



## OFFICE OF THE ATTORNEY GENERAL

March 10, 2008

**VIA HAND DELIVERY**

Hon. Felix P. Camacho,  
*I Maga'lahen Guåhan*  
Governor of Guam  
P. O. Box 2950  
Hagåtña, Guam 96910

*Ref: GOV 08-0218*

Re: Response to Request for Opinion dated March 7, 2008

Dear Governor Camacho:

This Office is in receipt of your letter of March 7, 2008 requesting a legal opinion about the legitimacy of several legislative bills. With your letter you have included a March 6, 2008 letter to you from Senator Ray Tenorio and a number of legislative bills.<sup>1</sup> Each of the bills you have attached includes a certification of passage attested to and signed by Tina Rose Muña Barnes, as Senator and Secretary of the Legislature, and by Senator Judith T. Won Pat, as Speaker. In Senator Tenorio's letter to you, he states: "[s]everal Democrat Senators addressed matters before the proper Legislature out of session and I am told that illegitimate documents may be transmitted for your review and approval." The Senator then asks you to disregard "these transmittals." Presumably, the documents Senator Tenorio is asking you to disregard are the bills you have forwarded to us.

In your letter to this Office, you indicate that on the day you received the letter from Senator Tenorio, you also received a request from Senator Won Pat asking you to accept bills which, using your words, were "purportedly passed by the Guam Legislature." You further indicate that your office is not accepting documents from the Legislature, but you believe the bills were left at your office by someone from Senator Won Pat's office. You then ask for the Attorney General's opinion "on whether the bills submitted by Senator Won Pat are legitimate and properly presented."

In sum, based on the documents and information you have provided to this Office, Senator Tenorio has advised you that the bills transmitted to you were "addressed" while the

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<sup>1</sup> The bills you forwarded include the following bill numbers: 195, 210, 211, 214, 218, 204, and 221.

Legislature was "out of session." For this reason, Senator Tenorio has asked you to disregard the bills. Because of Senator Tenorio's statements and request, you wish to know whether the bills are legitimate.

Since you have only ten days to sign, veto or let the bills lapse into law, you have asked for an expeditious response to your inquiry. Therefore, the following legal discussion must be and is based on the documents and information you have forwarded to us with your March 7, 2008 letter.

A discussion of the legislative process must begin with the Organic Act of Guam. Section 1423b of the Organic Act provides that a *quorum*<sup>2</sup> of the legislature consists of a simple majority<sup>3</sup> of its members and that no bill shall become law unless it was passed at a meeting at which a *quorum* was present and a majority of the members present vote in favor of the bill.<sup>4</sup> "Every bill that is passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor." 48 U.S.C. § 1423i.<sup>5</sup> The Governor can then sign the bill into law, veto it or let it lapse into law.<sup>6</sup> *Id.* Sections 1423b and 1423i are the only Organic Act requirements for a bill to become law. No question has been raised as to whether a *quorum* was present when the bills were voted upon or whether a majority of the Senators present voted for the bills. Likewise no issue has been raised as to whether the bills were entered upon the journal. You have, however, raised the question of presentment of the bills.

The Organic Act requires that every bill that is passed shall be "presented to the Governor." "To 'present' means to lay before, or submit to a person or body for consideration or action . . ." WORDS AND PHRASES, "Present" (2006) (citing Gage v. Jordan, 147 P.2d 387, 393 (Cal. 1944)). In this sense, the word "present" is sometimes referred to as "presentment."

<sup>2</sup> "The minimum number of members (usu. a majority of all the members) who must be present for a deliberative assembly to legally transact business." BLACK'S LAW DICTIONARY 1284 8<sup>th</sup> Ed. (2004).

<sup>3</sup> "A majority of the members who vote, a quorum being present, disregarding absent members, members who are present but do not vote, blanks, and abstentions." BLACK'S LAW DICTIONARY 975 8<sup>th</sup> Ed. (2004).

<sup>4</sup> In full, 48 U.S.C. § 1423b provides:

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 in original).

<sup>5</sup> In pertinent part, 48 U.S.C. § 1423i provides:

Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it . . . .

<sup>6</sup> There is also the pocket veto possibility, but that option is not relevant here. See Pangelinan v. Guitierrez, 2000 Guam 11, *aff'd. in 276 F.3d 539* (9<sup>th</sup> Cir. 2002), *cert. denied in 537 U.S. 825, 123 S.Ct. 113* (2002).

“Presentment” is defined as “[t]he act of presenting or laying before a court or other tribunal a formal statement about a matter to be dealt with legally.” BLACKS LAW DICTIONARY, 8<sup>th</sup> ed. (2004). Based on these definitions, presenting a bill to the Governor, in this case, would mean submitting it to the Governor for his review and action of either signing it into law, vetoing it or letting it lapse into law.

You have indicated that your office is not accepting bills from the Legislature, but you believe the bills were left at your office. This issue is addressed in 5 GCA § 1511 which, in part, provides: “*I Maga’lahen Guåhan* [The Governor] shall receive bills transmitted from *I Liheslaturan Guåhan* [the Legislature] for his review and action at any time, including after regular government working hours and on weekends and holidays.”<sup>7</sup> (brackets and italics in original). Thus, § 1511 requires the Governor to receive bills transmitted by the Legislature. The Governor cannot refuse to accept bills that are submitted to him. Therefore, based on the definition of “present” and § 1511, if, in fact, the bills in questions were delivered to your office, then the Organic Act requirement that bills must be “presented to the Governor” has been met.

