

June 15, 1955

M E M O R A N D U M \*

Subject : Enforcement of Federal Narcotics Laws by Commonwealth Officials.

Perhaps one of the most interesting Federal-Commonwealth relationships is that under which Commonwealth Treasury officials administer in Puerto Rico the U. S. Narcotics Act of 17 December 1914 and the Marihuana Act of 2 August 1937. These Federal Acts provide for control--mainly through licensing--of the production of and traffic in narcotics and marihuana. The operation of the Acts is not confined to interstate commerce and, in the States, brings the Federal Government into direct contact with drug manufacturers and dispensers. The constitutional validity of the Acts rests not only on the commerce clause but also on the taxing power. Furthermore, they serve to implement in part a treaty obligation.

These statutes provide that in Puerto Rico the administration of the respective laws, the collection of special and other taxes provided for therein and the issuance of order forms "shall be performed by the appropriate internal revenue officers of that government," and all revenues collected thereunder in Puerto Rico shall accrue intact to the insular government. The text of the pertinent sections of the U. S. Internal Revenue Code is set forth in Appendix B.

It is apparent from opinions of the U. S. Attorney General and the General Counsel of the U. S. Treasury Department dated 7 December

\* Prepared by Emil J. Sady.

1935 and 21 January 1936, respectively, that Commonwealth officials exercise responsibility under these Acts by virtue of a direct investiture of authority from the U. S. Congress. They are not subject to the supervision or direction of the U. S. Secretary of the Treasury or the U. S. Commissioner of Narcotics. The Treasurer of Puerto Rico possesses the same powers in administering the Acts in Puerto Rico as the U. S. Commissioner of Narcotics possesses in administering the laws in the States. The Treasurer of Puerto Rico can promulgate regulations to carry out these Federal statutes on his own authority and without referring them to any Federal agency for approval. He is also authorized to compromise criminal and civil liability incurred under the Federal laws (i.e. to impose administrative fines).

The Chief of the Commonwealth Bureau of Alcoholic Beverages and Narcotics issues licenses to importers, producers, distributors, doctors and others in Puerto Rico pursuant to these Federal statutes. The license forms carry the heading "Gobierno de Puerto Rico" and the text affirms compliance of the licensee with the pertinent Federal statute. The Commonwealth Government can prescribe the forms and record books required and issues commodity tax stamps for drugs produced in Puerto Rico.

The proceeds from licenses, fines, and tax stamps collected in the administration of these Federal Acts in Puerto Rico are deposited into the Commonwealth Treasury. These totalled \$4,420.50 in fiscal 1954. The Commonwealth Government expends about \$45,000 annually for administration of the Narcotics statutes. The U. S. Government bears

the cost of Federal prosecution, U. S. District court costs, the cost of caring for drug addicts in U. S. Public Health Service hospitals, and the cost of maintaining federal law violators in jail.

The General Counsel of the U. S. Treasury Department in his opinion dated January 21, 1936, interpreted the national interest in the application of the Narcotics Act of 1914 to Puerto Rico as follows:

"Aside from certain statistical information, which the United States as a party to the International Opium Conventions is obligated to submit through the State Department to international bodies at Geneva, neither the United States, nor the Treasury Department has any direct or immediate interest in the administration of the Act in Puerto Rico, for the Act is primarily a revenue measure and the revenue collected thereunder in Puerto Rico accrues intact to the insular government."

It is noteworthy that since the Commonwealth was proclaimed in 1952, the Commonwealth Bureau has not sent reports to the Federal Bureau. However, it is believed that data for Puerto Rico is included in the overall data for the United States which are published by the International Opium Board.

There is also a basic Commonwealth narcotics statute which was adopted in 1934 and then amended in 1939. The same Commonwealth officials who administer the Federal Narcotics and Marihuana laws are charged with the administration of the Commonwealth statutes. It appears to be largely a matter of "fielder's choice" whether a person arrested for dope peddling, for example, is charged in a Commonwealth court with violating a Commonwealth law or charged in the U. S. District Court with violating a Federal law.

