LEGAL MEMORANDUM

TO: Director, Department of Revenue and Taxation

FROM: Attorney General

SUBJECT: Non-renewal of Massage Parlors Business Licenses

May 28, 2010

The question has been raised whether the Department of Revenue and Taxation (DRT) may deny the renewal of a business license for a business which is found to be violating the regulatory laws of a government agency, including but not limited to the Guam Fire Department, the Department of Public Health and Social Services, and the Department of Labor. During the initial application, certain government agencies must clear the application for compliance with their laws and regulations. Upon renewal, the applicant must sign a declaration under penalty of perjury that the applicant continues to comply with all of the prerequisites and qualifications provided by law, rules and regulations which were certified by the proper departments of the government of Guam in the application for his/her/its original license. Upon receiving information that the applicant is not in compliance, the DRT may properly deny the renewal of a license, without providing a hearing under the procedures outlined in the Administrative Adjudication Law (AAL).

Business licenses are valid for one year and expire on June 30th of each year. 11 GCA §70103(n). A person must file an application for renewal within three months of the license expiration date. Id.

Title 11 GCA §70106 provides that the qualifications for securing licenses shall be promulgated as rules and regulations, however, to date no regulations have been promulgated. Title 11 GCA §70117 addresses the renewal of a business license and provides in part as follows:

A licensee may renew his license at the expiration thereof by the payment of the annual license fee and by filing with the renewal application an affidavit oath and subject to the penalties of perjury that he has continued to comply with all of the prerequisites and qualifications provided by law, rules and regulations which were certified by the proper (sic) apartments of the government of Guam in the application for is original license.
Thus, the applicant must certify that he continues to comply with all of the qualifications and prerequisites and other qualifications which were certified by the proper departments of the government of Guam. The initial application has clearances for Guam Fire Department (GFD), as well as other government agencies. The Regulatory Administrator, John Carlos, has explained that part of GFD’s certification requirements during the initial review for a business license is that GFD clears the applicant for compliance with the fire code. In speaking with Mr. Carlos, he was not aware of §70117’s requirement that for subsequent renewals which provides that the applicant must submit an affidavit under penalties of perjury that the applicant continues to comply with all the prerequisites and qualifications provided by law, rules and regulations of certain government of Guam agencies. Mr. Carlos has indicated he will review this provision and draft the appropriate affidavit for use in connection with the renewals this year.

Under §70117, a massage parlor that has been found to be in violation of the fire code would not be in compliance with all the prerequisites and qualifications provided by law, rules and regulations of the certifying government agencies, and the applicant who signed the affidavit would commit perjury if he signed such an affidavit. The DRT’s Examining Department is tasked with the responsibility of examining and endorsing a class of applicants for required qualifications. 11 GCA §70103(f). If the Administrator of the DRT’s Examining Department is aware of a possible violation, he should conduct an examination of the qualifications of any applicant in accordance with 11 GCA §70109, and contact GFD to confirm the applicant is in fact in violation of the fire code. If the applicant is in violation, the applicant has not met the prerequisites and qualifications for renewal and the renewal may be denied. 11 GCA §70105(a).

Once an application is denied by the DRT director, the License Board may, in accordance with 11 GCA §70113, review the denial of any application for a license. Specifically, §70113 provides:

It shall be the duty of the License Board upon written request of an applicant to review any denial of an application for a license, and the Board may deny or approve the license within the terms of the law and applicable rules and regulations. The decisions of the License Board are appealable to the Superior Court of Guam.

Notably, no administrative hearing is required under Title 11, Chapter 70, the General Provisions for Business License, prior to denying a license. Rather, a hearing is required only when a license will be suspended or revoked. 11 GCA §70120 and 11 GCA §70129. See also, 11 GCA §70131 which requires a hearing prior to the DRT closing a business due to the failure to have a valid business license. Title 5 GCA §9200 of the AAL does not provide authority for a hearing, rather the legal authority for a hearing prior to taking action must be provided by the business licensing law. Rather, 5 GCA §9200 provides for the procedures of a hearing which is required by law to be determined after an agency hearing. Title 5 GCA §9200 provides:

The procedure of any agency shall be conducted pursuant to the provisions of this Chapter in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing.

The issue of whether the AAL provides legal authority for a hearing was addressed in Guam Federation of Teachers ex rel. Rector v. Perez, 2005 Guam 25, in which the Court held that the AAL applies only when an agency is required by law to hold a hearing. It noted:

[34] Title 5 GCA § 9108 (2005) defines “administrative adjudication” as “that administrative investigation, hearing, and determination by any agency of issues
or cases applicable to particular parties.” The trial court found that this language supported its conclusion that a hearing was required.

[35] This section appears in Article 1 of the AAL, the chapter entitled “Definitions.” Section 9108 merely provides a definition for the term “hearing” and does not, by itself, create a right to a hearing. Section 9108 does not include any reference to DOA or the duties of the Director, particularly with respect to a ULP charge. Section 9108 also includes other definitions. The language and context of 5 GCA § 9108 do not support the Superior Court’s finding that the AAL provisions require Perez to conduct a hearing on Rector’s ULP claim.

[36] With respect to applicability, the first provision of Article 2, Title 5 GCA § 9200 (2005) states: “The procedure of any agency shall be conducted pursuant to the provisions of this Chapter in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing.” (emphasis added). Like section 9108, section 9200 lacks any language that mandates that the Director conduct a hearing on a ULP charge. Rather, the text of 5 GCA § 9200 simply states that the hearing procedures delineated in Article 2 must be followed by an agency when the agency is required by law to conduct a hearing. In other words, if an agency is not legally required to hold a hearing, then the Article 2 hearing procedures do not apply to such agency procedures. The plain language of Title 6 GCA § 9200, therefore, does not support the lower court’s holding that the Director is required to hold a hearing on this ULP claim.

[37] Accordingly, upon review of the plain language of the AAL provisions discussed above, we find that there was no support for the lower court’s holding that the provisions of the AAL required the Director to conduct a hearing on the ULP charge filed by Rector.

Rector at ¶¶34-37.

In sum, the application for a business license, including the renewal of a business license, may be denied by the DRT for non-compliance with a government agency’s rules, regulations, or laws. The DRT should be notified by each agency that a particular business is not in compliance with the respective agency’s rules, regulations or laws and provide such documentation to the DRT which will be maintained in the applicant’s file. No hearing is required for the denial of a license.

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