Office of the Attorney General of Guam

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January 19, 2018

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OPINION MEMORANDUM **Ref: LEG 18-0021**

TO: The Honorable Régine Biscoe Lee
Legislative Secretary
I Mina 'Trentai Kuåtro Na Liheslaturan Guåhan
34th Guam Legislature

GL#34-18-1427
Speaker Benjamin J.F. Cruz

JAN 21 2018
Time: 1:02 [ ] AM [ ] PM File No. 34-142
Received By:

FROM: Attorney General

SUBJECT: Legal Opinion Regarding the Application of 3 GCA § 16311 which Requires a Voter Referendum Before Increases in Taxes May Be Established, to Bill 230-34 (LS) which would Repeal Tax Exemptions for Qualifying Insurance, Wholesale, and Banking Companies.

This Office is in receipt of your request for a legal opinion dated January 11, 2018 seeking clarification as to whether Bill 230-34 (LS), which proposes to repeal tax exemptions for qualifying insurance, wholesale, and banking companies, would trigger the voter referendum requirement found at 3 GCA § 16311. You note that the Legislature already has proposals similar to Bill 230-34 (LS) that may remove tax exemptions in order to raise revenue from currently exempted businesses.

Introduction

This Office has just recently answered a very similar request from Senator Thomas C. Ada, Chairman of the Committee on Environment, Land, Agriculture and Procurement Reform, asking whether contemplated increases in the *Realty Conveyance Tax* located at 11 GCA § 20101; increases in the fees provided in 21 GCA §§ 45130; 45132; § 60320; § 60602(c); § 61303(d)(4); and § 61660; as well as new fees in 21 GCA Chapter 60, Article 3 are subject to the referendum requirements of 3 GCA §§ 16311 and 16312. *See,* Opinion of the Attorney General, LEG 17-0736 (Jan. 11, 2018). As we advised Senator Ada, the short answer is that the Legislature is authorized to adjust taxes directly despite the referendum requirements of 3 GCA § 16311. We repeat our analysis for the benefit of those who may not have seen our response to Sen. Ada.

2018 JAN 22 PM 1:38

Discussion

Currently located at 3 GCA § 16311, Public Law 24-222 (Bill No. 539 (COR)) was enacted into law on August 3, 1998 via legislative override of Governor Carl Gutierrez's May 6, 1998 veto.

Office of the People
Senator Régine Biscoe Lee
Legislative Secretary
Date/Time: 1/22/18 @ 10:46am
Initials:

1427

The law now provides, "no increase in real property tax, liquid fuel tax, business privilege tax or any locally enacted and administered tax on Guam shall go into effect without the approval of the voters of Guam in a referendum held during a general election." 3 GCA § 16311.

Governor Gutierrez's veto message criticized Bill No. 539 because only one month prior to passing Bill No. 539, and on the very day Bill No. 539 itself was passed, the Legislature passed additional fees and incurred additional indebtedness for the Government without submitting either of these measures to the voters in a referendum. Governor Gutierrez wrote, "If our legislators really believe in Bill No. 539, they would have insisted that this backdoor raise to our people's utility rates needed to pay for this prohibitively expensive project be put to a vote!" Governor Gutierrez concluded:

> Our legislative body obviously does not believe in this legislation. Actions speak louder than words. For a moment, the bill might have "sounded good", but it doesn't "act good". This legislation sloughs off the essential responsibility of our legislative body to the people, and makes it impossible to financially manage our government to the better interests of the public.

Whether one agreed with Governor Gutierrez's reasons for vetoing Bill No. 539 at that time, anyone familiar with P.L. 24-222's subsequent history would agree that the legislative mandate that increases in taxes and fees charged by the Government of Guam be submitted to the voters in a referendum before going into effect has been "honored in the breach more than the observance."[1]

The Office of the Attorney General has addressed this question on at least three occasions prior to answering Senator Ada and now Senator Biscoe Lee. Each time this Office has concluded that the Legislature was not bound by P.L. 24-222 when considering whether to impose new taxes or fees. *See*, Opinion of the Attorney General, LEG 07-0473 addressed to Senators Rory J. Respicio; Judith P. Guthertz; Tina Rose Muña Barnes; and David L.G. Shimizu (Sept. 11, 2007); Opinion of the Attorney General addressed to Sen. Lou Leon Guerrero (Aug. 19, 2003); and Opinion of the Attorney General addressed to Sen. Rory J. Respicio (Jan. 24, 2003). These three opinions and our opinion addressed to Senator Ada are attached for the convenience of the reader.

