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Office of the Attorney General

June 27, 2008

LEGAL MEMORANDUM

Ref: AG 08-0583

TO: Administrator, Guam Economic Development Authority

FROM: Attorney General *AL*

SUBJECT: **Whether Governor May Pledge Section 30 Funds for Payment of Streetlight Arrearage Loan**

This is in response to an inquiry from Ms. Tina Garcia, Acting Deputy Administrator, asking whether the Governor may pledge Section 30 funds for the pending loan to pay streetlight arrearage to the Guam Power Authority as authorized by P.L. 29-82.

The only portion of P.L. 29-82 pertinent to this discussion is Section 3 which authorizes a borrowing in the amount of \$13.8 million and provides further that "there are hereby appropriated from the General Fund such sums as will equal in each year the amount of money necessary for the repayment of the principal, interest and other costs associated with the financing." P.L. 29-82 creates an ongoing appropriation from the General Fund until the loan is fully repaid, and this repayment term is equivalent to the government giving its full faith and credit to back up the loan. No other expression regarding repayment can be gleaned from P.L. 29-82:3.

Perhaps your question has arisen because the General Fund has several sources, one of which is Section 30 money coming from the U.S. Treasury. However, P.L. 29-82 does not specify that Section 30 funds should be used or pledged for the pending loan. In our view, there is a vast difference between pledging Section 30 funds specifically and using the General Fund as repayment. The Legislature has only indicated that the General Fund shall be used.

The power to incur indebtedness is a legislative function. See 48 U.S.C. §1423a. Therefore, the executive branch may not infringe on the Legislature's power to incur debt or to prescribe the terms therefor by changing any term prescribed by the authorizing legislation.

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You have also provided us with a copy of a letter from the Governor to the Secretary of the Treasury which advises the Treasury that Section 30 money was pledged for the 2002 line of credit authorized by P.L. 26-84, as amended by P.L. 26-122. We want to point out, however, that the Legislature expressly authorized the 2002 loan to be secured by a pledge of Section 30 money. See P.L. 26-122:8.

We conclude that a pledge of Section 30 money is not authorized by P.L. 29-82.



J. PATRICK MASON
Deputy Attorney General