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## OFFICE OF THE ATTORNEY GENERAL

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July 9, 2010

### LEGAL MEMORANDUM

Ref.: DOA 10-612

To: Director, Department of Administration

From: Attorney General *J.M.*

Re: Re-Employment of Former Chief of Police Paul R. Suba

On June 23, 2010, you sent our office a memorandum, requesting clarification regarding the interaction between 5 G.C.A. § 3104 on the one hand, and 10 G.C.A. §§ 77110.1-77110.3 on the other. More specifically, you seek guidance regarding the reinstatement of former Chief of Police Paul R. Suba, given the circumstances surrounding his departure from office and the nature of his qualifications. Mr. Suba took leave after stepping down from his position as Chief under a cloud of controversy and now seeks reinstatement to the rank of Captain, which he held prior to serving as the Chief of Police.

Section 3104 of Title 5 the Guam Code Annotated provides in pertinent part:

Notwithstanding any other provision of law, a person appointed by the Governor to be Chief of Police . . . who is a member of the classified service immediately prior to such appointment as Chief of Police . . . shall continue to receive the salary he receives for his classified position while serving as Chief if it is greater than the salary established by law for the position of Chief and shall be reinstated to the position he held immediately prior to such appointment as Chief upon termination of his employment, if not removed for cause, as Chief of Police . . . .

5 G.C.A. § 3104. Thus, by law, a former police chief drawn originally from the GPD classified ranks must be reinstated to his former classified position if he has not been terminated “for cause”.

Termination for cause may include, but is not limited to, such things as:

- (1) stealing;
- (2) lying;
- (3) failing a drug or alcohol test;
- (4) falsifying records;
- (5) embezzlement;

- (6) insubordination;
- (7) failure to follow the directions and supervision of one's manager;
- (8) deliberately violating company policy or rules;
- (9) a severe attendance problem about which the employee has received repeated verbal and written (or equivalent electronic) warning;
- (10) poor quality of work;
- (11) incompetence;
- (12) negligence;
- (13) conviction of a crime;
- (14) breach of a contract with one's employer; and
- (15) other serious misconduct related to one's employment.

See, e.g., Tatum v. Philip Morris Inc., 809 F. Supp. 1452, 1461 (W.D. Okla. 1992) (finding that employee was terminated for cause for stealing and insubordination), aff'd, 16 F.3d 417 (10th Cir. 1993) cert. denied, 511 U.S. 1083, 114 S. Ct. 1833, 128 L. Ed. 2d 461 (1994); Motzkin v. Trustees of Boston Univ., 938 F. Supp. 983, 990 (D. Mass. 1996) (termination for cause for charges of harassment, sexual harassment, sexual assault, violation of drug and alcohol policy, and lying); Tice v. Bristol-Myers Squibb Co., 515 F. Supp. 2d 580, 588 (W.D. Pa. 2007) (employee terminated for cause for falsifying sales records), aff'd, 325 Fed. Appx. 114 (3d Cir. 2009); Sanders v. Board of Educ., 263 N.W.2d 461, 465 (Neb. 1978) (just cause for termination includes "incompetency, neglect of duty, unprofessional conduct, insubordination, immorality, physical or mental incapacity, or other conduct which interferes substantially with the continued performance of duties").

Mr. Suba stepped down as Chief of Police and spoke of his intention to retire from the police force. However, he did not resign from government service and instead took administrative and annual leave. He currently remains on leave, pending a determination concerning his request for reinstatement pursuant to 5 G.C.A. § 3104. Thus, Mr. Suba remains employed in government service and has not been terminated for cause.

According to the information you have provided, Mr. Suba, prior to June 29, 2009, had sufficient credentials to qualify as a GPD Police Captain. On June 29, 2009, the Legislature amended the law governing the qualifications for this position. The law now requires a Police Captain to have "graduated with a bachelor's degree in Police Science, Criminal Justice Administration, Public Administration, or closely related field or discipline, at a nationally accredited institution". 10 G.C.A. § 77110.3. The Legislature similarly increased the qualifications for persons seeking the positions of Police Commander and Police Major. See 10 G.C.A. §§ 77110.1 & 77110.2.

If Mr. Suba were today seeking elevation for the first time to the rank of Police Captain, under the current state of Guam law, he would not qualify for that position. Ordinarily, the legal analysis of this matter may include, *inter alia*, determining whether or not retroactive application of 10 G.C.A. § 77110.1 through § 77110.3 was intended. However, section 3104 provides that, "[n]otwithstanding any other provision of law, [a police officer appointed to the position of police chief] . . . shall be reinstated to the position he held immediately prior to such appointment . . . upon termination of his employment, if not removed for cause". 5 G.C.A. § 3104. Because section 3104 explicitly states that it applies despite any other law, it remains unaffected by the

subsequent changes to the statutory qualifications for Police Commander, Police Major, and Police Captain in 10 G.C.A. §§ 77110.1, 77110.2 and 77110.3. Since Mr. Suba held the position of Captain prior to serving as Chief and was not terminated for cause from the position of Chief, in light of section 3104, Mr. Suba is eligible for reinstatement to the position of Police Captain. The same would hold true if the prior rank were Police Commander or Police Major.

For a faster response to any inquiry about this legal memorandum, please use the reference number shown above.



Marianne Woloschuk  
Assistant Attorney General

cc: Chief of Police, Guam Police Department