Our reasoning has been three-fold: First, as a matter of statutory construction when faced with seemingly inconsistent laws the latter in time prevails. LEG 07-0473, page 2. Second, because establishing taxes and fees are "essential to the operation of government" they are beyond the authority of the Legislature to delegate.

> The raising of taxes and fees is essential to the operation of government even though the amounts are discretionary. The Organic Act has given the authority to perform this essential function to the Legislature. Thus, it appears that requiring a vote of the electorate to raise fees for government services is beyond the scope of the Legislature's authority to delegate.

Id., LEG 07-0473, page 3 (Sept. 11, 2007). Third, it is commonly understood by all courts that have considered the question that one legislature cannot bind future legislatures. Stated another way,

[1] Shakespeare, *Hamlet*, Act I, Scene 4.

because P.L. 24-222 is a law enacted by the Legislature, it "may be repealed, amended, modified or suspended by any other law of either the same or a later legislature." Opinion of the Attorney General addressed to Hon. Rory J. Respicio (Jan. 24, 2003).

We are confident that the Guam Supreme Court would agree. *See*, *In re Request of Maga'låhen Guåhan Eddie Baza Calvo Relative to the Interpretation & Application of Organic Act Section 1423b & What Constitutes the Affirmative Vote of the Members of I Liheslaturan Guåhan*, 2017 Guam 14 ¶ 44 (observing that "courts have repeatedly held that one legislature cannot attempt to bind future legislatures by imposing higher standards for the passage or repeal of specific legislation.")(citing *Atlas v. Bd. of Auditors*, 275 N.W. 507, 509 (Mich. 1937) ("The power to amend and repeal legislation as well as to enact it is vested in the Legislature, and the Legislature cannot restrict or limit its right to exercise the power of legislation by prescribing modes of procedure for the repeal or amendment of statutes; nor may one Legislature restrict or limit the power of its successors [sic]."); and *State ex rel. Stenberg v. Moore*, 544 N.W.2d 344, 348–49 (Neb. 1996) (same)); *see also*, *In re Request of Governor Felix P. Camacho Relative to the Interpretation of Section 11 of the Organic Act of Guam*, 2006 Guam 5 ¶ 30 (discussing the two exceptions to the "general rule which prohibits governmental bodies from binding successors").

We discern no distinction simply because Bill 230-34 proposes to repeal tax exemptions rather than assess new taxes. Removing an exemption merely serves to reinstate a tax that would have otherwise been imposed.

Conclusion

Even before Senator Ada's request for a legal opinion, this was not a novel question. The Legislature is authorized to adjust taxes directly and is not bound or restricted by the referendum requirements of 3 GCA § 16311.

We trust we have sufficiently addressed your inquiry. For further information concerning this matter, please use the reference number shown above.

ELIZABETH BARRETT-ANDERSON
Attorney General

Attachments:
Opinion of the Attorney General, LEG 17-0736 addressed to Sen. Thomas Ada (Jan. 5, 2018)
Opinion of the Attorney General, LEG 07-0473 addressed to Senators Rory J. Respicio; Judith P. Guthertz; Tina Rose Muña Barnes; and David L.G. Shimizu (Sept. 11, 2007)
Opinion of the Attorney General addressed to Sen. Lou Leon Guerrero (Aug. 19, 2003)
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January 5, 2018

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OPINION MEMORANDUM **Ref No.: LEG 17-0736**

TO: The Honorable Thomas C. Ada, Chairman
Committee on Environment, Land, Agriculture
and Procurement Reform
I Mina 'Trentai Kuåtro Na Liheslaturan Guåhan
34th Guam Legislature

FROM: Attorney General

SUBJECT: **Legal Opinion Regarding the Application of 3 GCA § 16311 which Requires a Referendum on Tax Increases to Proposed Amendments to *Realty Conveyance Tax* Located at 11 GCA § 20101; and to 3 GCA § 16312 which Requires a Similar Referendum Before Certain Fees May Be Established.**

This Office is in receipt of your November 16, 2017 request for a legal opinion on the application of 3 GCA § 16311 which requires a voter referendum on tax increases to contemplated amendments to the *Realty Conveyance Tax* located at 11 GCA § 20101; and to 3 GCA § 16312 which requires a similar referendum before certain fees may be established.

