on third reading on March 22, 1979. Forty-Ninth Day Summary Journal. (Exhibit No. 9).

The Convention then referred Proposal No. 486, as amended, back to the Committee on Style and Arrangement, the Committee then made some “minor revisions for style”. (Exhibit No. 4). As a result of those revisions, Sections 2 and 5 as reported to the Convention for fourth reading, stated as follows:

Section 2. Vice-President. The 19 Vice-President shall serve as a member of the cabinet and have such other responsibilities as may be assigned by the President.

Section 5. Cabinet. The cabinet shall consist of the heads of the major executive departments created by law. The cabinet members shall be appointed by the President with the advice and consent of the Senate and shall serve at the will of the President. No person may serve in a legislature and the cabinet at the same time. (Exhibit No. 13).

Proposal No. 486, Sections 2 and 5 as revised above passed on fourth reading. It is identical to the present Sections 2 and 5, Article VIII of the Constitution.

The early drafts of Sections 2 and 5 left no doubt that the Vice President would head a major executive department. It is clear to the court that while the style and sentence structure of these sections were altered, its substantive meaning never changed.

Plaintiffs argue that although the language of Sections 2 and 5 was the work of the Committee on Style and Arrangement, the Convention adopted those changes on fourth reading. Plaintiffs further argue that the changes made by the Committee on Style and Arrangement were merely its recommended actions to the Convention, and the Convention could then either adopt or reject such proposed amendments.

In essence, Plaintiffs argue that when Proposal No. 486 was referred to the Committee on Style and Arrangement after third reading, the Committee made amendments which completely changed the concept of Sections 2 and 5 initially introduced by the Committee on the Executive. Plaintiffs further contend that the Convention adopted those amendments on fourth reading with the intention that the Vice President no longer had to be appointed by the President to head a major executive department.

The court disagrees with the Plaintiffs interpretation of the legislative history. Under the

Remeliik v. The Senate, 1 ROP Intrm. 1 (Tr. Div. 1982)

Convention's own Rules of Procedure, the Committee on Style and Arrangement had no power to alter the substantive meaning of any provision submitted to it for its consideration. (Exhibit No. 1). Constitutional Convention Rule 25 states:

¶10 Rule 25. Committee on Style and Arrangement. This Committee shall consist of one member designated by each of the subject-matter standing committees. It shall examine, consider and edit all proposals referred to it for inclusion in the Constitution for the purposes of avoiding inaccuracies, repetition, inconsistencies or poor drafting, and shall consider and make recommendations on any differences, conflicts or unresolved matters of substance. The Committee shall have the authority to rephrase language and to regroup sections proposed for inclusion in the Constitution, but shall have no authority to change the sense or purpose of any proposal referred to it. The Committee shall also have the power to recommend re-referral of Committee Proposals submitted to it back to the originating committee. It shall undertake to resolve any inconsistency or conflict in conference with the originating committee. If the Committee shall fail to resolve any such inconsistency or conflict, it shall notify the Convention and await its instructions. (Emphasis added).

It is clear to the court that under Rule 25, the Committee on Style and Arrangement had no authority to alter the sense or purpose of Sections 2 and 5 of Proposal No. 486. Furthermore, at no time did the Committee on Style and Arrangement indicate that it was doing anything other than making "minor revisions for style and clarity". Standing Committee Reports Nos. 38 and 82. (Exhibit Nos. 3 and 4). Plaintiffs can point to no statement in the records of the Convention that supports a contrary intent.

Accordingly, after a careful review of Proposal No. 486, as amended, the committee reports, the debates and the entire summary journals of the Convention, the court is convinced that the purpose of Sections 2 and 5, Article VIII, was to have the Vice President appointed by the President to head a major executive department.

IT IS, THEREFORE, ORDERED, AND ADJUDGED that the rights of the parties are as follows: That pursuant to Sections 2 and 5, Article VIII of the Constitution of the Republic of Palau, the President has a constitutional duty to **¶11** appoint the Vice President to head a major executive department created by law.