

July 7, 1955

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

Subject: Issuance of Passports for Travel Abroad.

This memorandum explores possible means for increasing Commonwealth self-government in connection with the issuance of passports for travel abroad. It is based on talks with the Hon. N. Almiroty, Commonwealth Assistant Secretary of State, and on available literature on the subject. It should be noted that while Mr. Almiroty contributed useful information and ideas, he should not be held accountable for anything contained herein.

Conclusions: As long as Puerto Ricans remain U. S. citizens, there is no practicable alternative to their obtaining United States passports for travel abroad, pursuant to Federal laws and regulations. The present arrangement under which Commonwealth officials issue United States passports in Puerto Rico appears to be highly satisfactory from both a political and practical standpoint. It can, however, be perfected by:

- a. Vesting passport authority in the Commonwealth Secretary of State instead of the Governor, assuming that there is no objection as a matter of policy to the direct investiture of Federal authority in a Commonwealth official other than the Governor.
- b. Enabling the responsible Commonwealth passport official to issue special passports to Commonwealth officials traveling abroad on official business of the Commonwealth Government.

c. Vesting the responsible Commonwealth passport official with authority to revoke passports which are issued by him or under his direction.

d. Identifying the passports issued by the Governor of Puerto Rico as "Commonwealth" rather than "Insular" passports.

e. Abolishing the U. S. Court for the District of Puerto Rico and vesting its authority and jurisdiction in the Commonwealth Supreme Court in order that initial judicial review of the Governor's passport decisions may be heard in a Commonwealth rather than a Federal court.

Caution should be exercised in seeking any changes in the existing passport arrangement since the exercise by non-Federal officials of passport authority is unprecedented in recent times.

Background: A passport is the accepted international evidence of nationality. According to the U. S. State Department, "The American passport is a document of identity and nationality issued to persons owing allegiance to the United States and intending to travel or sojourn in foreign countries." It entitles the bearer to the protection and good offices of American diplomatic and consular offices abroad and requests officials of foreign governments to permit the bearer to travel in their territories and in case of need to give him all lawful aid and protection. Of foremost importance, however, is the fact that in recent years it has become unlawful for a person to depart from or enter into the United States without a passport. Wide discretion is allowed the

Secretary of State and others acting under his authority not only to deny passports but also to revoke them and to compel the return to the U. S. of citizens abroad by penalizing those who refuse. Therefore, the manner in which the passport authority is exercised is of vital interest to Puerto Rico. The discussion below explores the feasibility of the Commonwealth Government issuing, on its own authority, its own passports or American passports and also possible improvements in the present organization and procedures by which Commonwealth officials issue American passports under authority derived from the U. S. Secretary of State.

Feasibility of Commonwealth Having Own Passport Authority: Since 1856, when the Congress provided by law for the issuance of passports by the Secretary of State, the U. S. State Department has consistently opposed the issuance of anything in the nature of a passport by Governors of States and other officials not specifically authorized to do so. The State Department even objects to letters signed by Governors affirming that a person going abroad is a "citizen of the United States" and seeking courtesies from foreign governments.

In 1929, the State Department cautioned the Governor of American Samoa that, in letters of identification issued to American Samoans for travel to nearby islands, he should not state the bearer's nationality status nor that he is entitled to the protection of the United States. "A document setting forth the latter-mentioned facts would be an instrument in the nature of a passport and for that reason would be objectionable."

