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Fwd: AG Opinion Memorandum Ref. GOV 18-0675

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Fri, Dec 28, 2018 at 4

12-28-18	**15:43**	**12-28-18**	Attorney General Opinion Memorandum Ref. GOV 18-0675- Organicity of the Legislatively Imposed Prohibition on Hiring Deputy Directors and other Unclassified Employees of the Executive Branch in P.L. 34-116 (the General Appropriations Act of 2019) *Email	Office of the Attorney General of Guam	34GL-18-2700

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December 28, 2018

OPINION MEMORANDUM **Ref. GOV 18-0675**

To: Chair, Guam Transition Committee for the Office of Governor-Elect and Lt. Governor-Elect

From: Attorney General of Guam

Subject: Organicity of the Legislatively Imposed Prohibition on Hiring Deputy Directors and other Unclassified Employees of the Executive Branch in P.L. 34-116 (the General Appropriations Act of 2019)

This following is a response to your November 30, 2018 request for legal guidance on the prohibition on hiring deputy directors and other unclassified employees of the Executive Branch in Chapter XIII, Part I, Section 4 of Public Law 34-116.

QUESTION:

Does Chapter XIII, Part I, Section 4 of Public Law 34-116 violate the separation of powers doctrine in that the Legislature imposed conditions to an appropriation which impinges on the Executive Branch of Guam ("Executive Branch") power to allocate staff and resources for the proper fulfillment of its duty to execute the laws? The answer is YES.

DISCUSSION:

Chapter XIII, Part I, Section 4 of Public Law 34-116 ("Section 4") prohibits the Executive Branch from spending funds appropriated in Public law 34-116 to fill deputy director and similar positions (collectively "Deputy Directors") from January 7, 2019, until the end of Fiscal Year 2019. Section 4 states as follows:

> **Funding of Unclassified Deputy Director and Similar Positions Prohibited.** Notwithstanding any other provision of law, rule, regulation, pay scale, or otherwise, beginning on January 7, 2019, Executive Branch departments and agencies receiving appropriations in Part IV of Chapter II,

> Parts II, III and IV of Chapter III, Chapter V, and Chapter X of this Act *shall not* be authorized to expend any government funds for the purposes of employing unclassified positions with the titles of Deputy Director, Deputy Administrator, Deputy General Manager, Assistant General Manager, Deputy Executive Manager, Vice President, and Deputy Executive Director.

Pub. L. No. 34-116:XIII:I:4.

As your request points out, this Office addressed a similar issue in AG Opinion 12-0014, dated January 9, 2012, *Re: Organicity of Legislatively Imposed Hiring Freeze and Other Condition on Executive Management Decisions in P.L. 31-77 (Sept. 20, 2011)* (the "2012 AG Opinion") wherein this Office opined that the Legislature's hiring freeze in Public Law 31-77 violated the separation of powers doctrine. Similarly, on October 15, 2018, this Office responded to an inquiry from the Department of Administration ("DOA") on whether the hiring freeze in Chapter XIII, Part I, Section 1 of P.L. 34-116 ("Section 1") violated the separation of powers doctrine. Our response there stated that the hiring freeze of Section I was legally indistinguishable from the hiring freeze addressed in the 2012 AG Opinion and that Section 1, therefore, violated the separation of powers doctrine.

Your request asks if the 2012 AG Opinion is also applicable to the prohibition in Section 4 against hiring unclassified Deputy Directors. We believe that both the 2012 AG Opinion and the 2018 response to DOA are applicable here. Whether couched as a freeze on hiring or prohibition against spending appropriated funds to fill vacant positions, the effect is the same in that the Legislature is impinging upon the authority of the Executive Branch to "allocate staff and resources for the proper fulfilment of its duty to execute the laws." *Id.* (quoting *In re Request of Governor Gutierrez Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 Guam 5 ¶ 45).

The 2012 AG Opinion and our Office's response of October 15, 2018 to DOA addressed general hiring freezes to include classified employees. Both rely on the Organic Act and the Governor's authority to appoint Executive Branch employees. Such authority stems from the Organic Act which states in relevant part, "[The Governor] shall appoint, and may remove, *all* officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam. . . ." 48 U.S.C. § 1422 (emphasis added). The Governor's broad authority to appoint *all* employees in the Executive Branch is not conditioned on whether the position is classified or unclassified.

CONCLUSION

Based on the foregoing, the Legislature's prohibition on the hiring of unclassified Deputy Directors, in Chapter XIII, Part 1, Section 4 of Public Law 34-116 violates the separation of powers doctrine and is inorganic and unenforceable.

ELIZABETH BARRETT-ANDERSON
Attorney General of Guam

cc: Governor of Guam
Acting Speaker, 34th Guam Legislature