Introduction

Guam law provides, "no increase in real property tax, liquid fuel tax, business privilege tax or any locally enacted and administered tax on Guam shall go into effect without the approval of the voters of Guam in a referendum held during a general election." 3 GCA § 16311. Guam law also provides that no "new fee for service proposed to be established in such cases where the fee is for a service already provided by the government of Guam prior to the establishment of the new fee, and where such service was previously funded by other revenues," 3 GCA § 16312, without being first submitted to the voters of Guam for approval in a referendum to be held during a general election. *Id.*

You have inquired whether contemplated increases in the *Realty Conveyance Tax* located at 11 GCA § 20101; increases in the fees provided in 21 GCA §§ 45130; 45132; § 60320; § 60602(c); § 61303(d)(4); and § 61660; as well as new fees in 21 GCA Chapter 60, Article 3 are subject to the referendum requirements of 3 GCA § 16311.

Discussion

Currently located at 3 GCA § 16311, Public Law 24-222 was enacted into law on August 3, 1998 by Legislative override of the Governor Carl Gutierrez's veto. Governor Gutierrez's May 6, 1998 veto message criticized Bill No. 539 (COR) because only one month prior to passing Bill No. 539, and on the very day Bill No. 539 itself was passed, the Legislature passed additional fees and incurred additional indebtedness for the Government without submitting either of these measures to the voters in a referendum. Governor Gutierrez wrote, "If our legislators really believe in Bill No. 539, they would have insisted that this backdoor raise to our people's utility rates needed to pay for this prohibitively expensive project be put to a vote!" Governor Gutierrez concluded:

> Our legislative body obviously does not believe in this legislation. Actions speak louder than words. For a moment, the bill might have "sounded good", but it doesn't "act good". This legislation sloughs off the essential responsibility of our legislative body to the people, and makes it impossible to financially manage our government to the better interests of the public.

Whether one agreed with Governor Gutierrez's reasons for vetoing Bill No. 539 at that time, anyone familiar with P.L. 24-222's subsequent history would agree that the legislative mandate that increases in taxes and fees charged by the Government of Guam be submitted to the voters in a referendum before going into effect has been "honored in the breach more than the observance."[1]

The Office of the Attorney General has addressed this question on at least three occasions, each time concluding that the Legislature was not bound by P.L. 24-222 when considering whether to impose new taxes or fees. *See*, Opinion of the Attorney General, LEG 07-0473 addressed to Senators Rory J. Respicio; Judith P. Guthertz; Tina Rose Muña Barnes; and David L.G. Shimizu (Sept. 11, 2007); Opinion of the Attorney General addressed to Senator Lou Leon Guerrero (Aug. 19, 2003); and Opinion of the Attorney General addressed to Senator Rory J. Respicio (Jan. 24, 2003). These opinions are attached for the convenience of the reader.

Our reasoning has been three-fold: First, because establishing taxes and fees are "essential to the operation of government" they are beyond the authority of the Legislature to delegate.

> The raising of taxes and fees is essential to the operation of government even though the amounts are discretionary. The Organic Act has given the authority to perform this essential function to the Legislature. Thus, it appears that requiring a vote of the electorate to raise fees for government services is beyond the scope of the Legislature's authority to delegate.

Id., LEG 07-0473, page 3 (Sept. 11, 2007). Second, as a matter of statutory construction when faced with seemingly inconsistent laws the latter in time prevails. *Id.*, LEG 07-0473, page 2. Third, it is commonly understood by all courts that have considered the question that one legislature cannot bind future legislatures. Stated another way, because P.L. 24-222 is a law enacted by the Legislature, "as such [it] may be repealed, amended, modified or suspended by any other law of either the same or a later legislature." Opinion of the Attorney General addressed to Hon. Rory J. Respicio (Jan. 24, 2003).

