LEGAL MEMORANDUM

TO: Doris Flores Brooks, Public Auditor
   Office of Public Accountability

FROM: Attorney General

SUBJECT: Leave Sharing Program – Guam Fire Department Employees

Dear Ms. Brooks:

This is in regard to your letter of August 4, 2010, requesting clarification of our prior memorandum concerning the leave sharing program as applied to employees of the Guam Fire Department. Specifically, you seek clarification regarding the source of the 61-hour “non-productive” bonus paid to GFD uniformed personnel while on leave. The source can be found in section 6219 of the Uniform Position Classification and Salary Administration Act of 1991, 4 G.C.A. § 6219.

I. FACTS

According to your findings, Guam firefighters who use 45 hours of leave in a two-week pay period—whether that leave is annual leave, sick leave, or donated leave—are compensated for 106 hours. Regular GovGuam employees, on the other hand, are charged hour-for-hour for the leave they use, up to a maximum of 80 hours per pay period. This results in a 61-hour bonus paid to firefighters on leave (106 – 45 = 61).

II. ANALYSIS

1. Applicable Law

Section 6219 of the Uniform Position Classification and Salary Administration Act of 1991 governs the compensation of firefighters and provides in pertinent part:

(a) Notwithstanding any other law, rule, or regulation, firefighters within the Guam Fire Department, except the Fire Chief, shall be compensated at the regular hourly rate of pay at one hundred six (106) hours . . . per pay period. Firefighters who are working administrative duty shall work eighty (80) hours per pay period.
at their regular rate of pay in the same manner as other government of Guam employees.

(c) Firefighters shall be charged no more than nine (9) hours annual leave or sick
leave for any given day on which such leave is taken.

(d) All other laws, rules, regulations applicable to firefighters not consistent with
this Section shall remain in full force and effect.

4 G.C.A. § 6219.

Thus, firefighters on non-administrative duty are compensated for a 106-hour 2-week pay
period. During the pay period, they are actually on duty for five 24-hour days (i.e., 120 hours). In
contrast, regular GovGuam employees are compensated for an 80-hour 2-week pay period and
are actually on duty for ten 8-hour days (i.e., 80 hours) during the pay period.

2. Effect of Section 6219 on Regular Pay

When a regular GovGuam employee takes an entire workday off, he is charged 8 hours of
leave of the type appropriate to the absence, i.e., sick leave in the case of a sick day, and annual
leave (otherwise referred to as personal leave in the Department of Education) in the case of
other types of absence. When a regular GovGuam employee is off work for an entire 2-week pay
period, he is charged 80 hours of leave for the ten days off work and receives a paycheck that
reflects an 80-hour 2-week pay period.

When a firefighter takes an entire workday off, due to section 6219, he can only be
charged 9 hours of leave of the type appropriate to the absence. When a firefighter is off work
for an entire 2-week pay period, he is charged 45 hours of leave for the five days off work and
receives a paycheck that reflects a 106-hour 2-week pay period. Thus, Guam law is the source of
the 61-hour bonus paid to firefighters on leave. See 4 G.C.A. § 6219(c) ("Firefighters shall be
charged no more than nine (9) hours annual leave or sick leave for any given day on which such
leave is taken.").

3. Effect of Section 6219 on Donated Leave under Leave Sharing Program

Under GovGuam’s Leave Sharing Program, an employee who has exhausted all of his
accrued annual and sick leave and compensatory time may use leave donated by other employees
in order to avoid taking leave without pay for the purposes of a medical emergency or for
personal reasons, including military duty. 4 G.C.A. § 4109.2(a). The law allows the recipient
employee to use donated leave for up to 90 working days per occasion, with the possibility of an
extension for an additional 90 days under certain circumstances, and again for an additional 30
days. 4 G.C.A. § 4109.2(b). As a result, an employee participating in the Leave Sharing Program
may be absent for up to 210 working days per occasion.

In the case of a regular GovGuam employee who works ten days per pay period, a 90-day
absence translates to 9 pay periods or 18 weeks (approximately 4.2 months); a 180-day absence
translates to 18 pay periods or 36 weeks (approximately 8.4 months); and a 210-day absence translates to 21 pay periods or 42 weeks (approximately 9.8 months).

In comparison, in the case of a firefighter who works five days per pay period, a 90-day absence translates to 18 pay periods or 36 weeks (approximately 8.4 months); a 180-day absence translates to 36 pay periods or 72 weeks (approximately 16.8 months); and a 210-day absence translates to 42 pay periods or 84 weeks (approximately 19.6 months). Thus, the current law grants firefighters on donated leave an extraordinary amount of leave time: They receive their GovGuam salary for twice as long as similarly situated regular GovGuam employees on donated leave.

4. Effect of Section 6219 on Recipient Employee’s Agency

Because the agency that employs the recipient employee bears the cost of paying for the donated leave, the Leave Sharing Program has the potential to affect that agency’s operations. According to information provided by the Department of Administration, during Fiscal Year 2010, 132 firefighters took advantage of the ability to use 90-day blocks of donated leave for purposes of military leave under the Leave Sharing Program. This cost the Guam Fire Department a total of $122,692.21, comprised of $41,242.46 for salary (45 hours per pay period per person) plus $81,449.75 for non-productive pay (61 hours per pay period per person).

If such an impact was not its intent, the Guam Legislature should close this loophole by specifying that, notwithstanding the provisions of 4 G.C.A. § 6129(c), donated leave used by a recipient employee will be charged at the rate of 8 hours per day, 10 days per pay period. If it is an intended policy, then the Legislature should address the effect of the 61-hour bonus paid solely to firefighters on leave, which the rest of the GovGuam employees may find unfair, and taxpayers may find too generous. Alternatively or additionally, the Legislature could make the donor employee’s agency responsible for bearing the cost of paying for donated leave taken by the recipient employee. This would alleviate some of the burden on the recipient employee’s agency, in this case, the Guam Fire Department.

III. CONCLUSION

In summary, the 61-hour bonus paid to firefighters on leave finds its source in section 6219 of the Uniform Position Classification and Salary Administration Act of 1991. This section has far-reaching, possibly unintended, effects. However, because it is a duly enacted law, only a legislative act can change it.

We hope this sufficiently clarifies the matter for you. For further information concerning this matter, please use the reference number shown above.

Marianne Woloschuk
Assistant Attorney General