

MAY 11, 1959

EFFECT OF H. R. 5926, 86TH CONGRESS

Present status of the Commonwealth of Puerto Rico - We attach a report by Miss Margaret Fonnell of this Division, entitled "Puerto Rico," which discusses in detail the status of the Commonwealth.

H. R. 5926, 86th Congress - Following is a summary of the provisions of this bill. In this summary, within the short time available to us, we will attempt to point out the changes which the bill seeks to make in the present law, which is known as the "Puerto Rican Federal Relations Act." (48 U.S.C. 731 et seq.)

Title - The act shall be known as "The Articles of Permanent Association of the People of Puerto Rico with the United States."

Present law - Whether the present status of the Commonwealth of Puerto Rico, which was created through Public Law 600, 81st Congress (64 Stat. 319 Ch. 446) is permanent and irrevocable, is a problem yet to be resolved (See Part II of attached Report, "Puerto Rico").

Boundaries - Article I sets out the territory which is to be included under the name of Puerto Rico.

Present law - The same provision is now carried in 40 U.S.C. 731, but while the present provision includes with the island of Puerto Rico "the adjacent islands belonging to the United States," H.R. 5926, though including these same islands, does not refer to them as "belonging to the United States."

Rights of United States citizens - Citizens of the United States will be entitled (in Puerto Rico) to all the rights, privileges, and immunities that the citizens of Puerto Rico will be entitled to, as if Puerto Rico were a State of the Union (Art. II (a)).

Comment - Under Article XV, sec. 2, of the U.S. Constitution, the citizens of each State are entitled to all the privileges and immunities of citizens in the several States.

Present law - The same provision is now carried in 48 U.S.C. 737.

Full Faith and credit clause - This clause of the U.S. Constitution (Art. IV I) will also apply to Puerto Rico as it now applies to each State, and full faith and credit will be given in each State to the public acts, records, and judicial proceedings of Puerto Rico, and in Puerto Rico, of the public acts, records, and judicial proceedings of every other State of the Union. (Art. II (b) of H.R. 5926)

Extraditions of persons fleeing from justice - Article IV, 2, cl. 2 of the U. S. Constitution, requiring a State to surrender fugitives from justice, will apply equally to Puerto Rico as to any State (Art. 11 (c) of H. R. 5926).

Exception of bonds from taxation - All bonds issued by the United States, by the District of Columbia, or by any State, Territory or Possession of the United States or subdivision thereof, shall be exempt from taxation by the Commonwealth of Puerto Rico, and all bonds issued by Puerto Rico shall be exempt from taxation by the United States, the District of Columbia, or by any State, Territory or Possession of the United States or by any subdivision thereof (Art. III (a)(b) of H.R. 5926).

Comment - This would place Puerto Rico on a par with each State in the Union. ". . . the limitation upon the taxing power of each (the Federal Government and the State), so far as it affects the other, must receive a practical construction which permits both the function with the minimum of interference each with the other... ." New York v. United States, 1946, 326 U. S. 572, 589.

Present law - At present all bonds issued by the Government of Puerto Rico are exempt from taxation in the same manner (48 U.S.C. 745).

Internal revenue taxes -- In levying internal revenue taxes, Puerto Rico shall make no discrimination between articles imported from the United States or from foreign countries and similar articles produced or manufactured in Puerto Rico (Art. III (c) of H.R. 5926).

Present law -- The present law is the same (48 U.S.C. 741a).

Puerto Rican articles coming into the United States -- Articles manufactured in Puerto Rico coming into the United States for consumption in the United States, shall be subject to taxation in Puerto Rico under its internal revenue laws at the same rate as like articles produced for consumption in Puerto Rico, but in addition shall be subject to payment to the United States of a compensatory tax in an amount equal to the difference between the internal revenue tax imposed thereon under the laws of Puerto Rico and the internal revenue tax imposed in the United States on like articles manufactured in the United States at the point of manufacture or production (Art. III (d) of H.R. 5926). The taxes thus imposed and collected shall be covered into the Treasury of the United States (Id. (f)).