We are confident that the Guam Supreme Court would agree. *See, In re Request of Maga'låhen Guåhan Eddie Baza Calvo Relative to the Interpretation & Application of Organic Act Section 1423b & What Constitutes the Affirmative Vote of the Members of I Liheslaturan Guåhan*, 2017 Guam 14 ¶ 44 (observing that "courts have repeatedly held that one legislature cannot attempt to bind future legislatures by imposing higher standards for

[1] Shakespeare, *Hamlet*, Act I, Scene 4.

the passage or repeal of specific legislation.")(citing *Atlas v. Bd. of Auditors*, 275 N.W. 507, 509 (Mich. 1937) ("The power to amend and repeal legislation as well as to enact it is vested in the Legislature, and the Legislature cannot restrict or limit its right to exercise the power of legislation by prescribing modes of procedure for the repeal or amendment of statutes; nor may one Legislature restrict or limit the power of its seccessors [sic]."); and *State ex rel. Stenberg v. Moore*, 544 N.W.2d 344, 348–49 (Neb. 1996) (same)); *see also*, *In re Request of Governor Felix P. Camacho Relative to the Interpretation of Section 11 of the Organic Act of Guam*, 2006 Guam 5 ¶ 30 (discussing the two exceptions to the "general rule which prohibits governmental bodies from binding successors").

CONCLUSION

For these reasons, this Office remains of the opinion that the Legislature is authorized to adjust taxes and fees directly and is not bound or restricted by the referendum requirements of 3 GCA §§16311 and 16312.

We trust we have sufficiently addressed your inquiry. For further information concerning this matter, please use the reference number shown above.

ELIZABETH BARRETT-ANDERSON
Attorney General

Attachments

Alicia G. Limtiaco
Attorney General

J. Patrick Mason
Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

September 11, 2007

Ref: LEG 07-0473

OPINION

To: Senator Rory J. Respicio
Senator Judith P. Guthertz
Senator Tina Rose Muna Barnes
Senator David L.G. Shimizu

From: Attorney General

Subject: Requirement for Voter Approval of Some Fees Changed in Public Law 29-02

You have requested our opinion answering your question whether all or just part of Public Law 29-02 (P.L. 29-02) must be submitted to the voters in order to raise the fees prescribed therein. We are of the opinion that no voter ratification is required for the fees.

In this matter, there is a conflict between P.L. 29-02, Chapter V, Part IX, Section 1 (Section 1), and 3 GCA §§17311 and 17312. The Ninth Circuit has examined laws which are absolutely contrary to each other, such as the two dealt with here. In *Awa v. GMH*, 726 F.2D 594 (CA9, 1984), the court said:

> In so holding, we recognize that statutes have a strong presumption of validity and courts must make every effort to construe them to maintain the legislative intent. [Citations omitted]

P.L. 29-02 evidences within its four corners and language, the intent that the law will go into effect immediately as to all its parts unless there is another date specified in the law. Our previous opinion on this subject (CDLO 03-01) said that the Legislature could bypass the requirement of a voter submission by using the word "Notwithstanding." However, there are many other ways of showing intent.

P.L. 29-02, Section 1 indicates that new and increased fees, charges and taxes were to go into effect upon passage of the law in May 2007. P.L. 29-02, Section 1 states:

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> Effective Date. (a) The effective date for all fees, charges, penalties, provisions, exemptions and moratoriums, excluding any de-appropriation penalties, contained in this Act *shall* be May 1, 2007.

Subsection (b) of Section 1 goes on to require that certain agencies notify the public of the new fees imposed by "this Act" within ten days of its enactment. Further provision is made for annual hearings on modifying the fees and charges beginning in FY 2008. All of this shows an unmistakable intent to make the new fees and charges effective upon the enactment of Public Law 29-02 in May 2007.

