FOR PUBLICATION

CERTIFIED QUESTION NO. 02-001-OA

IN THE SUPREME COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

FRANCISCO M. BORJA, MAYOR OF TINIAN; the MUNICIPALITY OF TINIAN, a Chartered Municipality and a Political Subdivision of the Commonwealth of the Northern Mariana Islands; and the **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,**

Defendants.

United States District Court for the Northern Mariana Islands
Civil Case No. 02-0016

OPINION

Cite as: *United States v. Borja (Mayor of Tinian),* 2003 MP 8

Argued and submitted December 23, 2002.
Decided May 8, 2003

For:	Defendants Municipality of Tinian and Francisco M. Borja, Mayor of Tinian Loren A. Sutton, Esq. P.O. Box 5593 CHRB Saipan, MP 96950	Defendant Commonwealth of the Northern Mariana Islands Joseph L.G. Taijeron, Jr. Esq., Assistant Attorney General Civil Division--Capitol Hill Saipan, MP 96950	Amicus Curiae Municipality of Rota Thomas G. Brace,Esq. Songsong Village P.O. Box 537 Rota, MP 96951

BEFORE: DEMAPAN, Chief Justice, SABLAN-ONERHEIM and BELLAS, Justices *Pro Tempore.*

DEMAPAN, Chief Justice:

¶1 On October 1, 2002, the Honorable Alex R. Munson, Chief Judge of the U.S. District Court for the Northern Mariana Islands, certified a question for interpretation of local law, on an issue that has not yet been considered or determined by this Court. Federal courts are "bound by the answers of state supreme courts to certified questions just as [they] are bound by state supreme court interpretations of state law in other contexts." *Reinkemeyer v. Safeco Ins. Co. of Am.*, 166 F.3d 982, 984 (9th Cir. 1999).[1] *See also Dyack v. Commonwealth*, 317 F.3d 1030, 1034 (9th Cir. 2003).[2] The question certified is: "[i]s the 'Municipality of Tinian' a chartered municipality such that it can sue and be sued?" We have jurisdiction pursuant to Rule 5 of the Commonwealth Rules of Appellate Procedure.[3] *Sonoda v. Cabrera*, 1997 MP 5 ¶1. For the reasons that follow, we answer the rephrased certified question in the affirmative.

ISSUE PRESENTED AND STANDARD OF REVIEW

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[1] We do not contemplate that our answer to the certified question will be treated as merely advisory. *See Grover v. Eli Lily and Co.*, 33 F.3d 716, 719 (6th Cir. 1994) ("A federal court that certifies a question of state law should not be free to treat the answer as merely advisory unless the state court specifically contemplates that result.")

[2] "If the state's highest court has not addressed the issue, then we must predict how that court would interpret the statute. The CNMI Supreme Court has not yet construed § 8131 (a)(2). Accordingly, our task is to predict how it would interpret that statutory provision." *Dyack v. Commonwealth*, 317 F.3d 1020, 1034 (9th Cir. 2003).

[3] It reads, in pertinent part:

> [a] federal court may certify to this Court a question or proposition of law concerning a local law of the Commonwealth of the Northern Mariana Islands where the local law has not been clearly determined, and it is necessary or desirable to ascertain the local law in order to dispose of the federal court's proceeding.

Com. R. App. P. 5(a).

¶2 We have rephrased the certified question certified to read:[4]

I. Is the "Municipality of Tinian and Aguiguan" a chartered municipality such that it can sue and be sued?

"A certified legal question from the U.S. District Court is reviewed de novo." *Sonoda v. Cabrera*, 1997 MP 5 ¶3.

BRIEF FACTUAL AND PROCEDURAL BACKGROUND

¶3 Plaintiff United States of America entered into a contract in 1992 with the (then) Mayor of Tinian and Aguiguan, the Honorable James M. Mendiola. Subsequent contracts were signed by the United States of America and the (successor) Mayor, the Honorable Herman M. Manglona. It does not appear that the present Mayor, the Honorable Francisco M. Borja, executed any contracts that are the subject of this suit. The United States of America filed suit against defendants "Mayor of Tinian and Municipality of Tinian," (hereinafter collectively "Defendant" or "Tinian") as well as codefendant Commonwealth of the Northern Mariana Islands. The suit seeks to collect approximately two million dollars to remedy the alleged breach of the contracts.