Present law -- Under present law as contained in the 1954 Internal Revenue Code 7652, articles manufactured in Puerto Rico, coming into the United States for consumption in the United States are subject to the same tax as like articles manufactured in the United States. However, the whole amount is covered into the treasury of Puerto Rico. As a practical example: if an article manufactured in Puerto Rico is taxed 1 cent in Puerto Rico and

three cents in the United States, under present law the United States would tax it 3 cents and cover the money into the Puerto Rican treasury. Under H.R. 5926, the United States would only collect the difference of 2 cents and would keep this two cents. Puerto Rico would tax the article 1 cent and would lose the balance of the 2 cents on said article.

Although Puerto Rico would be in a position, as to this tax, not as favorable as it is under present law, it would still be in a more favored position than a State, for when the United States imposes a tax upon an article manufactured or produced in the United States, the United States collects for its own Treasury, the entire tax, regardless of the rate at which (if any) a State may tax such article.

Income Tax -- The income tax laws of the United States shall apply in Puerto Rico on incomes of residents derived from sources outside Puerto Rico, including Federal salaries, but any tax levied by Puerto Rico on such income shall be credited against Federal income taxes.

Present law -- Under 3401 (6) (n) and 933 (1) of the 1954 Internal Revenue Code, income from Federal salaries derived by a resident of Puerto Rico is taxable by the United States. The income which was not taxable was income derived from sources within Puerto Rico (Id. 933). Credit is now allowed on Federal Income tax for income taxes paid to States.

Internal revenue laws -- Except as provided above, the internal revenue laws of the United States shall have no force and effect in Puerto Rico (Art. III (g) of H.R. 5926).

Comment -- This will place Puerto Rico in a more favorable position than a State and will give Puerto Rico greater freedom to levy its own taxes.

Social insurance -- The social insurance laws of the United States under which the participating states substantially pay the costs of insurance shall extend to Puerto Rico as if Puerto Rico were a State of the Union.

Federal laws establishing programs such as direct aid to the needy, and grants-in-aid, that is, laws under which the Federal Government substantially contributes, shall apply to Puerto Rico only if Congress specifically so provides.

(Art. III (h) of N. R. 5926).

Comment - As to the latter, Puerto Rico would not be in as good a position as a State, for a State would automatically benefit from such programs without being specifically included by Congress. However it should be remembered that residents of a State are subject to all Federal internal revenue laws while Puerto Rico would be excepted from them as noted above (Art. III (g) of N. R. 5926).

Free interchange of merchandise with the United States -

N. R. 5926 provides for the interchange of merchandise between the United States and Puerto Rico, free from import duties and free of quantitative restrictions except such as may be placed on the commerce of any state.

Present law - The same provision as to import duties is contained in 48 USC 738. This provision would keep Puerto Rico on a position equal to each State in the Union.

Duties on foreign imports. The bill repeats the present provision of 48 USC 739 which requires that the tariffs, customs and duties levied, collected

and paid on all articles imported into Puerto Rico from ports other than those of the United States shall be the same as those required on all articles imported into the United States (Art. IV (a) of H. R. 5926). This is the same as in applicable to a State.

However, Puerto Rico may request and Congress may provide otherwise. Thus Puerto Rico might protect its commerce from certain commodities which might ruin it by requesting and receiving a higher tariff on such article. A State cannot do this.

Coffee - As to coffee imported into Puerto Rico, the present law authorizes Puerto to levy a duty of 5 cents a pound. H. R. 5926 allows Puerto Rico to fix the amount of duty to be levied.

Comment, - As compared to a State this would place Puerto Rico in a much more favorable position. North Carolina, for example, is not authorized to fix the amount of duty to be levied on tobacco which is her main product.