In addition to the presentment issue, you have raised the question whether the bills are legitimate. Based on your letter and the documents submitted to this Office, the question of legitimacy arises from Senator Tenorio’s statement that the bills were properly before the Legislature, but that the Legislature was “out of session” when the matters were addressed.

Courts have held that an act of the Legislature will not be declared void or invalid for failure of that body to observe its own rules of procedure, since such observance is a matter entirely within its control and discretion and is not subject to review by courts as long as legislative action does not violate some constitutional provision. Board of Trustees of Judicial Form Retirement System v. Attorney, 132 S.W.3d 770, 777-78 (Ky. 2003); State v. Gray, 60 So.2d 466, 468 (La. 1952). The Organic Act of Guam is the equivalent of Guam’s Constitution. Underwood v. Guam Election Comm’n, 2006 Guam 17, ¶ 16, cert. denied in 127 S.Ct. 2431 (2006). Therefore, consistent with case law, the Guam Legislature creates its own rules of procedure, the observance of which is entirely within its

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<sup>7</sup> In full, 5 GCA § 1511 provides:

*I Maga’lahen Guåhan* [The Governor] shall receive bills transmitted from *I Liheslaturan Guåhan* [the Legislature] for his review and action at any time, including after regular government working hours and on weekends and holidays. *I Maga’lahen Guåhan* [The Governor] shall provide for a process in which transmission can be effectuated during and after regular government working hours by *I Liheslaturan Guåhan* [the Legislature] by delivering to the Speaker of *I Liheslaturan Guåhan* [the Legislature], within thirty (30) days of enactment of this law, written notice of the procedures. Until such time as notice is provided to the Speaker of *I Liheslaturan Guåhan* under this Section, *I Liheslaturan Guåhan* shall deliver to the Office of *I Maga’lahen Guåhan* bills for *I Maga’lahen Guåhan*’s review and action during regular government working hours; and if *I Maga’lahen Guåhan* is unavailable after regular government working hours, to the security personnel at Government House located in Agana Heights. *I Maga’lahen Guåhan* shall be deemed unavailable after regular government working hours when any security personnel at Government House advise the Clerk of *I Liheslaturan Guåhan*, either in writing or orally, that *I Maga’lahen Guåhan* cannot immediately receive the legislation.

control and discretion and is not subject to review by courts unless there are violations of the Organic Act.

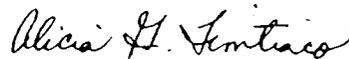
Courts have long held that, when enrolled, signed, and filed, acts of the legislature are *prima facie* valid. State v. Kaufman, 430 So.2d 904, 905 (Fla.1983). The bills on their face appear to be legitimate because a *quorum* was present when a majority of Senators voted in favor of the bills. Hence, without evidence to the contrary, the bills meet the requirements of the Organic Act. The presentment of the bills to the Governor also meets the Organic Act requirements.

Thus, under the Organic Act, the Governor presently has the option of signing the bills, vetoing the bills stating his objections, or letting them lapse into law. A bill purporting to have been duly passed by the Legislature and presented to the Governor in conformity with requirements of the Organic Act is a public record of a coordinate branch of the government, and neither the Judicial [nor the Executive] Branch has the power to adjudge it to have been made in a manner not in conformity with the rules and regulations of the law, in the absence of a specific charge of fraud on the part of the officers concerned, or the existence of some public record of equal dignity to show the abuse of authority or violation of law by them. *See e.g., Amos v. Gunn*, 94 So. 615, 635-36 (Fla. 1922); *see also Jensen v. Matheson*, 583 P.2d 77, 80 (Utah 1978).

“[U]ltimately such disputes are inherently political because they implicate the appropriations and budgetary powers of the legislature and the executive, and the political relationship between those branches of government.” Alaska Legislative Council v. Knowles, 21 P.3d 367, 376 (Alaska 2001). “The judiciary has no special competence to settle these types of inherently political disputes.” *Id.* Similarly, the Executive Branch would not possess any special competence to settle such inherently political disputes. Thus, it is entirely within the control and discretion of the Legislature to determine whether it has observed its own rules of procedure; this is not subject to review by courts or the Executive Branch as long as the legislative action does not violate some constitutional provision.

Furthermore, in pre-enactment stages, the Governor has no standing to challenge a bill for constitutional infirmity. No one can be adversely affected by legislation until it has been applied or enforced as effective law. No showing of actual or threatened injury can be made before the bill becomes effective law. In short, only a person against whom effective law has been applied would have standing to challenge its constitutionality. *Cf. In re Initiative No. 358*, 870 P.2d 782, 789-90 (Okla. 1994)(KRAUGER, J., concurring). Moreover, the “prudential rule of necessity”, adhered to by all state and federal courts, commands that constitutional issues not be resolved in advance of strict necessity. *Id.* Pre-enactment testing of proposed legislation clearly offends the prudential rule. *Id.* On the other hand, once a bill is enacted and becomes law, any party who has standing and who desires to make a challenge in court will have ample opportunity to do so.

Sincerely,



ALICIA G. LIMTIACO

Attorney General