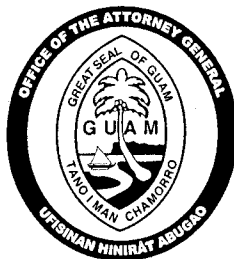


Alicia G. Limtiaco
Attorney General



Alberto E. Tolentino
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

August 15, 2008

LEGAL MEMORANDUM

Ref: **DRT 07-0229**
(Supplement to DRT 05-0393)

TO: Director, Department of Revenue and Taxation

FROM: Attorney General

SUBJECT: **Real Property Tax Assessment & Adjustment Issues**

We reiterate our original opinion that there is no need to refile a petition for redetermination of a real property tax assessment. (The Opinion is attached hereto). Indeed, if the cases were to be dismissed and the petitioner is required to refile, they would be long outside of the statute of limitations applicable to their dates of reassessment and would have to be dismissed. This was the result found by the Ninth Circuit in Guam v. United States, 744 F.2d 699 (9th Cir. 1984) where a case was filed in a land matter, trying to force the return of utilities to Guam from the United States. It was dismissed and then refiled. However, because the statute of limitations had expired between the dismissal and refile, the whole case was lost. In that case, there was only a 12-day lapse. So, to avoid unnecessary litigation, the cases before the board should not be dismissed nor the petitioners be required to refile.

As to the number of members required and the number of votes required, the law establishing the Assessment Board contains no special provisions, in fact, none at all. In the absence of a special rule, the standard rule stated in the Robert's Rules of Order and repeated with respect to the Real Estate Commission, also within your Department, states:

§102109. Quorum; effect of vacancy; act of majority. A majority of the commission constitutes a quorum for the transaction of any business, for the performance of any duty, or for the transaction of any business, for the performance of any duty, or for the exercise of any power or authority of the Commission. A vacancy on the Commission does not impair the right of the remaining members to perform all the duties and exercise all the power and authority of the Commission. The act of the majority of the Commission, when in session as a commission, is the act of the Commission.

21 GCA §102109.

You should follow this rule. Please do not hesitate to ask more questions.


J. PATRICK MASON
Deputy Attorney General

*Legal Memorandum prepared by Charles H. Troutman

Douglas B. Moylan
Attorney General



Charles H. Troutman
Consumer Counsel

Office of the Attorney General

May 23, 2005

Re: DRT 05-0393

MEMORANDUM (Opinion)

To: Director, Dept. Of Revenue & Taxation

From: Attorney General

Subject: Real Property Tax Assessment and Adjustment Issues

You have requested an Opinion answering four questions you propose. I will answer them in your order.

QUESTION 1: What is the Board's or an individual board member's, liability for final decisions on matters appealed to them for adjustment of tax rates and values?

ANSWER 1: There is no statute specifically dealing with the Board of Equalization. Therefore, I am attaching two prior Attorney General Opinions dealing with the liability in general. In addition, the US Supreme Court has held, in *Ngiraingas v. Sanchez*, 110 S. Ct. 1737, 1743 (1990), that neither the Government of Guam, nor its agencies, nor persons acting in their official capacities may be sued in a federal civil rights action under §1983. Furthermore, *Bermudez v. Duenas*, 936 F.2d 1064 C.A.9 (Guam), 1991 held that boards which perform judicial functions are absolutely immune from suit in such cases.

Therefore, we conclude that current or past members of the Equalization Board are immune from suit for undertaking their official duties.

QUESTION 2: To what degree, if any, does liability extend to either the personal or official capacities of the members?

ANSWER 2: See Answer to the first Question.

QUESTION 3: If a pending application is approved by the Board, is the reduction or approval of the application retroactive to the year in which the application was first filed?

ANSWER 3: The law is silent as to this issue. As of our last publication of Rules, there were none filed for the topic of "real estate taxes" or adjustments. Therefore, we must look to general principles. In a court action, the determination time for making an award is not the date of filing, assuming that this came within the statute of limitations, but the prayer of the complaint and the evidence presented by the plaintiff. So here, assuming the request for adjustment was made within the time limits prescribed in law, 11 GCA § 24509, you would be ruling on the adjustment request filed for the year the roll was published, since the applicant has until September 15th of that year to file.

