ARTICLE XIII

General Provisions

Section 1. The national government of the Federated States of Micronesia recognizes the right of the people to education, health care, and legal services and shall take every step reasonable and necessary to provide these services.

Case annotations: Professional Services Clause

The Constitution vests the nat'l gov't with power to act concerning health care and may place some affirmative health care obligations on it. *Manahane v. FSM*, 1 FSM Intrm. 161, 172 (Pon. 1982).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. *Carlos v. FSM*, 4 FSM Intrm. 17, 29 (App. 1989).

The Professional Services Clause of the Constitution demands that when any part of the nat'l gov't contemplates action that may be anticipated to affect the availability of education, health care or legal services, the nat'l officials involved must consider the right of the people to such services and make a reasonable effort to take "every step reasonable and necessary" to avoid unnecessarily reducing the availability of the services. *Carlos v. FSM*, 4 FSM Intrm. 17, 30 (App. 1989).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in art. XIII, § 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 FSMC 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in art. XIII, § 1 of the Constitution. *Carlos v. FSM*, 4 FSM Intrm. 17, 30 (App. 1989).

Since the Constitution's Professional Services Clause is a promise that the nat'l gov't will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 FSMC 702(4), which creates a $20,000 ceiling of governmental liability, shields the gov't against a claim that FSM gov't negligence prevented a person from receiving necessary health care. *Leeruw v. FSM*, 4 FSM Intrm. 350, 362 (Yap 1990).

When considering a foreign investment permit application the Secretary of Resources and Development must consider "the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia." 32 FSMC 210(8). *Michelsen v. FSM*, 5 FSM Intrm. 249, 254 (App. 1991).

Since the denial of the application resulted in a decrease in the availability of legal services in Yap and since the Secretary did not properly weigh the extent to which the application would contribute to the constitutional policy of making legal services available to the of the FSM, the denial of the foreign investment permit to practice law in Yap was unwarranted by the facts in the record and therefore unlawful. *Michelsen v. FSM*, 5 FSM Intrm. 249, 256 (App. 1991).

Art. XIII, § 1 is a general provision that recognizes the right of the people to education, health care, and legal services. It does not act as an exclusive duty to ensure the availability of attorney

services in the FSM, and it does not prohibit a state from administering its own bar.*Berman v. Santos*, 7 FSM Intrm. 231, 237 (Pon. 1995).

***Section 2*.** Radioactive, toxic chemical, or other harmful substances may not be tested, stored, used, or disposed of within the jurisdiction of the Federated States of Micronesia without the express approval of the national government of the Federated States of Micronesia.

***Section 3*.** It is the solemn obligation of the national and state governments to uphold the provisions of this Constitution and to advance the principles of unity upon which this Constitution is founded.

***Section 4*.** A noncitizen, or a corporation not wholly owned by citizens, may not acquire title to land or waters in Micronesia.

***Section 5*.** A lease agreement for the use of land for an indefinite term by a noncitizen, a corporation not wholly owned by citizens, or any government is prohibited.

Editor's note: Art. XIII, § 5 was amended by Constitutional Convention Committee Proposal No. 90-23, CD1, SD1 which became effective on July 2, 1991. A copy of this amendment follows this Constitution.

The original language of art. XIII, § 5 was as follows:

"**Section 5.** An agreement for the use of land for an indefinite term is prohibited. An existing agreement becomes void 5 years after the effective date of this Constitution. Within that time, a new agreement shall be concluded between the parties. When the national government is a party, it shall initiate negotiations."

Case annotations prior to the effective date of the constitutional amendment interpret art. XIII, § 5 as originally worded.

Case annotations: Indefinite Land Use Agreements

Read in the light of its legislative history, art. XIII, § 5 of the FSM Constitution was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. *Melander v. Kosrae*, 3 FSM Intrm. 324, 330 (Kos. S. Ct. Tr. 1988).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. *Billimon v. Chuuk*, 5 FSM Intrm. 130, 132 (Chk. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. *Nena v. Kosrae*, 5 FSM Intrm. 417, 423 (Kos. S. Ct. Tr. 1990).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for

missionary purposes. The term is definite, because its termination can be determined with certainty. *Dobich v. Kapriel*, 6 FSM Intrm. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a gov't. *Dobich v. Kapriel*, 6 FSM Intrm. 199, 202 (Chk. S. Ct. Tr. 1993).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. *Nena v. Kosrae (I)*, 6 FSM Intrm. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. *Nena v. Kosrae (II)*, 6 FSM Intrm. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite . it is a permanent transfer of an interest in land. *Nena v. Kosrae (III)*, 6 FSM Intrm. 564, 568 (App. 1994).

Section 6. The national government of the Federated States of Micronesia shall seek renegotiation of any agreement for the use of land to which the Government of the United States of America is a party.

Section 7. On assuming office, all public officials shall take an oath to uphold, promote, and support the laws and the Constitution as prescribed by statute.