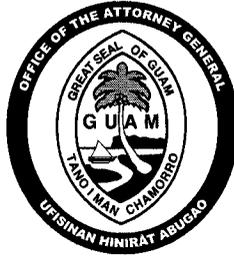


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OFFICE OF THE ATTORNEY GENERAL

February 18, 2010

LEGAL MEMORANDUM

Ref: DOA 09-1257

To: Director of Administration
From: Attorney General *PLJ*
Subject: **Hazardous Duty Pay For Chief Of Police**

We hereby respond to your request for an opinion regarding whether the Chief of the Guam Police Department is entitled to hazardous duty pay pursuant to 4 G.C.A. § 6224 and § 6225. The law regarding hazardous duty pay does not apply to the Chief of Police.

Section 6224 provides for hazardous duty pay for some police officers in the amount of one hundred and ten percent of their legally established rate of pay. Section 6225 authorizes the Chief of Police to enact a Table of Organization and Equipment (TOE) to establish an organizational structure for the Guam Police Department (GPD) and to designate the positions at GPD that receive hazardous duty pay. By executing General Order 90-03 in 1990, a previous Chief of Police enacted a TOE that authorized hazardous duty pay for the Chief of Police. However, the Department of Administration (DOA) believes that such pay is appropriate only for uniformed positions at GPD. The present Chief of Police claims that previous Chiefs of Police received this benefit, but DOA's payroll records do not support this assertion.

The Chief of Police is an agency head in the Executive Branch of government who is appointed by the Governor and confirmed by the Legislature. A review of 4 G.C.A. § 6224 reveals that hazardous duty pay is not appropriate for the Chief of Police:

A police officer assigned to a hazardous duty position is entitled to hazardous duty pay calculated at the rate of such police officer's wage plus ten percent (10%).

In § 6224, the phrase "police officer" refers to rank and file officers who perform dangerous work and whose duties are not primarily administrative or managerial. The word "hazardous" in § 6224 can be interpreted no other way. Pursuant to 10 G.C.A. § 77102, § 77106, and § 77107, the duties of the Chief of Police are essentially performing managerial and chief executive functions, not to routinely or ordinarily work in assignments like the typical patrol officer or investigator in circumstances which may, on a daily basis, be hazardous or dangerous.

His job is not a "hazardous duty position" within the meaning of § 6224. The designation by the General Order that gives the Chief of Police hazardous duty pay contradicts § 6224.

Hazardous duty pay must be viewed as additional compensation for government employees whose duties put them at risk of life or limb. The Legislature did not intend it for every position in the Guam Police Department nor for every kind of police work.

The discretion vested in the Chief of Police by § 6225 is limited by § 6224. The Chief of Police can designate only those officers working in dangerous conditions to receive hazardous duty pay. The affixing of compensation for public employees is completely within the Legislature's discretion. In re: Request of Gutierrez, 2002 Guam 1; Wirth v. State, 142 Cal.App.4th 131, 47 Cal.Rptr.3d 623 (2006); 48 U.S.C. 1422c, 1423a.

Some corrections officers at the Department of Corrections (DOC) and some customs officers at Customs and Quarantine receive hazardous duty pay, but not their directors, even though their agencies engage in law enforcement. See 4 G.C.A. § 6222.

Therefore, the Chief of Police is not entitled to hazardous duty pay despite the designation contained in General Order 90-03. If you have any further questions regarding this subject, please do not hesitate to contact our Office.


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