If the person or his agent filed after September 15th of the year in question, that is beyond the time specified and it should be rejected. If within that time, then the Board would look to the evidence presented as to the conditions in that year and grant or deny, or modify the adjustment as the Board determines. Then, the tax roll for that year would be adjusted and, I presume, later years would carry the same value unless there were to be another adjustment or a reevaluation of the property as otherwise provided in law.

QUESTION 4: Does the Board have the authority to review applications for adjustment that were filed prior to their appointment?

ANSWER 4: Generally, yes. Appeals are not filed with a particular Board, but with whomever is on the Board at the time. The appeals will continue to be pending until a decision is made. However, if a prior Board made a decision and that decision is final, the present Board may not reconsider it. There is no authority in law for such reconsideration.

I hope this answers your questions.

Charles H. Troutman
CHARLES H. TROUTMAN
Deputy Attorney General

February 28, 1989

Memorandum (Opinion)

Ref: GBDE 89-0105

To: Chairman, Guam Board of Dental Examiners

From: Attorney General

Subject: License Requirements for USPHS Dentists

This office is in receipt of your memorandum dated January 13, 1989, in which you requested information on the following:

REQUEST NO. 1: Can the GBDE license a dentist not under its authority and jurisdiction?

ANSWER: See discussion.

REQUEST NO. 2: Must the GBDE examine an applicant- though such applicant does not need a license to practice on Guam?

ANSWER: See discussion.

REQUEST NO. 3: Is the GBDE liable for the malpractice of a USPHS dentist?

ANSWER: See discussion.

REQUEST NO. 4: If an exempted dentist becomes licensed by the GBDE, does such dentist submit to the jurisdiction of the GBDE?

ANSWER: See discussion.

REQUEST NO. 5: Are exempt dentists subject to the control of the GBDE?

ANSWER: See discussion.

REQUEST NO. 6: Is DPHSS responsible for a USPHS dentist's work performance and ethical conduct?

ANSWER: See discussion.

REQUEST NO. 7: Is the Chief Public Health Dental Officer responsible for the malpractice of a USPHS dentist?

ANSWER: See discussion.

REQUEST NO. 8: Is the Chief Public Health Dental Officer responsible for monitoring USPHS dentists?

ANSWER: See discussion.

STATEMENT OF FACTS:

The Guam Board of Dental Examiners (GBDE) has received requests for dental licensure on Guam, pursuant to Guam law and regulations, from United States Public Health Service (USPHS) dentists. Guam law provides that USPHS dentists are exempt from the need to be licensed under certain circumstances. The GBDE asks several related questions concerning the licensure and authority over the USPHS dentists.

DISCUSSION:

The answer to Request No. 1- revolves around the statutory duties of the GBDE with respect to licensing dentists on Guam. 10 GCA S 12410 provides in part "Any person desiring to practice dentistry in this Territory shall file his name, together with an application for examination, with the Board at least sixty (60) days before the date set for the beginning of the examination. *** The Board may refuse to issue a license to a person for any cause that would authorize suspension or revocation of a license under S 12417 of this Chapter.1 Thus, from the language of the statute, the GBME must take an application from any person desiring to practice dentistry on Guam and may refuse to license such person only for the reasons set out in 5 12417 of the Chapter. A review of 5 12417 does not reveal a statutory reason for the GBDE denying a license to an otherwise qualified USPHS dentist seeking a Guam license.

Request No. 2 is really a facet of the first request. Even though a USPHS dentist is exempt from the license requirements of 10 GCA, such a dentist may still desire to be Guam licensed. If such is the case, the GBDE, in our opinion, would be obligated to accept and process the application for license.

Turning to the question of GBDE liability for the malpractice of a dentist it has licensed, the general rule is that administrative agents, when acting in good faith

within the scope or their authority, are not civilly liable for the consequences of their acts. For a fuller discussion of this principle in a related fact situation, see AG Opinion PHSS 85-1544, attached. In the same vein, 10 GCA S 80106, as amended by P.L. 19-04 provides:

"(d) The Guam Memorial Hospital Authority shall be liable for the negligent act of any hospital employees or officer if the Board knew or had notice that said employee or officer was inefficient and incompetent to perform the services for which he was hired, or said Board retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency."