In practice, Commonwealth officials consistently resort to Federal, rather than Commonwealth, law and enforcement machinery. They do so, according to the former Director of the Commonwealth Bureau of Alcoholic Beverages and Narcotics, because (1) the Commonwealth law is not sufficiently comprehensive; (2) the penalties under Commonwealth law are not severe enough (note: they are for violators of marihuana laws but not for violators of narcotics laws); (3) certainty that the Federal law will be enforced serves psychologically as a deterrent; and (4) the United States pays for prosecution and adjudication of cases and for imprisonment of offenders.

The work load in this field during fiscal 1954 is reflected in the following data, taken from the Commonwealth Secretary of the Treasury's report:

	<u>Marihuana</u>	<u>Narcotics</u>
Major Cases Referred to the U. S. District Court	13	3
Cases in Which Defendants Found Guilty	7	3
Cases Handled Administratively	--	165
Cases in which Administrative Fines imposed .....		62
Cases dropped .....		92
Cases pending .....		11

It is estimated that there are about 250 narcotic addicts and 600 marihuana addicts in Puerto Rico. Most of these persons are "relapsers", i.e. were once cured of addiction and have succumbed to it again. Addicts who are apprehended are sent to U. S. Public Health

Service institutions for males in Texas or Kentucky and for females in West Virginia. Those guilty of illegal traffic in narcotics and marihuana are sent to Federal penitentiaries or reformatory institutions in the U. S. The Attorney General of the U. S. determines the institution to which these persons are sent.

It is estimated that 80 per cent of the sentenced addicts relapse due principally to lack of proper assistance in securing employment and otherwise adjusting to normal life after their departure from the Federal institutions. It is also reported that there is illicit traffic of narcotics in the federal institutions and that contact made there with incorrigible criminals or addicts is an important cause of relapse.

In response to a Presidential request for suggestions on means of reducing drug addiction throughout the United States, the Commonwealth Government suggested the desirability of establishing a "Public Health Hospital" in Puerto Rico and improving programs to aid in the social and economic rehabilitation of those medically relieved from addiction.

There is a close working relationship between Commonwealth and Federal officials. The Federal Bureau has occasionally sent experts to Puerto Rico, at Commonwealth expense, to assist in training narcotics enforcement officers. There is exchange of information with the local office of the FBI. Since New York is the principal source of illicit traffic in Puerto Rico and the place where most Puerto Rican addicts are first exposed to narcotics, close relationship with the Federal Bureau of Narcotics and its enforcement officials in New York is essential to effective enforcement in Puerto Rico.

It should be noted before concluding that there are two other basic Federal statutes in the narcotics field which are applicable to Puerto Rico but which do not impose duties on Commonwealth officials. One is the Narcotic Drugs Import and Export Act (21 USC 171-185). The enforcement of the prohibitive features of that Act is primarily a duty for U. S. Customs Officers. However, Puerto Rico neither imports nor exports narcotics products. All such products which are processed and consumed legally in Puerto Rico are shipped from the U. S. The value of such commercial shipments in fiscal 1954 was \$30,000. The permissive features of the above Act are administered by the U. S. Commissioner of Narcotics. These include (1) determination of narcotics import requirements and prescribing regulations with respect to importation; (2) disposition of narcotics which are forfeited in a condemnation proceeding or not claimed; and (3) certification of medical need for narcotic exports. Since Puerto Rico forms part of the customs territory of the United States, it does not appear desirable or feasible to modify the method of administering this Act.

The other basic Act is the Opium Poppy Control Act (21 USCA-188-188 n) which was passed on 11 December 1942, i.e., after the above-mentioned Treasury and Attorney-General opinions were written. This Act is designed to control, through licensing, the production of opium and traffic in opium products. The Act makes the U. S. Secretary of the Treasury responsible for enforcing its provisions and authorizes him to delegate authority to "such officers or employees of the Treasury

Department as he shall designate or appoint." The Act states that it does not repeal any provisions of the Internal Revenue Code, but it provides in effect that the provisions of the Narcotics Act of 1914 relating to opium and coca leaves shall not apply in cases where opium poppies are lawfully produced, sold, or transferred in accordance with its provisions. This would seem to indicate that both the U. S. Secretary of the Treasury and the Commonwealth Treasurer have responsibility for issuing licenses to manufacturers and dispensers of opium products in Puerto Rico but where there has been compliance with the Act administered by the U. S. Secretary of the Treasury, the Act administered by the Commonwealth Treasurer is deemed not to apply.