¶4 Tinian answered that it is not a chartered municipality and it is not capable of suing and being sued. The District Court certified the question on October 1, 2002. Pursuant to Com. R. App. P. 5(c), we ordered briefing on October 2, 2002. On October 31, 2002, we permitted the Municipality of Rota to file an amicus curiae brief, in which the Municipality of Rota took the position that Tinian and Aguiguan was

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[4] A Supreme Court is free to rephrase a certified question if necessary. *See Vermont v. Crandall*, 644 A.2d 320, 322 (Vt. 1994) ("We are not, however, limited by this inaccuracy in as much as a certified question is a landmark, not a boundary, and we can address issues that are fairly raised even if they are not exactly described.") (citations omitted).

The District Court's omission of Aguiguan is understandable when one considers the fact that the parties, including the Municipality of Tinian and Aguiguan, generally omitted Aguiguan when referring to the Municipality of Tinian and Aguiguan in most of the submissions to this Court.

properly chartered as a municipality. Arguments were held on December 23, 2002.[5]

ANALYSIS

¶5 Tinian argues that it is not a properly chartered municipality or quasi-corporation; as such, it cannot sue or be sued. *See* Def.'s Opening Br. at 16-18. It argues that Article VI, Section 8 of the Commonwealth Constitution is too vague to be self-executing, and that legislative enactment is necessary to charter the municipality. *Id.* at 7-16. Furthermore, Tinian cites an Attorney General's Opinion which explicitly opined[6] that further action by the legislature was necessary to charter the municipalities of Rota and Tinian. *Id.* at 11-12. We find these arguments unpersuasive.

¶6 Section 8 of Article VI o£the Commonwealth Constitution reads:

> The chartered municipality form of local government on Rota, and, Tinian and Aguiguan, is hereby established. Local taxes paid to the chartered municipal governments of Rota, and, Tinian and Aguiguan, and Saipan may be expended for local public purposes on the island or islands producing those revenues. New agencies of local government may not be established without the affirmative vote of two-thirds of the persons qualified to vote from the island or islands to be served by the proposed agency of local government.

¶7 A constitutional provision is self-executing if it does not require legislation to put it into effect. *See Am. Fed'n of Labor v. Watson*, 327 U.S. 582, 596, 66 S. Ct. 761, 768, 90 L. Ed. 873, 882 (1946) ("There is, in the first place, some question whether this new provision of Florida's constitution is

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[5] The United States of America took no position on the issue, and declined to participate in the briefing and argument of this certified question. *See* Letter from Assistant U.S. Attorney Gregory Baka filed December 3, 2002.

[6] Attorney General's Opinion No. 867 (July 7, 1986) reads, in pertinent part:

> The provision establishing the chartered municipality form of local government on Rota, Tinian and Aguiguan is a reversal of the provisions appearing in Article VI, Section 6(a) of the Constitution. Under the language of the Amendment, the form of local municipal governments is established, but it is believed that additional steps must be taken to actually establish a chartered municipal government. In effect, the chartering process must be undertaken. The language of the Amendment is not believed to be self-executing to the extent that it actually establishes specific chartered municipalities.

self-executing or requires legislation for its enforcement.") (footnote omitted). Furthermore, a presumption exists that every provision in the Commonwealth Constitution is self-executing. *See Rockefeller v. Hogue*, 429 S.W.2d 85, 88 (Ark. 1968) ("There is a presumption of law that any and every constitutional provision is self-executing."); *Ohio v. Bliss*, 101 N.E.2d 289, 291 (Ohio 1951) (*quoting* 11 AM. JUR. *Constitutional Law* § 72) ("Accordingly, the presumption now is that all provisions of the constitution are self-executing.").[7]

¶8 This is not to say, however, that every provision in the N.M.I. Constitution is self- executing. A constitutional provision that contemplates and requires legislation is not self-executing. *Taylor v. Madigan*, 126 Cal. Rptr. 376, 381 (Cal. Ct. App. 1975). Constitutional provisions dealing with the incorporation of municipalities are sometimes held to be not self-executing.[8] For example, a constitutional provision mandating that the legislature "shall by general law classify cities and towns according to population, and

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[7] A historical analysis of the presumption provides:

> When the Federal Constitution and the first state constitutions were formed, a constitution was treated as establishing a mere outline of government providing for the different departments of the governmental machinery and securing certain fundamental and inalienable rights of citizens, but leaving all matters of administration and policy to the departments created by the constitution. This form of the organic instrument gave rise to a general presumption that legislation is necessary in order to give effect to the provisions of the constitution and that its terms operate primarily as commands to the officers and departments of the government. [Modern] state constitutions have been generally drafted upon a different principle and have often become, in effect, extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments. Accordingly, the presumption now is that all provisions of the constitution are self-executing.