The above statute makes Guam Memorial Hospital Authority (GMHA) liable for the acts of its employees under certain circumstances. No such statute exists in the Dental Practice Act. If the Legislature would have wanted to make the GBDE liable for the malpractice of the dentists it licenses, a similar statute could have been drafted to cover the GBME.

If an exempted dentist chooses to be licensed on Guam, that dentist submits to the jurisdiction of the GBDE to the extent that the GBDE may sanction him or her with respect to the Guam license. That is, insofar as the Guam license is concerned, the GBDE may deal with a Guam licensed USPHS dentist as it would with any other Guam licensed dentist. But, the GBDE would not have the authority to impact on the USPHS portion of the dentist's license. Thus, USPHS dentists, like all other dentists, are subject to the control of the GBDE if they are licensed under Guam law.

The question of whether the GBDE is responsible for the USPHS dentist's work requires a bifurcated answer. According to the Memorandum of Agreement between the USPHS and the Department of Public Health and Social Services (DPHSS), the USPHS is to "supervise and control the NHSC professionals." Therefore, while the USPHS dentist is working in a public service capacity, that dentist will not fall under the control of the GBDE. On the other hand, 10 GCA S 12417 provides the GBDE with the authority to suspend or revoke a dental license for "unprofessional conduct" among other things. Thus, the USPHS dentist, if also licensed under Guam law would be under the supervision of the GBDE if and when that dentist practiced privately. As indicated earlier, the GBDE may affect only the Guam license not the overall ability to practice dentistry on Guam, as that is allowed by virtue of the USPHS exemption.

Looking at the liabilities and responsibilities of the Chief Public Health Dental

Officer (Chief), the above stated general principle concerning the non-liability of an administrative agent would apply to the Chief as well. But as with all malpractice cases, the facts of the individual situations on a case-by-case basis will determine the specific individual liability. Also, the Chief, probably as a practical matter, will do some if not all of the day-to-day monitoring and supervision of the USPHS dentist, though the Agreement provides that such responsibility rests with the USPHS itself.

This memorandum is issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By:

VANCE J.I. GUERENA
Deputy Attorney General

Attachment

cc: Director, DPHSS

December 2, 1985

Memorandum (Opinion)

Ref: PHSS 85-1544

To: Chairman, Guam Board of Medical Examiners

From: Attorney General

Subject: Legal Opinion Concerning Civil Immunity of GBME Members

We are in receipt of your memorandum of October 23, 1985 in which you requested information on the following:

REQUEST NO. 1: What is the extent of immunity from civil suit afforded members of the Guam Board of Medical Examiners while acting in a quasi-judicial capacity?

ANSWER: GBME members when acting in good faith and within the scope of their authority are probably not civilly liable for the consequences of their acts. See discussion.

REQUEST NO. 2: If GBME receives a verified complaint from a private citizen, must the board file a formal accusation under the Administrative Adjudication Law or may it exercise its discretion and decide internally whether or not to file such an Accusation?

ANSWER: The board has the discretion to decide whether or not to file an Accusation pursuant to the Administrative Adjudication Law.

STATEMENT OF FACTS:

Recently, the Guam Board of Medical Examiners has been investigating the activities of several physicians here on Guam. Disciplinary actions concerning the possible revocation, suspension or limitation of licenses to practice medicine have been discussed and, in fact, one has been filed. A couple of the potential respondents in disciplinary actions have threatened board members with civil suits against them in their personal capacity if such proceedings are commenced. Therefore, the Chairman of GBME now requests a legal opinion as to the degree of immunity enjoyed by GBME members in regard to civil actions

against them in their personal capacity.

Also, a verified complaint making serious allegations about the conduct of two Guam physicians was filed with the board by a local attorney. The Chairman, therefore, also requests an opinion as to whether or not the Board has the discretion to decide whether or not to file a formal Accusation under the Administrative Adjudication Law and proceed with a disciplinary proceeding or whether it must file such an Accusation.

