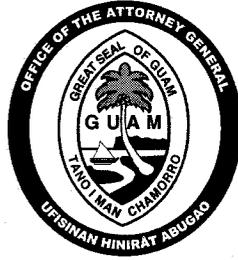


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## OFFICE OF THE ATTORNEY GENERAL

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April 27, 2009

### LEGAL MEMORANDUM

Ref: DOA 08-0053

TO: Director, Department of Administration

FROM: Attorney General *AL*

SUBJECT: University of Guam Board of Regent's Authority to Adjust Salary of Non-Academic Personnel.

*Buenas and Hafa Adai!* You have requested an opinion on whether the Board of Regents of the University of Guam has the authority to adjust the salary of classified and/or unclassified positions without regard to the Uniform Position Classification and Salary Administration Act of 1991 (Uniform Salary Act).

There is a clear conflict between the enabling legislation for the University of Guam, providing for the Board of Regents of the University of Guam to set compensation for employees of the University, and the Uniform Salary Act, setting the compensation for all government of Guam employees, with the one exception of academic employees of the University of Guam and Guam Community College. Resolving this conflict is necessary in order to determine whether the Board of Regents for the University can set compensation for non-academic employees.

The current enabling legislation for the University of Guam was repealed and reenacted on December 30, 1988. P.L. 19-40:1. This enactment empowered the Board of Regents, among other things, to "...set the policies governing duties, conditions of employment, compensation, salary and emoluments, of all employees of the University as herein provided." 17 GCA §16104.1. As well, the "Board ... shall establish ... salary and other compensation ... and all other conditions of work and employment as herein provided." §16108. "The University of Guam has the power and duty to do any and all things necessary to further the purposes of this Chapter." §16109.

These seeming clear provisions are then both strengthened and weakened by two other provisions in the same enabling law. The authority of the University is strengthened by §16111 as follows: "Insofar as the provisions of this Chapter are inconsistent with the provisions of any other law, the provisions of this Chapter shall be controlling; and in particular ... no provision of any law with respect to employment of personnel, shall be applicable unless the Legislature shall specifically so state; ..." (Added by P.L. 19-40:1). The authority of the University is weakened by §16113 as follows: "Notwithstanding any law, rule or regulation to the contrary, all non-academic personnel ... shall be classified. Matters relating to the employment of classified personnel shall be governed by and in accordance with Title 4 of the Guam Code Annotated and other applicable laws." (Added by P.L. 19-40:1, as amended by P.L. 23-26:11) (Emphasis added.).

Based on the foregoing, the Board of Regents has the power to set compensation of all employees, to include non-academic employees. Except that, matters relating to the employment of classified, non-academic employees are to be governed by Title 4. This is the state of the law as of December 30, 1988.

In September 1991 a fundamental change in the classification and compensation of employees in the government of Guam occurred when the Legislature implemented the results of the Hay Study. The Legislature enacted the Uniform Salary Act. 4 GCA §§ 6101 – 6505. (P.L. 21-59:7). The enacting legislation provided:

"It is the intent of the Legislature to adopt and implement a uniform and unified system of position classification, and salary administration for public employees. More importantly, the Legislature is committed to providing fiscal control, financial stability, administrative efficiency, and equity, among the various position classifications, inclusive of all public instrumentalities."

P.L. 21-59:7. The Uniform Salary Act states:

"The purpose of this Chapter is to provide a uniform and unified system of position classification and compensation for the Executive and Judicial Branches of the Government of Guam. The only exception is for academic personnel of the Guam Community College and the University of Guam which as institutions of higher education, must adhere to accreditation standards established by the appropriate accrediting bodies." (Emphasis added.)

4 GCA §6102. This section was amended, by addition of the second sentence in June 1995. P.L.23-26 In addition, the Uniform Salary Act states:

"Unless otherwise specified, this Chapter shall apply to all positions, officers, and employees, classified and unclassified, as the case may be, inclusive of the Executive and Judicial Branches, autonomous and semi-autonomous agencies, public corporations,

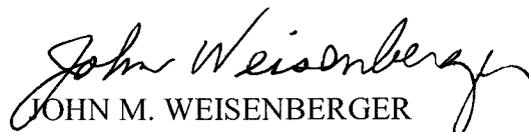
and other public instrumentalities of the government of Guam. The provisions of this Chapter do not apply to academic personnel of the Guam Community College and the University of Guam. The employment and terms and conditions of employment of academic personnel shall be exclusively governed by provisions of the enabling laws of Guam Community College and the University of Guam pertaining to academic personnel as set out in Title 17, Guam Code Annotated.

4 GCA §6103.

On balance, the conflicting statutes, when read together, indicate that the Legislature has preserved to the University of Guam control over only the compensation and related personnel matters of academic personnel. Other, non-academic personnel, whether classified or unclassified, are governed by Title 4 of the Guam Code Annotated, to include the Uniform Salary Act. Not only is this consistent with the clearly stated purpose of the Uniform Salary Act, to provide a uniform system of classification and compensation, but the only stated exceptions to the uniform act are for academic personnel at the University and the College. This fits right into the exception carved out in the enabling legislation for the University, wherein it states that personnel matters of classified employees of the University are to be controlled by Title 4 (and the Uniform Salary Act, an integral part of Title 4.). Statutes are to be interpreted in light of their terms and legislative intent. *People v. Angoco*, 2007 Guam 1, ¶ 49; *People v. Flores*, 2004 Guam 18, ¶ 8. The plainness or ambiguity of a statute is understood by reference to the language itself, the context of the language, and the broader context of the statute as a whole. *Aguon v. Gutierrez*, 2002 Guam 14, ¶ 6.

At the time that the Legislature enacted the Hay Study, adopting the Uniform Salary Act, it is presumed to be aware of existing law of Guam. Certainly, when the Legislature, in 1995, amended the Uniform Salary Act, to add one clarifying provision excluding academic personnel of the University and the College from the Uniform Salary Act, it could have included non-academic personnel in that exception. The Legislature did not do so.

Based upon the history of the enabling legislation of the University of Guam, followed as it is by the Uniform Salary Act, as amended in particular concerning compensation for certain University personnel, the intent of the two laws, read together, is that compensation for non-academic employees of the University of Guam, whether they be classified or unclassified, is controlled by Title 4, Guam Code Annotated. The Board of Regents of the University of Guam is bound by the Uniform Salary Act as pertains to the non-academic personnel of the University.

  
JOHN M. WEISENBERGER