In practice, this fault in the law has occasioned no difficulty. The 1948 Act is not being applied in Puerto Rico. The question of jurisdiction has never arisen. There are no Federal employees in Puerto Rico charged with its administration. Commonwealth officials who administer the Narcotics Act of 1914 were not previously aware of the 1942 Act when consulted regarding it, and have not applied it.

If Commonwealth Treasury officials are to continue administering the Narcotics Act of 1914, it would seem desirable to arrange for them to be vested with authority to enforce in Puerto Rico the Opium and Poppy Control Act of 1942.

Alternatives: Growth of Federal-Commonwealth relations in the field of narcotics can develop in one of four different ways: (A) maintain the present arrangement but arrange for the Commonwealth Secretary of the Treasury to be properly vested with the same powers of administration in Puerto Rico as is possessed by the U. S. Commissioner of

Narcotics under the Opium Poppy and Control Act; (B) Enforce Federal laws as in A above but use Commonwealth judges (following the precedent in the Philippines and in the Trust Territory), jails, hospitals, and other Commonwealth institutions entirely; (c) Strengthen the Commonwealth narcotics statute with a view to resorting entirely to Commonwealth prosecution, courts, curative facilities (which would have to be established), and prisons as well as retaining the present administrative machinery; (D) amend existing Federal laws as necessary to provide for direct Federal administration in Puerto Rico as in the States of all U. S. laws in this field and at the same time strengthen Commonwealth laws and institutions as may be necessary. The advantage and disadvantage of these alternatives are presented in tabular form in Appendix A.

This is an area of relationship which can, without much difficulty or difference in cost, be developed to support other desired trends in Federal-Commonwealth relations. It is, therefore, premature to judge which is the best alternative. In the meantime, it would be useful to get answers to the following legal questions which may affect the choice of alternatives:

1. Do Commonwealth officials now have a free choice whether to apply the Commonwealth or Federal narcotics statutes or does the U. S. Narcotics and Marihuana Acts impose a legal obligation upon the "internal revenue officers" of the Commonwealth Government to administer the Federal statutes? Might the decision in the National Firearms Case pending before the U. S. District Court in Puerto Rico have a bearing on this?



2. Is it correct to assume that the Commonwealth Treasurer, in connection with his duties in Puerto Rico under the Narcotics Act of 1914 and the Marihuana Act of 1937, is subject to Federal Court orders in the same manner as is the U. S. Commissioner of Narcotics under the same laws in the states?

3. Can the U. S. Commissioner of Narcotics issue licenses pursuant to the Opium Poppy and Control Act of 1942 for the production of opium poppy and for the manufacture of opium products in Puerto Rico? If so, would the recipient of such a license also be required to obtain a license from the Commonwealth Treasury Department in order to comply with (a) the U. S. Narcotics Act of 1914, as amended or (b) the Commonwealth narcotics laws?

4. What duties, if any, do Commonwealth officials now have under the Opium Poppy Control Act of 1942? Can the U. S. Secretary of the Treasury or Commissioner of Narcotics delegate authority under this Act to Commonwealth officials?

