Gmail

BENJAMIN CRUZ <speaker@senatorbjcruz.com>

## MC Fwd: Opinion Memorandum issued March 03, 2018

1 message

**BENJAMIN CRUZ** <speaker@senatorbjcruz.com>
To: 34th Guam Legislature Clerks <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

Sat, Mar 3, 2018 at 8:36 PM

| | | | | |
|---|---|---|---|---|
| 03/03/18 | 03/03/18 | Office of the Attorney General of Guam | Opinion Memorandum issued by AG Barrett-Anderson on this 3rd day of March, 2018. | 34-18-1614 |

GL# 34-18-1614
Speaker Benjamin J.F. Cruz

MAR 0 3 2018
Time: 836 [ ] AM [ ] PM File No.
Received By:

---------- Forwarded message ----------
From: **Benjamin J.F. Cruz** <senator@senatorbjcruz.com>
Date: Sat, Mar 3, 2018 at 8:32 PM
Subject: Fwd: Opinion Memorandum issued March 03, 2018
To: BENJAMIN CRUZ <speaker@senatorbjcruz.com>

---------- Forwarded message ----------
From: Pauline I. Untalan <puntalan@guamag.org>
Date: Sat, Mar 3, 2018 at 5:35 PM
Subject: Opinion Memorandum issued March 03, 2018
To: senator@senatorbjcruz.com <senator@senatorbjcruz.com>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, senatorbiscoelee@guamlegislature.com <senatorbiscoelee@guamlegislature.com>, office@senatorada.org <office@senatorada.org>, rose.senatorsa@gmail.com <rose.senatorsa@gmail.com>, senatortcnelson@gmail.com <senatortcnelson@gmail.com>, senatorsannicolas@gmail.com <senatorsannicolas@gmail.com>, senatordrodriguez@gmail.com <senatordrodriguez@gmail.com>, aguon4guam@gmail.com <aguon4guam@gmail.com>, senjvespaldon@gmail.com <senjvespaldon@gmail.com>, tommy@senatormorrison.com <tommy@senatormorrison.com>, senatormary@guamlegislature.org <senatormary@guamlegislature.org>, senatorlouise@gmail.com <senatorlouise@gmail.com>, wilcastro671@gmail.com <wilcastro671@gmail.com>, senatoresteves@gmail.com <senatoresteves@gmail.com>

Good Afternoon Speaker, Vice Speaker and Senators:

Attached is the Opinion Memorandum issued by AG Barrett-Anderson on this 3rd day of March, 2018. A hard copy will be delivered to your office first thing Tuesday morning.

Respectfully,
*Pauline I. Untalan*

Special Assistant to Attorney General Elizabeth Barrett-Anderson

Administrator, Victim Service Center, Criminal Injuries Compensation

Program and the Guam Notary Program

Office of the Attorney General of Guam

590 S. Marine Corps Dr. Suite 901

Tamuning, Guam 96913

(671)475-3324 ext. 5030 -phone

(671)477-4703 - fax

www.guamag.org

2018 MAR -3 PM 8:43

**CONFIDENTIALITY NOTICE**: This email and any files transmitted with it may be legally privileged and confidential and is intended solely for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any review, dissemination or copying of this email, or taking any action in reliance on the contents of this information is strictly prohibited. If you received this transmission in error, please notify us immediately by e-mail or telephone to arrange for the return of this email and any files to us or to verify it has been deleted from your system.

**Speaker Benjamin J.F. Cruz**
*I Mina'trentai Kuåttro Na Liheslaturan Guahan*
T 671-477-2520 | F 671-477-2522
http://www.senatorbjcruz.com

1614

OFFICE OF SPEAKER BENJAMIN J.F. CRUZ

Committee on Appropriations and Adjudication

*I Mina'trentai Kuattro na Liheslaturan Guahan*

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910

T: (671) 477-2520/1 | F: (671) 477-2522 | www.senatorbjcruz.com

# Office of the Attorney General of Guam

*590 S. Marine Corps Dr., Ste. 901, Tamuning, Guam 96913*

Elizabeth Barrett-Anderson
**Attorney General**
Phone: (671) 475-3324
ext. 5015/ 5030
Fax: 477-4703
law@guamag.org

Jacqueline Z. Cruz
Chief of Staff
**Administration**
ext. 5010
jzcruz@guamag.org

Joseph B. McDonald
Chief Prosecutor
**Prosecution**
ext. 2410
jmcdonald@guamag.org

Karl P. Espaldon
Deputy AG
**Solicitors**
ext. 3115
kespaldon@guamag.org

Kenneth D. Orcutt
Deputy AG
**Litigation**
ext. 3225
korcutt@guamag.org

Fred S. Nishihira
Deputy AG
**Consumer Protection**
ext. 3250
fnishihira@guamag.org