Proceeds of tariffs, customs and duties - The bill retains the present provisions of 48USC 740 that the duties, tariffs, and customs collected in Puerto Rico, less the cost of collecting same, be paid into the Treasury of Puerto Rico (Art. IV (e) (d) (e)).

Comment - Puerto Rico thus receives a benefit which a State does not.

Trade Agreements - At the request of Puerto Rico, the President may negotiate special trade agreements applicable to Puerto Rico, or, also upon request of Puerto Rico he may exclude Puerto Rico from any trade agreement unless he finds that the general interests of the United States require that Puerto Rico be included (Art. IV (f) of N. R. 5926).

Comment - This, of course, accords to Puerto Rico a privilege which is not accorded to a State; for while in effect, the President may exclude a certain commodity from a trade agreement, which commodity is the main product of a certain State, the effect would be the exclusion of the commodity from the agreement, and not the State. The exclusion of the commodity would affect all States Alike.

United States citizenship - All persons born in Puerto Rico on or after April 11, 1899 are citizens of the United States as if born in a State of the Union. Residence in Puerto Rico shall be equivalent to residence in a State in the Union for purposes of naturalization. Upon establishing his residence in Puerto Rico according to the laws of Puerto Rico, a citizen of the United States shall be deemed a citi-

zen of Puerto Rico (Art. V of H. R. 5926).

Comment -- These provisions apply equally to each State in the Union.

Federal Functions - The bill would allow Puerto Rico to slowly assume the responsibility for Federal functions in Puerto Rico commensurate with its ability to pay the cost of same.

Public Property - The bill retains the present provisions of 48 U. S. C. # 747 which transferred to Puerto Rico all property acquired by the United States under the Treaty of 1898 with Spain, which is not reserved to the United States for public purposes.

The President of the United States shall from time to time transfer control of public property as said control is no longer essential for public purposes of the United States. Puerto Rico is to pay only the appraised fair value of any improvements which have been made by the United States and which may be useful to Puerto Rico.

The President shall from time to time dispose of land, buildings and other interests of property in Puerto Rico controlled by the United States which are not needed for essential purposes. These shall first be offered to Puerto Rico, and if the Governor shall certify that they are needed for public purposes, they shall be transferred to the Commonwealth at cost.

The President may from time to time accept from the Commonwealth any lands, buildings, or property which may be needed for Federal public purposes (Art. VII of H. R. 5926).

Present law - Similar provisions are now contained in 48 U. S. C. # 748.

Comment - The most striking difference between the status proposed for Puerto Rico and that of a State is that the President "may accept" lands for public purposes in Puerto Rico, but the Federal Government may exercise the right of eminent domain over the lands in a State.

Harbors and navigable waters - The bill retains the present provisions of 48 U. S. C. 749 which transferred the harbors and navigable waters and submerged lands in and around Puerto Rico, now under the control of Puerto Rico, to the Commonwealth of Puerto Rico. The use, occupancy and control of these by the United States shall not be impaired. The Federal laws for the protection and improvement of navigable waters shall continue to apply to same.

Comment - The question of the submerged lands may place Puerto Rico in a position differing from that of a State, since it has now been recognized that the submerged lands surrounding a state, to a certain geographically limit, is the property of the State.

Statutory laws - Statutory laws hereafter enacted by the United States shall not be applicable to Puerto Rico unless specifically made applicable by Congress (Art. IV of H. R. 5926).

Comment - This, of course, emphasizes the difference between the status of Puerto Rico and that of a State.

Representation - The Commonwealth of Puerto Rico shall be represented in Congress by a Commissioner who shall have the rights and privileges of a Member of the House but shall not be entitled to vote in the House or to offer a motion to recommit (Art. XI of H. R. 5926).

Present law - This is the same as the present law.

The Commonwealth shall have self government consistent with the provisions of the U. S. Constitution.

Final judgments of the Supreme Court of Puerto Rico shall be subject to review by the U. S. Supreme Court.

Approval by people - This act shall become effective when approved by a majority of the qualified voters of Puerto Rico in a referendum.

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