Ohio v. Bliss, 101 N.E.2d 289, 290-91(Ohio 1951) (*quoting* 11 AM. JUR. *Constitutional Law* § 72).

While we explicitly adopt that presumption today, we implicitly recognized it in *Govendo v. Marianas Pub, Land Corp.*, 2 N.M.I. 482 (1992). In *Govendo*, we held that Art. I, Section 9 of the CNMI Constitution was self-executing. Article I, Section 9 of the CNMI Constitution reads:

> Each person has the right to a clean and healthful public environment in all areas, including the land, air, and water. Harmful and unnecessary noise pollution, and the storage of nuclear or radioactive material and the dumping or storage of any type of nuclear waste within the surface or submerged lands and waters of the Northern Mariana Islands, are prohibited except as provided by law.

Without comment, we stated "[w]e interpret Article I, section 9 of the Constitution to be self-executing." *Id.* at 502 n.16.

[8] "Constitutional provisions which have been construed as not self-executing include provisions relating to . . . establishment of a uniform system of county and municipal governments and by general law classifying cities and towns according to their population and providing for their incorporation, government, and the like." 16 AM. JUR. 2d *Constitutional Law* § 107 (1998).

shall by general law provide for their incorporation, government, jurisdiction, powers, duties and privileges under such classification," was held to be not self-executing. *Florida v. Wilder*, 25 So. 2d 569, 571 (Fla. 1946) ("Section 24 of Article III is a mandate from the people to the legislature to establish a uniform system of county and municipal government throughout the state, but this section of the Constitution is not self-executing.").

¶9 Our analysis of the certified question begins and ends with the plain language of the Constitution, for "[w]e will apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended." *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 368 (1990) (quotation and citation omitted). The Constitution plainly reads, "[t]he chartered municipality form of local government on Rota, and, Tinian and Aguiguan, is *hereby established*." N.M.I. Const. art. VI, § 8 (emphasis added). It is immediately obvious that the sovereign people of the Commonwealth desired that Rota and Tinian and Aguiguan become chartered municipalities immediately, due to the usage of the phrase "is hereby established." *Id.*

¶10 It should be noted that the provision does not read that the municipalities should be established "as provided by law." *See, e.g.*, N.M.I. Const. art. VI, § 7(a) ("The municipal councils shall meet in regular session no more than twice a month, and shall be paid for each meeting *as provided by law*." (emphasis added)); N.M.I. Const. art. XX, § 1 (in pertinent part) ("Exemption from the civil service shall be as provided by law."). Nor does Section 8 of Article VI state that "the Legislature shall enact" laws creating the municipalities of Rota and Tinian and Aguiguan. *Compare* N.M.I. Const. art. VI § 8 *with* N.M.I. Const. art. XIX, § 1 ("The legislature shall enact a comprehensive Code of Ethics.") *and* N.M.I. Const. art. XX, § 1 ("The legislature shall provide for a non-partisan and independent civil service.").

¶11 Section 8 of article VI is self-executing, in that it chartered Rota and Tinian and Aguiguan into

municipalities. While it is true that the powers of the municipal councils and the duties of the Mayors of the municipalities may be expanded by the legislature at a later date, *see* N.M.I. Const. art. VI, § 3(h) ("A mayor shall perform other responsibilities provided by law.") and § 7(a)(5) ("Additional powers and duties as provided by law."), nothing is committed to the legislature to do at a later date to bring the municipalities into existence. *See* N.M.I. Const. art. VI, § 8. Therefore, pursuant to Article VI, Section 1 ("Agencies of local government shall be established as provided by this article."),[9] on November 3, 1985, the date of the ratification of Amendment 25,[10] Rota and Tinian and Aguiguan became chartered municipalities and new agencies of local government could "not be established without the affirmative vote of two-thirds of the persons qualified to vote from the island or islands to be served by the proposed agency of local government." N.M.I. Const. art. VI, § 8.