Appendix A

Alternative Approaches Toward Enforcement  
of U. S. Narcotics Laws in Puerto Rico

<u>Alternatives</u>	<u>Advantages</u>	<u>Disadvantages</u>
A. Continue present system and formally vest P. R. Treasurer with authority to enforce the U.S. Opium and Poppy Control Act.	Useful precedent for enforcement by Commonwealth of Federal laws in other fields which might contribute to Commonwealth Growth	Curative and penal care in Mainland. Prosecuting, judicial, penal, and other officials not responsible to people of P. R.  Exposes P. R. officials to U. S. court orders and Congressional bidding.
B. Enforce all U. S. laws as in A above but use Commonwealth prosecutors, judges, jails, hospitals and other institutions entirely.	Possibly useful precedent for Commonwealth growth in other fields.  Avoids constitutional issue of force of Federal law.  All officials and institutions responsible to people of Puerto Rico.	More costly. Possible loss of deterrent effect of applying Federal law. Exposes more P. R. officials to U. S. Court orders and Congressional bidding.
C. Strengthen and then enforce solely Commonwealth Law, using P. R. institutions entirely.	All officials and institutions responsible to people of P. R.  Medical care or imprisonment in P. R.	Increases costs to Puerto Rico.  May impair close relations with U. S. Narcotics officials.  Raises constitutional issue of force of U. S. laws unless latter made inapplicable to P. R.  Possible loss of deterrent effect on enforcing Federal law.

D. Amend U.S. laws to provide for direct Federal enforcement in P.R. as in States of all US laws in this field; and strengthen PR laws and institutional requirements for enforcing them if necessary.

Removes P. R. officials from jurisdiction of U. S. Congress and courts.

Possible deterrent effect of combined enforcement machinery.

Weakens potential for Commonwealth growth by applying Federal-State pattern.

US intrusion in local affairs through taxing power.

Duplication of enforcement machinery.

Appendix B

Excerpts from U. S. Code Annotated (1954) Relating to Narcotics and Marihuana

- A. Excerpt from the Harrison Narcotics Act of 1914 (26 USCA 2564 (a)) Administration in Puerto Rico and the Trust Territory of the Pacific Islands.

"In Puerto Rico and the Trust Territory of the Pacific Islands, the administration of this subchapter (relating to opium and coca leaves) and part V of subchapter A of chapter 27 (relating to taxes for various occupations involving use of narcotics), the collection of the special tax imposed by section 3220 of Chapter 27, and the issuance of the order forms specified in section 2554 shall be performed by the appropriate internal revenue officers of those governments, and all revenues collected thereunder in Puerto Rico and the Trust Territory of the Pacific Islands shall accrue intact to the general government thereof, respectively. The highest court of original jurisdiction of the Trust Territory of the Pacific Islands shall possess and exercise jurisdiction in all cases arising in such Territory under this subchapter and part V of subchapter A of chapter 27".

- B. Excerpt from the Marihuana Act of 1937 (26 USCA 2603) Administration in Insular Possessions--(a) Puerto Rico.

"In Puerto Rico the administration of this subchapter and part VI of subchapter A of chapter 27, the collection of the special taxes and transfer taxes, and the issuance of the order forms provided for in

section 2591 shall be performed by the appropriate internal-revenue officers of that government, and all revenues collected under this sub-chapter and part VI of subchapter A of chapter 27 in Puerto Rico shall accrue intact to the general government thereof."

C. Excerpts from the Opium Poppy Control Act of 1942 (21 USCA 188-188 n)

21 USCA 188 h (a): Nothing in sections 188-188 n of this title shall be construed to repeal any provision of Title 26, except that the provisions of subchapter A of chapter 23, and part V of subchapter A of chapter 27, Title 26, (note section quoted in A above) shall not apply to the production, sale or transfer of opium poppies, when such opium poppies are lawfully produced, sold, or transferred by persons duly licensed under sections 188-188 n of this title in conformity with the provisions thereof and the regulations issued pursuant thereto.

21 USCA j (a): It shall be the duty of the Secretary of the Treasury to enforce the provisions of sections 188-188 n of this title, and he is hereby authorized to make, prescribe, and publish all necessary rules and regulations for carrying out the provisions hereof, and to confer or impose any of the rights, privileges, powers, and duties conferred or imposed upon him by sections 188-188 n of this title upon such officers or employees of the Treasury Department as he shall designate or appoint.

21 USCA 188 k: The provisions of sections 188-188 n of this title shall apply to the several states, the District of Columbia, the Territory of Hawaii, the Canal Zone, Puerto Rico, and the other insular possessions of the United States.