However, this May 2007 effective date is in direct conflict with 3 GCA §§17311 and 17312. Section 17311 provides that any increase in certain taxes do not go into effect until after "approval of the voters of Guam in a referendum held during a General Election." Section 17312 provides the same referendum requirement when new fees are established for services already provided by the government but previously funded through other sources. Hence, under these statutes, any new fees would not go into effect until after approval by the voters at the next general election in fiscal year 2009. But as discussed above, the Legislature very clearly indicated that the new fees in P.L. 29-02 were to go into effect when the law was passed in May 2007, not sometime after the general election in FY 2009.

How can the two inconsistent laws be reconciled? In *Awa*, the court could not reconcile two inconsistent provisions because they were in the same law passed at the same time. Here, we have a later law, P.L. 29-02, containing provisions which are at odds with a prior law, 3 GCA Chapter 17. As we have said before, one legislature cannot bind another. Faced with two inconsistent public laws, we must conclude that the later public law (P.L. 29-02) must prevail, as to the inconsistent subject matter, over the former public law when the manifest intent and language of the later law are clear. See *Abalos v. Cyfred*, 2006 Guam 7, ¶ 20 (when two statutes are in irreconcilable conflict, the latter act, to the extent of the conflict, constitutes an implied repeal of the earlier act (citations omitted)).

Since the language of P.L. 29-02 evidences a clear intent that the law will take effect upon enactment, this intent overrides the referendum requirement to 3 GCA §§17311 and 17312. As a result, the fees established in P.L. 29-02 went into effect upon passage of the law in May 2007, unless otherwise stated in P.L. 29-02.

In addition, your question also raises an Organic Act issue. Section §1423a of the Organic Act (48 U.S.C.A. §1423a) contains both the general power of the Legislature and the power to tax and impose fees. The pertinent part of §1423a reads:

> The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam. Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and

> **concessions may be imposed for the purposes of the government of Guam as may be uniformly provided by the Legislature of Guam . . . .**

(emphasis added) Thus, under the Organic Act, the authority to impose certain taxes and fees is given to the Legislature.

Case law has established the legal principle that where a Constitutional (or Organic Act) power is given to a person or entity, the Legislature may not delegate that power elsewhere. See *Amalgamated Transit Union Local 587 v. Washington*, 11 P. 3d 762, 799 (2000) (holding that an initiative, which would have automatically required that all new state tax legislation be submitted to the voters for approval through the state referendum process was an unconstitutional infringement on legislative authority because all future state measures of a certain class – in this case certain taxes – would require voter approval).

Under 3 GCA §§ 17311 and 17312, when the Legislature passes a law increasing certain taxes or establishing new fees for government services, the law must be approved by the voters in a referendum. In §§ 17311 and 17312, not only is the Legislature delegating away a power given to it in the Organic Act, but it also is losing its ability to assure tax uniformity because some fees established by P.L. 29-02 would go into effect immediately; some fees, if accepted by the voters, would go into effect after the FY 2009 election and some fees, if rejected by the voters, would not go into effect at all. (For a general discussion of Legislative power see *In re: Request of Governor Felix P. Camacho Relative to the Interpretation and Application of Sections 6 and 9 of the Organic Act of Guam*, 2004 Guam 10.) Hence, although the Organic Act gives the Legislature the authority to tax and set fees, this exclusive legislative authority has been transferred to the voters under §§ 17311 and 17312.

The U.S. Supreme Court has described *referendums* as follows:

> Referendums are exceptions to the normal legislative process, and passage of a referendum is not itself essential to the functioning of government.

Gutierrez v. Ada, 120 S.Ct. 740 (slip op. 3, U.S. Supreme Ct. 2000).

The raising of taxes and fees is essential to the operation of government even though the amounts are discretionary. The Organic Act has given the authority to perform this essential function to the Legislature. Thus, it appears that requiring a vote of the electorate to raise fees for government services is beyond the scope of the Legislature's authority to delegate.

Based on the language of P.L. 29-02 and the powers granted the Legislature in the Organic Act, it is our opinion that the fees in P.L. 29-02 went into effect upon passage of the law in May 2007, unless otherwise indicated in the public law.

This is a formal opinion of the Attorney General and is intended to be an interpretation of Guam law as of the date of the Opinion.