¶12 Our determination that Article VI, Section 8 is self-executing, based on the plain language of the Constitution, is bolstered by the fact that the legislature has made no attempt to further charter the Municipality of Tinian and Aguiguan since the ratification of Amendment 25 on November 3, 1985. From this, we conclude that the Commonwealth government has correctly been operating under the assumption that Tinian and Aguiguan is, in fact, a chartered municipality. Were we to conclude otherwise, we would, in effect, be stating that the Legislature has been refusing to enact legislation mandated by the people of the Commonwealth for seventeen years.[11] We do not, however, impute this neglect to the Legislature; since

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[9] No party argued that Article VI, Section 1 required the legislature to officially "charter" the municipalities of Rota and Tinian and Aguiguan, nor do we interpret it in that manner.

[10] Portions of Amendment 25 became Section 8 of Article VI.

[11] In determining whether a constitutional provision is self-executing, courts are sometimes influenced by the fact that, if the provision in question is not treated as self-executing, the legislature would have the power to nullify the provision by inaction, thereby ignoring the will of the people. *See Morgan v. Bd of Supervisors*, 192 P.2d 236, 241 (Ariz. 1948) (citation omitted) ("The general presumption of law is that all constitutional provisions are self-executing, and are to be interpreted as such, rather than requiring further legislation, for the reason that, unless such were done, it would be in

we have certainly considered Tinian and Aguiguan to be a municipal entity, see *Commonwealth v. Tinian Casino Gaming Control Commission*, 3 N.M.I. 134 (1992), *Manglona v. Civil Service Commission*, 3 N.M.I. 243 (1992), and Tinian and Aguiguan has held itself out as a municipal entity by entering into contracts and suing in court,[12] it is only logical to conclude that the Legislature has assumed that Tinian and Aguiguan was properly chartered.

¶13 While we freely admit that the chartering of a municipality within a constitution is rare, we are unable to say that the charter granted to Rota and Tinian and Aguiguan in the Commonwealth Constitution is in any way defective. At the outset, we reject any notion that the Commonwealth Constitution cannot serve as a charter for the municipalities of Rota and Tinian and Aguiguan, for "[n]o particular form of words is necessary to constitute a municipal corporation, though a particular form of words is generally used for such purpose." *Rosencranz v. City of Evansville*, 143 N.E. 593, 595 (Ind. 1924). *See also Davidson Baking Co. v. Jenkins*, 337 P.2d 352, 354-55 (Or. 1959) ("[F]or a charter is the organic law of a city, and it is no less the organic law because it is contained in a general statute. . . . [I]t is not inappropriate to refer to such a statute as a charter.") (citations omitted).

¶14 Next, we reject the argument that Article VI, Section 8 is too vague to be self-executing. Were one to examine Article VI, Section 8 in a vacuum, one could easily conclude that further legislation would be necessary to bring the municipalities of Rota and Tinian and Aguiguan into existence, as no mention is made of the form or powers of the local governments to be created. *See* N.M.I. Const. art. VI, § 8. However, Article VI, Section 8 does not exist in a vacuum, as it is part of the Commonwealth Constitution.

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the power of the Legislature to practically nullify a fundamental of legislation."); 16 AM. JUR. 2d *Constitutional Law* § 100 n.68 (1998) (citing cases).

[12] *See, e.g., Rayphandv. Sablan*, 95 F. Supp. 2d 1133 (D. N.M.I. 1999), aff'd 528 U.S. 1110, 120 S. Ct. 928, 145 L. Ed. 2d 806 (2000).

¶15 When read as a whole, the Commonwealth Constitution is more than adequate as a chartering document for Tinian and Aguiguan.[13] A municipal charter "consists of the creative Act and all laws in force relating to the corporation, whether in defining its powers or regulating their mode of exercise." *Trailway Oil Co. v. City of Mobile*, 122 So. 2d 757, 762 (Ala. 1960). Section 2 of Article VI calls for the election of a mayor, lists the qualifications one must meet to serve as mayor, limits a mayor to two four year terms, and calls for a special election if there exists a vacancy in the office. N.M.I. Const. art. VI, § 2. Section 3 of Article VI outlines the mayor's duties and responsibilities. N.M.I. Const. art. VI, § 3. Section 4 of Article VI authorizes compensation for the mayor. N.M.I. Const. art. VI, § 4. Section 6 of Article VI mandates the creation of municipal councils, lists the qualifications needed to serve on the councils, and outlines the procedure by which vacancies shall be filled. N.M.I. Const. art. VI, § 6. Section 7 of Article VI lists the powers of the councils, requires meetings "in regular session no more than twice a month," and mandates that the members be paid for their service. N.M.I. Const. art. VI, § 7. To summarize, Section 8 of Article VI serves as the "creative act" while Sections 2-7 of Article VI define the powers of the Municipality of Tinian and Aguiguan and regulate their mode of exercise.