DISCUSSION:

It is a long standing principle of administrative law that administrative agents or their officers, when acting in good faith within the scope of their authority, are not civilly liable for the consequences of their acts. Washburn V. Shapiro, D.C. Fla. 409 F.Supp. 3 (1976). Generally, members of administrative boards acting within the board's jurisdiction, in the absence of bad faith, malice or corrupt motives, are not personally liable for errors or mistakes committed in the exercise of their honest judgment and discretion. Smith V. Bolte, 172 So.2d 624 (1965).

When an administrative body is performing quasi-judicial functions, it is generally not liable for errors made in ascertaining the facts of the case and deciding thereon. St. Regis Paper Co. v. New Hampshire Water Resources Board, 26 A.2d 842 (1942). Similarly, a member of a quasi-judicial body cannot be held liable for an erroneous application of the law. (See Volume 118 A.L.R. 1440)

As these cases indicate, the chances are remote that any member of the Guam Board of Medical Examiners will be held personally liable in a civil action. This is especially true so long as the board acts carefully within its statutory grant of authority, exercises appropriate care and diligence and follows the procedures outlined in the Administrative Adjudication Law. In fact, there are a few cases which hold that a quasi-judicial officer cannot be held personally liable even if he acts maliciously and corruptively or for ulterior motives. In the case of Wilson v. Hirst, 193 P.2d 461 (1948), several employees sued members of a government board for terminating them from government employment. The following language from that case indicates the importance of administrative bodies acting within their jurisdiction and using the appropriate procedures.

For all that appears in the complaint, the Board was strictly following the procedures prescribed by statute when the action herein

complained of was taken, which resulted in separating plaintiffs from the state payroll. Certainly if the Board lacked jurisdiction to conduct this review, which lack of jurisdiction would thereby deprive it of the rule of immunity, plaintiffs were obligated to allege facts in their complaint showing such want of jurisdiction * * *

The court went on to cite several cases in which public officers were held personally liable for their actions, but they distinguished the Wilson case in the following way.

Clearly these cases are distinguishable from the instant case where these cases show that the officers, who ostensibly were acting in a quasi-judicial capacity, had acted in excess of their authority or were acting where was a total want of jurisdiction in effecting the removal, thereby subjecting themselves to civil liability. As heretofore pointed out, the Board in this case was acting strictly within its -jurisdiction and therefore under the authority cited it was clothed with immunity from civil liability unless the allegation that its action which was taken maliciously leaves the complaint stating a good cause of action.

In a federal case the District Court of Hawaii states that if an administrative officer acts outside the scope of his jurisdiction and without authorization of law, he is liable in an action for damages for injuries suffered by a private person as a result thereof. Zimmerman V. Poindexter, D.C. Hawaii, 78 F.Supp. 421 (1947)

Quasi-judicial officers enjoy a similar immunity from suit in regard to actions brought under Title 42 U.S.C. 51983 which allege violations of someone's civil rights. Kinney v Lenon, 447 F.2d 596 (1971). Non-judicial government officials who perform functions of an adjudicatory nature enjoy qualified immunity to civil rights suits for damages. The office must act without notice and could not have known or could not be expected to have known that his actions would violate the plaintiff's civil rights. 290 Madison Corp. V. Capone, 485 F.Supp. 1348 (1980). Once again, however, this immunity does not extend to quasi-judicial officers who act outside their lawful authority. McGhee V. Mover, 60 F.R.D. 598 (1973).

Turning to the question as to whether or not the board must file a formal Accusation under 24101 GC, a part of the Administrative Adjudication Law, because an attorney has filed a verified complaint with the Board, we believe the Board's discretion in this area is great enough to allow for an internal preliminary decision as to whether or not an Accusation should be filed. If this

were not the case, the Board would have to take action on every written grievance filed with it no matter how slight or ill-founded the grievance might be. The law does not require that. As the administrative body charged by P.L. 16-123 and P.L. 16-125 with the authority to regulate the practice of medicine on Guam, the Board has discretion to decide whether or not a written complaint merits taking formal disciplinary action.

This memorandum is issued as an opinion of the Attorney General. For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By:

DAVID J. HIGHSMITH
Assistant Attorney General