Charles H. Troutman

CHARLES H. TROUTMAN
Assistant Attorney General

CONFIRMATION

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August 19, 2003

VIA FACSIMILE
671-472-3591

The Honorable Lou Leon Guerrero
Senator
I Mina Siete Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

SUBJECT: VOTER INTRODUCTION PROGRAM & VOTER AUTHORIZATION OF NEW TAXES AND BONDS; CLD03-03

Dear Senator:

You have requested the undersigned Attorney General's opinion in your correspondence dated August 1, 2003.

Question(s) Presented.

The questions you ask regard (1) the "constitutionality" of the Voter Introduction Program ("VIP") Law, Public Law Number 24-164, codified as 2 G.C.A. Chapter 12; and (2) whether the Voters may be permitted to approve the increase in taxes and issuance of obligation bonds prior to their taking effect under Public Law Number 24-222.

Statement of Facts.

On April 9, 1998 Public Law Number 24-164 was passed into law, adding a new Chapter 12 to Title 2 of the Guam Code Annotated. The law permitted the voters of Guam to introduce bills directly into the Guam Legislature. On July 29, 1998 the Guam Legislature passed Public Law Number 24-222, which provided for a referendum on tax increases to be placed before the voters of Guam.

Analysis.

1. The Legislature May Permit Voters to Introduce Legislation Absent a Modification of Guam Law, the Legislative Standing Rules or Vote of the Body.

The Organic Act of Guam expressly provides that the Legislature of Guam shall establish its rules of procedure. Section 1423b of Title 48 of the United States Code states,

> **"Section 1423b. Selection and Qualification of Members; Officers; Rules; Quorum.** The legislature shall be the judge of the selection and qualification of its own members. It shall choose from its members its own officers, determine its rules and procedure, not inconsistent with this chapter, and keep a journal. The quorum of the legislature shall consist of a simple majority of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays." (Emphasis added).

Guam law provides for the current Standing Rules to be in effect pending the adoption of the new Rules by the subsequent legislature. Section 1114 of Title 2 of the Guam Code Annotated states,

> **"Section 1114. Standing Rules.** Standing rules in force and existence at the adjournment sine die of a legislature shall continue until changed and shall govern the organization of the next legislature."

In the question you have asked, you essentially inquire as to the constitutionality of a *prior* legislature controlling the procedures of a present or *future* legislature. Quite simply, a prior legislature cannot bind the rules of a future legislature, *however*, it can, like in 2 G.C.A. § 1114 provide for a "default" procedure absent the current legislature modifying the procedure. State of Conn. v. Schweiker, 684 F.2d 979 (D.C. Cir. 1982). The Organic Act expressly permits the members of the Legislature of Guam to establish its procedures, without qualification. 48 U.S.C. § 1423b.

The legislature has established and codified *numerous* other "default" procedures in Guam law which control legislative operations and procedure. Examples include all the procedures set forth in 2 G.C.A. § 1118, which the current Standing Rules of the 27th Guam Legislature do not reference, but which control the procedures of the Legislative Body and operations. The law provides,

> **"Section 1118. Sessions of the Guam Legislature.**
>
> (a) The Legislature shall convene in a new regular session at the seat of Government at 10:00 a.m. on the first Monday in January of each year. The regular session shall continue for such period as each Legislature may determine, provided, however, that in no event shall a session continue beyond midnight of the day preceding the day upon which the next regular session of the Legislature is to convene.
>
> (b) At any time when the Legislature is in recess or has adjourned and could be in session but for such recess or adjournment, either the Speaker or the Committee on Rules may summon the Legislature to meet for whatever period of time the Legislature shall deem required. A meeting called pursuant to this paragraph shall be a continuation of the regular session last convened pursuant to Paragraph (a) of this Section.
>
> (c) At any time when I Liheslaturan Guåhan is in recess or has adjourned, the Speaker and the Legislative Secretary shall be empowered to, and shall receive, any messages or communications of any kind addressed to I Liheslaturan Guåhan [Legislature] from I Maga'lahen Guåhan [Governor]. For purposes of this Paragraph, receipt of messages or communications of any kind from I Maga'lahen Guåhan to I Liheslaturan Guåhan shall occur if delivered to the Speaker or the Legislative Secretary, or to their respective offices.
>
> (d) Any business, bill or resolution pending at the final adjourn ment of a regular session held in an odd-numbered year shall carry over with the same status to the next regular session.
>
> (e) No business, bill or resolution pending at the final adjournment of a special session shall carry over to any other session.
>
> (f) A session convening in an odd-numbered year shall be the first regular session of a Legislature and the session convening in the even-numbered year shall be the second regular session of the Legislature organized the preceding year."