¶16 The adequacy of Tinian and Aguiguan's charter becomes even more apparent when one juxtaposes the current charter with the original Charter for Tinian.[14] The original charter is approximately six pages long and is mirrored in many respects by the charter now granted to Tinian and Aguiguan via the Commonwealth Constitution. Article I of the original charter established the "Legislative Branch of the Municipality." Def.'s Opening Br., Exhibit II at 3. It stated the qualifications needed to serve as a

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[13] The same can be said of the Municipality of Rota.

[14] Tinian was chartered in the 1950's. The charter was repealed when the Commonwealth Constitution was ratified in 1977.

congressman, set the term of office, called for regular meetings, created congressional offices, stated the procedures by which positions could be vacated and by which vacancies in the Congress were to be filled, listed the powers of "the Congress of Tinian," stated the procedure by which a bill was to be considered approved and called for remuneration for members of the congress. *Id*. at 4-5.

¶17 Article II created the "Executive Branch of the Municipality." It created the position of Mayor, set his term of office and the qualifications needed to serve as Mayor, stated the circumstances by which the office may be vacated and the procedure for filling the vacancy, and stated the powers and duties of the Mayor. *Id*. at 5-6.

¶18 Article III stated that the "Judicial Branch of the Municipality shall be organized in accordance with the existing directives of the Administering Authority." *Id*. at 6. Article IV stated the procedures by which elections were to be held. *Id*. at 6-7. Article V was entitled "Public Finance" and detailed the procedures by which revenues were to be raised. *Id*. at 7-8. Article VI stated that the Charter could be amended "by a two thirds vote of all the Congress of Tinian, provided that no amendment shall deprive a citizen of Tinian of the basic rights stated in the preamble of this Charter. Amendments shall require the approval of the District Administrator." *Id*. at 8. Article VII stated that the Charter would become "lawful and binding upon all residents of Tinian" "[u]pon the written approval of the High Commissioner, Saipan District, Trust Territory of the Pacific Islands." *Id*.

¶19 In short, there is little contemplated by the original Charter that is not explicitly mentioned in Article VI or elsewhere in the Commonwealth Constitution. *Compare* Charter-Municipality of Tinian *with* Constitution of the Commonwealth of the Northern Mariana Islands. The charter granted to Tinian and Aguiguan is not too vague to be effective.

¶20 An opinion rendered by the Attorney General of the Commonwealth of the Northern Mariana

Islands is certainly not binding on the Commonwealth's judiciary. *See Cedar Shake and Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 625 (9th Cir. 1993) (courts are not bound by an Attorney General's Opinions, although they are generally regarded as "highly persuasive"). We find the Attorney General's Opinion dated July 7, 1986, unpersuasive as to the question presently before us for two reasons. First, the Attorney General has repudiated the opinion rendered in 1986 and now is of the opinion that Tinian and Aguiguan is a chartered municipality.

> To the extent that the Court finds the Attorney General's Opinions to be dispositive, the instant brief, supported by research and caselaw represents the current and (revised) AG Opinion on the matter of Tinian and Aguiguan's municipal status. All other opinions previously rendered on this issue are superceded and withdrawn to the extent that they are inconsistent with the notion that the Municipality of Tinian is a chartered entity such that it can sue and be sued.

Commonwealth's Reply Brief at 4-5 fn.2.

¶21 Second, we are of the belief that an Opinion of the Attorney General should be treated as persuasive authority for the judiciary only so far as it is properly and thoroughly researched. The Attorney General's previous Opinion stating that Section 8 of Article VI is not self-executing is four sentences long and contains ninety words with no reference to case law or legislative history. For each and both of the aforementioned reasons, we find the Opinion of the Attorney General rendered on July 7, 1986 unpersuasive.

CONCLUSION

¶22 For the foregoing reasons, the Municipality of Tinian and Aguiguan is a chartered municipality such that it can sue and be sued. The rephrased certified question is answered in the AFFIRMATIVE.

SO ORDERED this 8th day of May 2003.

/s/_____
MIGUEL S. DEMAPAN, CHIEF JUSTICE

/s/_____
VIRGINIA SABLAN-ONERHEIM JUSTICE PRO TEMPORE

/s/_____
TIMOTHY H. BELLAS, JUSTICE PRO TEMPORE