In 1936 the Executive Secretary of Puerto Rico issued cards or certificates to Puerto Ricans proceeding to the United States which were to be exchanged for certificates of identity at the N. Y. office of the Puerto Rican Bureau of Commerce and Industry. This practice has since been discontinued partly because Cubans and other Latin Americans were buying or otherwise acquiring Puerto Rican identification certificates. But before it was discontinued the U. S. State Department indicated that

"Inasmuch as the cards mentioned in the letter from the Executive Secretary are based upon an Executive Order promulgated for the purpose of carrying out the provisions of an Act of the Legislature of Puerto Rico, this Department offers no objection to their issue. It is suggested, however, that the Executive Secretary confine the issue of the certificates in question to persons leaving Puerto Rico for the United States and that persons desiring to visit foreign territory be advised to apply for regular passports. It is also suggested that the certificate issued both by the Executive Secretary of Puerto Rico and the Head of the New York Branch of the Bureau of Commerce and Industry of Puerto Rico contain a specific statement somewhat as follows: 'This certificate is not a passport and is not valid for use outside of the territory of the United States.'"

It is clear from the above that as long as Puerto Ricans are United States citizens, the only passport which can be issued them for travel abroad is an American passport. Furthermore, it is inconceivable that the Commonwealth Government would be allowed to issue American passports on its own authority, because the actions required for it to do so (i.e. to grant and deny the liberty of U. S. citizens to travel abroad, to provide identification of U. S. citizenship, to invoke the protection of American diplomatic missions abroad, to seek certain rights for U. S. citizens from foreign governments, to determine the countries in which

travel will be allowed, etc.) would involve the exercise of powers which the U. S. Government would doubtless be unwilling to grant the Commonwealth even if it were constitutionally possible for it to do so.

Improvement of Present Delegation of Passport Authority: Fortunately, the issuance of U. S. passports in Puerto Rico is now handled almost entirely by Commonwealth officials. All such passports are issued by the Commonwealth Department of State under authority delegated by the Governor of Puerto Rico. The Governor derives his passport issuing authority from the U. S. Secretary of State, pursuant to the following provision of the U. S. Code (22 USCA 211a):

211a. Authority to grant, issue and verify passports.

The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports. July 3, 1926, c 772, para. 1,44 Stat. 887.

The phrase "insular possessions" as used in the above section comprehends the Commonwealth and does not technically have the derogatory connotation for Puerto Rico which is normally associated with the word "possession". The Attorney General stated with reference to the effect of the 1917 organic act for Puerto Rico upon the continued application of this section to Puerto Rico:

"The words 'insular possessions of the U. S.' in their natural meaning more aptly refer to geographical location than to a particular form of government. Unless, therefore, those words as used in this statute have some other meaning,

a Territory of the U. S. may at the same time be an insular possession of the U. S. There is nothing to indicate that Congress intended to use them here in any other than their natural meaning".

There has been no significant change since the establishment of the Commonwealth in the relationship between the U. S. Secretary of State and the Governors with respect to the issuance of passports. This is noteworthy because when the Philippines Commonwealth was established in 1934 the passport issuing authority was transferred from the U. S. Governor General to the U. S. High Commissioner and not to a Philippine Government official. The Governor of Puerto Rico is the only elective official now vested with passport issuing authority. All the territorial Governor are appointive Federal officials and all passports on the Mainland are issued by the Department of State. The Governors' passport authority is more than that of agents, because Mainland passport agents cannot issue passports. They only forward passport applications to the State Department for issuance.

Consideration has been given to the desirability of having the Commonwealth Secretary of State instead of the Governor vested directly with passport issuing authority. The Secretary of State would probably come within the meaning of "other executive officer of the insular possessions of the United States" as set forth in the above quoted section of the U. S. Code. Such a change would add to the stature of the Commonwealth Department of State. On the other hand, the substantive gain would be little and the proposal might raise questions regarding the virtually unprecedented exercise of passport authority by non-Federal officials. There is also an internal administrative question

of whether any Commonwealth official other than the Governor should be vested with Federal executive authority--even though some already have been. Separate study of this problem is needed. It is only necessary here to note that the Commonwealth Secretary of State could probably be vested directly with passport authority by administrative action--i.e. without additional legislation. If this is confirmed by legal experts and the change is not deemed objectionable on grounds of principle, it would seem desirable to explore the proposal informally with the State Department.