Noteworthy are other provisions within Guam law that expressly control the procedures for adoption of legislation at the Guam legislature, including 2 G.C.A. §§ 2108 (Separate Consideration of Unrelated Matters) and 2107 (Separate Consideration of Land Bills). Clearly, legislature's past have provided for "default" procedures which purportedly control future legislatures, but which cannot irrevocably "bind" the current legislature. In order to change those procedures, the Standing Rules must address the default procedures which have been codified in Guam law, absent a currently adopted Standing Rule which conflicts with the procedures. Further, the legislature need not receive the Governor's approval to change a legislative procedure.

In this case, the Twenty-Fourth Guam Legislature (*Mina Bente Kuattro Na Liheslaturan Guåhan*) sought to create a Voter Introduction Program in order to provide greater access to bill introduction by the Public. This was not only a noble goal, but keeping with true democratic principles.

However, even though the procedure is codified in Guam law, 2 G.C.A. Chapter 12, like the other before identified provisions, it cannot control the wishes and desires of the present legislature. Consequently, the Senators may change this procedure either in the Standing Rules by vote of the Body by resolution, or in the case of other procedural laws identified above, provide for an exemption from the procedure in the legislation itself, such as an exemption from a non-appropriation bill only containing one subject (germaneness). 2 G.C.A. § 2108.

Noteworthy also is the rule of statutory construction that laws are presumed constitutionally valid. See 2A Sutherland Stat Const § 45.11 (4th Ed. 1987). Here, the Organic Act expressly provides that the Legislature of Guam may establish their rules of procedure. In doing so, *I Mina Bente Kuattro Na Liheslaturan Guåhan* elected to provide for voter introduction of legislation. Until the legislature either repeals Chapter 12 of Title 2 of the Guam Code Annotated; modifies its Standing Rules; or simply passing on file or taking off the agenda the VIP bill, the adopted "default" procedure in place is to permit voter introduction of bills. It is the undersigned's understanding that there is no current section within the Standing Rules which conflicts with Chapter 12 of Title 2 of the Guam Code Annotated. The current Standing Rules are silent.

In addition, the VIP law does *not* require the Legislature to take action on any measure, but only to place it, ultimately in the Second Reading File. The voters are *not* being given control over the law making authority of the Guam Legislature, but given an opportunity to participate in a procedural process, which even the members of the legislature may nullify either by repealing Chapter 12 of Title 2 of the Guam Code Annotated, by changing their Standing Rules by resolution vote or even by passing on file or taking off the agenda the VIP bill. Noteworthy is the case Paisner v. Attorney General, 458 NE2d 734, 390 Mass. 593 (Supreme Judicial Court of Mass., 1983). Although finding a violation of the non-delegation of legislative power doctrine, the case dealt with improper delegation of lawmaking authority and not procedure. Guam's VIP law deals squarely with putting a bill onto the legislative agenda (2nd Reading File) for consideration by the lawmakers. The Senators need not act upon it. Further, Guam's Organic Act is unlike Massachusetts.

Section 1422a gives the People the right of initiative and referendum:

> **"Section 1422a. Initiative, Referendum and Removal.**
> (a) The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam."

That right expressly provides that the voters can make laws or repeal them. This is important towards discounting the significance of Paisner since the People of Guam are given direct power

to pass legislation to the same extent as can members of the Legislature, and repeal what it has passed. What more consistent is the authority of a legislature to permit the voters access to placing a piece of legislation before the legislative body for consideration.