Rebecca M. Perez
Deputy AG
**Child Support**
ext. 1610
rebecca.perez@guamcse.net

Carol M. Hinkle-Sanchez
Deputy AG
**Family**
ext. 4040
csanchez@guamag.org

Pauline I. Untalan
Administrator
**Victim Service Center & Notary Unit**
ext. 5030
puntalan@guamag.org


March 03, 2018

**OPINION MEMORADUM**

PCF: GOV 18-0089

Honorable Eddie Baza Calvo
Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

*Hafa Adai* Governor:

This opinion is issued on an emergency request from your office regarding your authority under the Organic Act of Guam to call *I Liheslaturan Guahan* (Legislature) into special session, and whether the Legislature can refuse. The question at hand is whether the Governor can call a new or additional special session(s) while the Legislature is recessed in a special session. The answer is yes.

The Governor's authority to call a special session is rooted in the Organic Act of Guam. Title 48 U.S.C.A., Section 1423h provides, in relevant part:

> The Governor may call special sessions of the legislature **at any time** when, in his opinion, the **public interest** may require it. No legislation shall be considered at any special session other than that specified in the call therefor or in any special message by the Governor to the legislature while in such session. All sessions of the legislature shall be open to the public.

48 U.S.C.A. § 1423h (1950) (emphasis added). Statutory construction begins with a plain reading of a statute. *See Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23 (quoting *American Tobacco Co. v. Patterson,* 456 U.S. 63, 68, 102 S.Ct. 1534, 1537, 71 L.Ed.2d 748 (1982)). A plain reading is appropriate where the statute lays out specific requirements and indicates exactly what is necessary for compliance. *See Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 29. The Organic Act clearly provides that the Governor has plenary authority to call a special session "at any time" when the "public interest may require it." 48 U.S.C.A. § 1423h (1950).

Congress placed no limitation or restriction on the Governor's power to call a special session. Congress has afforded the Governor with discretion in calling the Legislature into special sessions based on a broad arena of public interest circumstances. *See* 48 U.S.C.A. § 1423h (1950). Furthermore, Congress did not limit the number of calls the Governor is entitled to make.

The Legislature's inference that there is a limitation on the Governor's authority to call a special session is misplaced.[1] Although there is no expressed power for the Governor to revoke a special session that has convened, the power to call additional special sessions, ***at any time***, is clear. The Governor may call a special session regardless of whether the Legislature is currently in a special session, recessed or adjourned therefrom. It is foreseeable that in certain emergencies, such as natural disasters which, our island often faces, multiple or simultaneous calls might be required. The Governor has expressed his opinion that there is a financial crisis affecting the public interest necessitating immediate legislative attention via a special session.

The Organic Act is the ultimate local constitutional authority on Guam. *See Underwood v. Guam Election Comm'n*, 2006 Guam 17 ¶ 21 (Dec. 19, 2006) ("[T]he Legislature's powers are broad, but are constrained by the provisions of Organic Act of Guam. . . ."). Therefore, the 34th Guam Legislature Standing Rules, Mason's Manual, which is referenced as a source of Legislative Procedure, and any authority from other jurisdictions are only persuasive and not binding on Guam. The 34th Guam Legislature made such a concession in its adoption of its current standing Rules. *See* 34th Guam Standing Rule, Part A § 1.02(c)(XX)(2)(A) ("The rules, which apply to Regular Sessions, *shall* apply to Special Sessions to the extent that they *do not* conflict with the Organic Act provision requiring the body *only* address the legislation provided by *I Maga'lahen Guåhan*.").

The Governor has express authority to call multiple special sessions at any time. It is the opinion of our Office that the Legislature did not have the authority to refuse to hear the call of the Governor's special session on March 2, 2018.

"The three branches of government should work together smoothly, harmoniously, and respectful of each other's authority. Dialogue between the Executive and the Legislative Branches should be conducted in an orderly manner to better serve the People of Guam. . . ." *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 30, aff'd, 276 F.3d 539 (9th Cir. 2002) (Chief Justice Siguenza).

Respectfully,

**ELIZABETH BARRETT-ANDERSON**
Attorney General of Guam

*cc: All Senators, I Liheslaturan Guahan*

[1] As per the guampdn.com, a legal opinion released by the Legislature stated that the Governor "may not have authority to revoke his previous call to session and simultaneously call the Legislature into another special session." March 2, 2018. (http://www.guampdn.com/story/news/2018/03/02/guam-governor-calvo-submits-new-tax-increase-bill-after-32-hour-workweek-postponed/387535002/).