Commonwealth officials exercise broad discretionary authority over the issuance of passports in Puerto Rico. They must, of course, be guided by Federal laws and regulations applicable thereto, but in practice they have virtually complete discretion as to who should be issued and who should be denied passports. They do not have to clear decisions in advance with the U. S. Department of State, not even on the question of issuing passports to persons regarded as security risks. Their decision to deny a passport is presumably subject to appeal to the Secretary of State and also to the Board of Passport Appeals, an advisory body to the Secretary of State. Furthermore, Commonwealth officials are doubtless required, just as a Federal court recently held the Secretary of State is, to satisfy the substantive as well as procedural requirements of due process of law in denying a person a passport (Schactman vs. Secretary of State, U. S. Circuit Court of Appeals for the District of Columbia, decided June 23, 1955). This Court decision further protects the liberty of American citizens to travel

abroad, although the officials in charge of the issuance of passports would doubtless exercise the greatest caution and discretion in security cases in which it would be inadvisable to permit a citizen to go abroad.

The Governor of Puerto Rico can deny a passport only on the grounds that there is insufficient evidence submitted by the applicant to prove his American citizenship. This decision of the Governor is, however, subject to review by the U. S. District Court of Puerto Rico. The fact that a decision of the Governor to deny a passport is subject to judicial review by a court other than one established by the Constitution of the Commonwealth of Puerto Rico constitutes a technical defect in the present arrangement.

Passports issued by the Governor of Puerto Rico can be revoked only by the Secretary of State. This is also a slight technical defect which could conceivably lead to unnecessary embarrassment. The Governor should be authorized to revoke passports which he issues--that is, he should have the power to correct what may in some cases be his own mistakes. It would be desirable from both the U. S. and P. R. standpoint, to avoid if possible situations in which it could be made to appear that a decision of the Governor has been overruled by the U. S. Secretary of State.

Another minor defect in the present system is that the Governor can issue only regular passports. He should be authorized also to issue Special Passports to Commonwealth officials traveling abroad on official U. S. or Commonwealth business. Special passports now may be issued only by the U. S. Secretary of State. They are designed primarily for

persons going abroad for the Federal Government on official business not of a diplomatic character. Delegates to scientific meetings, advisers to foreign governments performing services of interest to the U. S., and retired persons who have held high posts in the Government have also, however, been issued Special Passports. As Commonwealth status grows it will become increasingly convenient to have the Governor or Secretary of State authorized to issue Special Passports to officials going abroad on Commonwealth business.

Passport Application and Investigation: During and after the Second World War, the U. S. Government made its passport regulations much more stringent than they ever were before. Under present world conditions, it would be difficult to establish that these regulations are unduly burdensome, and even if it could be established, the State Department would probably be unwilling to make any significant exceptions therein for Puerto Rico. Applicants are obliged to accompany their applications by an affidavit, made before a clerk of a Federal or Commonwealth court, or a passport official stating the object of the proposed trip, its duration and other facts. This application must be accompanied by duplicate photographs of the applicant. The application must also be supported by the affidavit of at least one witness who has known the applicant at least two years. This affidavit must be made before the clerk of a court, or a passport official and the witness must accompany the applicant when he presents his application. A person born in the United States must also present with his

application his birth certificate, or baptismal certificate, or by an affidavit from his parents, or from the physician who attended him at his birth. Women married to citizens prior to 22 September 1922 must state this fact in their application which should be in the same form as that of a male citizen. The wife of a naturalized citizen must furnish her husband's certificate of naturalization or some other proof.

A passport is good for only two years but it may be renewed for two more years. The final date of expiration cannot be more than four years from date of issue. One passport suffices for the wife and minor children of an American citizen. Commonwealth officials can issue passports to persons residing in Puerto Rico or in transit. They also have authority to amend, limit, and extend passports.

