Office of the Attorney General of Guam

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April 25, 2017

GL#34-17-456
Speaker Benjamin J.F. Cruz

APR 2 8 2017
Time: 1030 [ ]AM [ ]PM File No.
Received By:

Honorable Règine Biscoe Lee
Chairperson, Committee on Innovation and Economic,
Workforce and Youth Development
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96910

Re: Request for Clarification or Testimony on Bill No. 31-34 Regarding Transfer of Classified Government Employees (Ref. LEG 17-0186)

Hafa Adai Senator:

This is in response to your letter dated March 20, 2017, requesting clarification or testimony on the ability to transfer classified government employees to a public corporation like the Guam Economic Development Authority (GEDA).

You refer to Bill No. 31-34 (COR), referred to your Committee for hearing. Specifically, you raise concern relative to the following provision of Bill No 31-34 that would authorize GEDA to establish a Guam One Stop Licensing and Permitting Center (One Stop Center):

> "50103(q)(1). The Authority shall coordinate and execute a Memorandum of Understanding (MOU) with each government of Guam regulatory agency involved in the licensing and permitting process to designate personnel to carry out the mandates of the regulatory agency at the One Stop Licensing and Permitting Center. The MOU shall clearly indicate that the Administrator of GEDA shall have full administrative control of such ***detailed*** personnel." (Emphasis added).

Your letter states that "[t]his provision will transfer employees of the Government of Guam to a public corporation," and upon this interpretation, you pose the following questions:

1. Is there currently an approved administrative process to transfer employees between the Government of Guam and any Public Corporation?

2. Upon transfer, will these employees remain covered under the Civil Service Commission?

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Office of the People
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Legislative Secretary
Date/Time 4/27/17 @ 4:42pm
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We have reviewed Bill No. 31-34 and believe that the questions you present are based upon an incorrect reading of proposed subsection 50103(q)(1). In our view, neither the proposed subsection nor any other provision of Bill No. 31-34 would ***transfer*** government of Guam employees to a public corporation, in this case GEDA. Instead, the legislation appears to contemplate that personnel from government of Guam regulatory agencies involved in the business licensing and permitting process be ***detailed***, through Memorandums of Understanding, to GEDA to assist with One Stop Center operations.[1] A detail is quite different from a transfer in personnel administration.

In sum, the questions posed in your letter regarding the transfer of employees to a public corporation and whether such transfers may affect their coverage under the Civil Service Commission are inapposite with respect to Bill No. 31-34. I hope we have not misunderstood your concerns.

If, however, you are nonetheless interested in appropriate statutory language regarding actual *transfer* protections for government of Guam employees between agencies, I refer your research to Title 4 G.C.A.§4114:

> § 4114. *Inter-Branch Employee Transfers*. Any employee in the classified service may be appointed or transferred to a position in a different branch, department, agency, instrumentality, authority or corporation requiring equivalent qualification for the one held or to a higher position. Qualification and standards as established by the Director of Administration in cooperation with any branch, department, agency or instrumentality authorized by law to administer the personnel laws and determine its own personnel rules shall be honored and accepted. Any employee affected by this Section shall not have affected adversely his governmental service, retirement credits, sick or annual leave, and other fringe benefits normally granted to an employee of the Government.
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> SOURCE: § 4113 GCA, as reenacted by P.L. 16-023. Amended by P.L. 28-068:IV:38 (Sept. 30, 2005), effective January 1, 2006, pursuant to P.L. 28-068:IV:47.

Please let me know if we can be of further assistance.

Sincerely,

ELIZABETH BARRETT-ANDERSON
Attorney General

[1] While detail assignments are normally made pursuant to Section 4.504 of the DOA Personnel Rules and Regulations, the bill does not specify if this section would govern the details of personnel or whether other procedures would apply.