2. The Voters have the Authority to Approve Local Taxes or General Obligation Bonds Prior to Their Taking Effect.

The essence of this question has been previously addressed in a previous opinion to Senator Respicio, which is attached. To supplement that opinion, under the case law reviewed for the first question, the Legislature cannot permanently bind present or future legislatures to submit any measure to the People. *However*, as an inherent right of legislating and the power of the People to exercise the Initiative and Referendum right, the Legislature can, as to individual pieces of legislation, attach conditions to its operation such as a vote of the People, or make the law effective only after it is both passed the Legislature and become a law and then been voted on by the People.

The only alternative to circumvent this requirement is that the bill authorizing the tax increase or authorization for certain general obligation bonds contain an exemption within the bill itself from the current law (Public Law Number 24-222), or that the current law be repealed.

Conclusion.

The Voter Introduction Program, Chapter 12 of Title 2 of the Guam Code Annotated, is a valid law, consistent with other procedural laws contained within Title 2 of the Guam Code Annotated. *However*, the present legislature has the authority to remove the People's right to introduce legislation by repealing the relevant sections of Title 2 of the Guam Code Annotated; by changing the Legislative Standing Rules by resolution, thereby prohibiting such bill introductions; or by simply passing on file or removing the People's bill from the legislative agenda.

The People have the right and Organic Act power to approve any proposed increase in local taxes or certain obligation bonds prior to their taking effect (Public Law Number 24-222). The present legislature may, *however*, nullify that authority granted by a prior legislature in Public Law Number 24-222 by exempting that authority in any legislation it passes or by repealing Public Law Number 24-222.

Although a prior legislature cannot bind a present or future legislature, the rationale for passing the two (2) laws which you question were clearly to empower the People of Guam and provide them greater access to affecting laws which effect them. Your changing current procedures and laws within the legislative Body's lawful discretion leaves the question of why you would wish to do so, which is not within the undersigned's scope of review, but purely a political question, answerable only to the voters of Guam.

This opinion is based upon the facts as the undersigned understands them and the law existing at the time dated herein. Further it is intended solely for the use of the above identified individual.

Your attention to this matter is appreciated. Thank you.

Douglas B. Moylan

cc: Compiler of Laws
Speaker
Legislative Secretary
All Senators
Attachments

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Sen Respicio
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VIA FACSIMILE
671-479-8667

Honorable Rory J. Respicio
Senator & Chairman, Committee on Youth &
Senior Citizens, Federal & Foreign Affairs, Military &
Veterans Affairs, Human Resources and Natural Resources
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SUBJECT: YOUR JANUARY 21, 2003 REQUEST FOR OPINION; CDLO03-01

Dear Senator Respicio:

You have requested the undersigned's opinion regarding the legality of 3 G.C.A. § 17320, relative to putting to the vote of our People any local tax or fee increases. I am of the opinion that such a section is legal, but that since it is an enactment of *I Liheslaturan Guåhan*, not an Organic Act provision, then *I Liheslaturan Guåhan* may suspend, modify or repeal that law whenever it wishes.

The Organic Act states, with respect to initiative and referendum:

> "Section 1422a. Initiative, Referendum and Removal.
> (a) The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam."

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Therefore, I will presume that 3 G.C.A. § 17320 is a valid law, since the definition of "referendum" is that *I Liheslaturan Guåhan* submits a proposal to the People for their approval or rejection.

However, this does *not* end the analysis. Section 17320 is a law enacted by *I Liheslaturan Guåhan*, and as such, may be repealed, amended modified or suspended by any other law of either the same of a later legislature. Such has happened often in the past. For example, *I Liheslaturan Guåhan*, while retaining the Chamorro Land Trust Act, has exempted various transactions from its effects. The same may be done here.

If *I Liheslaturan Guåhan* does *not* want to amend or repeal § 17320, it may place in the body of any tax or fee increase measure a statement to the effect:

> "The provisions of 3 G.C.A. § 17320 (submission of tax increase measures to the voters) shall *not* apply to this Act."

In addition, the Organic Act, 48 U.S.C. § 1421I (part) permits *I Liheslaturan Guåhan* to levy an income tax surcharge on the Guam Income Tax:

> "Provided, that notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the government of Guam."

Therefore, *I Liheslaturan Guåhan* has the power to exempt any tax provision from the effects of 3 G.C.A. § 17329 if it so desires.

Sincerely,

Douglas B. Mœylan
Attorney General of Guam