In most cases, applications are received and examined, and passports are issued without there being any contact with any Federal agency. However, where there is doubt from a security standpoint, Commonwealth passport officials, through the local Police Department and the FBI, conduct their own investigation and if such investigation reveals that the applicant is going abroad to engage in activities contrary to the best interests of the United States or of the Commonwealth the case is then submitted to Washington for final decision. The local Police Department provides, for that purpose, the Commonwealth State Department with a list of persons suspected of belonging to subversive organizations. From time to time the U. S. State Department will send a letter indicating that if Mr. X makes application for

a passport they would appreciate if such application is forwarded to Washington. This is always done and the final decision on Mr. X's application is left to the U. S. State Department.

The responsibility of the Commonwealth State Department for its own decisions is undiluted by coaching or instructions from Washington. Furthermore, in all the years that Mr. Almiroty has been connected with this activity, he recalls very few cases in which passports issued by Commonwealth officials have subsequently been revoked by the U. S. Department of State.

Passport Personnel and Fees: Although the issuance of passports involves the exercise of Federal authority, all employees engaged in passport functions in Puerto Rico are Commonwealth State Department employees, paid by the Commonwealth Government. The Commonwealth is not reimbursed for its passport services. Of the \$11 collected for each new passport issued in Puerto Rico, the Commonwealth retains \$2, one for processing the application and one (a local charge) for impressing the Commonwealth seal. It turns over to the U. S. State Department the \$9 fee for the issuance of a new passport and the \$5 fee for renewal of a passport. Commonwealth receipts from these fees, which totalled about \$4,000 in 1954, defray less than half of the cost incurred by the Commonwealth in performing this function, which was estimated to be \$8,500 in fiscal 1955. As noted in the attached table, there were 2,007 passports issued and 350 passports renewed in 1954 and the trend is toward an increase in work load. Although the Commonwealth

Government could claim entitlement to a larger share of the passport fee, it would doubtless be reluctant to do so in view of the many services rendered by the Federal Government in Puerto Rico without reimbursement. Furthermore, continued effective performance of this Federal function by Commonwealth officials, can serve to facilitate Commonwealth growth in other fields.

The local personnel are in no sense supervised by U. S. State Department officials. Mr. Almiroty recalls only two times in his many years of contact with this activity that passport officials from the Department of State have visited Puerto Rico. Nor do Puerto Rican officials visit the U. S. State Department Passport Office. Although statistical and financial reports are sent to Washington, there is no Federal audit made locally. The Commonwealth Auditor checks on all passport transactions to insure that the Commonwealth portion of the passport fee is duly deposited.

The Passport Document: Passports issued in Puerto Rico and those issued in the Territories and Possessions bear the letter "I", denoting that it is an "Insular" passport. There would be some advantage in having a distinctive designation for passports issued in the Commonwealth of Puerto Rico. Since this could be done by a change in regulations, the possibility of doing so would be worth exploring with the U. S. State Department.

The passport has two serial numbers, one for the U. S. State Department, the other for Commonwealth Government records. The bearer's identity as a Puerto Rican may be reflected in the place of birth or in the fact that the passport bears the seal of the Commonwealth and the signature and title of a Commonwealth State Department official with the stipulation that he is acting on behalf of the Governor of Puerto Rico.

A P P E N D I X

Passports Issued and Renewed in Puerto Rico

and Disposition of Fees - 1945-1954

Calendar Year	Passports Issued	Passports Renewed	Fees Sent to U. S. State Department	Fees Retained in P. R.
1945	2,262	149	21,103	4,524
1946	1,527	200	14,743	3,054
1947	1,274	158	12,256	2,548
1948	1,231	237	12,264	2,462
1949	1,113	228	11,157	2,226
1950	1,557	247	15,248	3,114
1951	1,311	285	13,224	2,622
1952	1,886	361	18,779	3,772
1953	1,791	310	17,669	3,582
1954	2,007	350	19,813	4,014
Total - 10 years	15,959	2,525	156,256	31,918
Average per annum	1,596	253	15,626	3,192