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## OFFICE of the ATTORNEY GENERAL

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August 5, 2010

**LEGAL MEMORANDUM**

**Ref: LEG 10-0663**

TO: Hon. Tina R. Muna-Barnes, Senator  
30<sup>th</sup> Guam Legislature

FROM: Attorney General

SUBJECT: **GBAHE Inquiry**

Dear Senator Muna-Barnes:

This is our response to your letter of July 12, 2010 requesting an opinion about the legality of Resolution 2010-1, recently adopted by the Guam Board of Allied Health Examiners.

The new rule prohibits the use of video or audiotape recorders to record Board meetings. It does not restrict the public's right to attend or to speak at a meeting. Anyone may attend Board meetings, take notes, address the Board if recognized and communicate information he obtains to others. The Board records the meetings and keeps minutes. Your inquiry is whether Resolution 2010-1 violates either the First Amendment to the United States Constitution or the Open Government Law of Guam.

The First Amendment clearly does not create the right to tape a public meeting. United States v. Yonkers Board of Education, 747 F.2d 111 (C.A.N.Y. 1984); Whiteland Woods, L.P. v. Township of West Whiteland, (3<sup>rd</sup> Cir. 1999); Carlow v. Mruk, 425 F.Supp.2d 225 (D.R.I. 2006). These cases recognize a First Amendment right to attend public meetings, but no First Amendment right to tape them so long as the attendee may observe and communicate regarding the meeting to others.

The Open Government Law of Guam neither mentions the use of electronic recording devices nor grants greater access to the press than to the general public. It creates no particular rights or restrictions regarding recording devices.

Several different Guam statutes permit the Board to enact the rule in question. The Open Government Law itself, Title 5 G.C.A. § 8106, authorizes boards and commissions to enact rules to regulate their meetings, while § 8112 authorizes the Board to remove a disruptive or disorderly person. A member of the public has a right to attend, but not to participate at a public meeting. Title 5 G.C.A. § 8103.

Your letter seemingly implies that Title 5 G.C.A. § 8112 grants special rights to photographers and reporters, but it does not. It merely authorizes the Board to eject reporters and photographers who misbehave, just as it may eject any unruly person.

The Board's own enabling legislation authorizes it to regulate the conduct of its own meetings. Title 10 G.C.A. § 12803(c)(1) and (15); § 12818; § 12825(a).

Some state courts have, in interpreting the "spirit" rather than the "letter" of that state's open government law, ruled that taping of the public meeting of a board or commission should be allowed. Csorny v. Shoreham-Wading River Central School District, 759 N.Y.S.2d 513 (2003); Tarus v. Borough of Pine Hill, 916 A.2d 1036 (N.J. 2003). In these cases, however, the courts expanded the scope of their state's open government laws beyond their literal meaning. Only judicial or legislative action can accomplish this.

GBAHE Resolution 2010-10 is valid and enforceable because it does not violate federal or local law. We trust that this answers your questions.

  
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