

The Virgin Islands Consortium

Op-Ed: Government Officials' Fringe Benefits -- Fool Me Twice, Shame On Me

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By way of introduction and background, I was a prosecutor for 36 years retiring in 2011 with 32 of those years as a federal prosecutor. From 2005 through 2009, I served as the first assistant, and the acting and interim U.S. Attorney in the United States Virgin Islands. I teach Criminal Procedure at the University of St. Thomas Law School in Minneapolis, Minn. Obviously, I write only as a private citizen and in no official capacity to express an opinion and comment on the public interest issues raised by fringe benefits paid to Virgin Islands officials, particularly lodging and personal security.

Mafofigate was a divisive, sad and very expensive experience for Virgin Islands taxpayers. The objective of this op-ed is not to address the past. The purpose of this op-

ed is to look to the future so that Virgin Islanders can seek to prevent similar events from happening again. Lack of transparency and accountability are two primary lessons to be learned from an experience such as Mafoligate. Another lesson was the overwhelming power of the Office of the V.I. Governor, which has regularly defied the federal government and defied the V.I. Legislature that was pathetically reduced to begging for the people's money back, and most importantly, defied the people of the Virgin Islands.

As a society the only methods by which the citizens of the Virgin Islands can address a Mafoligate-type failure is through legislation, the courts, and assistance from the federal authorities. Until there is an independent Virgin Islands Attorney General (VIAG), no action can realistically be expected to come from that office. The VIAG represents the people, not individual government officials, not even V.I. governors. If a VIAG has to choose between the personal interest of an official and the public, their ethical obligations require them to choose their client, the public. Historically, the failure to recognize their true client as the people has been the primary failure of VIAGs; they cannot serve two masters.

Government House-The Official Residence of V.I. Governors

Governor Mapp is quoted as saying at a press conference, "Well, Government House is the official office of the governor. I believe that most people understand Catherinberg is the residence." He was further quoted as saying, "But the Organic Act says the Governor shall reside in the capital..."

These statements are contrary to the law; these statements are simply wrong.

Government House, by federal law, is the "official residence" of V.I. governors, not Catherinberg. No law provides that a V.I. governor "shall reside in the capital." Governors may not like it, but the law is the law. Governors are not Kings who get to make up the law as they go along to support what they want to do. The law is the only protection citizens have and they should not reject it, even when they dislike that it is federal law or they disagree with its provisions.

The starting point in the law is the Revised Organic Act of 1954 (ROA). Title 48 U.S.C. 1591 provides in pertinent part:

"The Governor **shall maintain his official residence in the Government House** on Saint Thomas during his incumbency, which house, together with land appurtenant thereto, is hereby transferred to the government of the Virgin Islands. While in Saint Croix the Governor may reside in Government House on Saint Croix, which house, together with land appurtenant thereto is also transferred to the government of the Virgin Islands." (Emphasis added)

This federal statute transferred Government House to the government of the Virgin Islands for the express purpose that it serve as the "official residence" for the governor of the Virgin Islands. The language of this statute is mandatory, that is, "The Governor **shall maintain his official residence** in the Government House on Saint Thomas during his incumbency..." It does not require the governor to live in Government House or live on St. Thomas. There is no doubt that under this federal law, the governor of the Virgin Islands can have only one "official residence" on St. Thomas, Government House.

This statute does not permit a Governor to have any other "official" residence on St. Thomas. V.I. governors may have a personal residence, but that is their personal business and their personal expense.

Past governors have stated that living in Government House is no longer possible because the living quarters of the house have been turned into office space. Whose fault is that? Was it lawful?

First, a literal reading of the provisions of Section 1591 transferred Government House to the Government of the Virgin Islands for the purpose that it serve as the official residence of governors of the Virgin Islands, not as an office building. Use of the building as an office building appears to violate the federal law, especially when that use has intentionally defeated the statutory purpose for which the property was intended, the governor's official residence.

Second, if this literal reading of the statute seems too fault-finding and persnickety, it is the governors who have defeated their ability to live in Government House by making their official residence an office building in which they cannot live. Now, having eliminated their official residence, they want the People of the Virgin Islands to pay for not living in the mandated official residence. If governors cannot live in Government House because of their own actions, whose fault is that and who should pay the price of that conduct? Obviously, the governors; not the taxpayers.

Third, because federal law establishes unequivocally that Government House is a governor's official residence and a governor thus may not have a different "official residence" on St. Thomas, it would be a violation of the ROA to spend money from the treasury of the Virgin Islands for the purpose of paying for a different property as the "official residence" of the governor of the Virgin Islands. The V.I. Legislature could not lawfully pass a statute authorizing the expenditure of money to pay for a different "official residence" for a governor, as it would be contrary to Section 1591. Any other residence of a governor is their personal residence.

Click [here](#) to read the remainder of the Op-Ed, beginning on Pg. 3.

Submitted by:

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Image: *Government House In St. Thomas*