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2007 APR 26

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MEMORANDUM (Opinion)

To: Director, Bureau of Budget and Management Research  
Director of Administration  
Chairman, Retirement Fund

From: Attorney General [Signature]

Subject: FY 2007 Statutory Rate of Government's Retirement Contribution

11:26 am  
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SENATOR RAY TENORIO  
SECRETARY OF THE LEGISLATURE

You have requested our interpretation of P.L. 28-150:V:3 (hereafter Section 3) as to whether this section requires a government contribution to the Retirement Fund of 0.84% over that of the FY 2006 contribution, or something higher. The other two branches of the Government have adopted the Retirement Fund's determination of a higher amount. This section states:

**Section 3. Government of Guam Retirement Fund Rate of Contribution.**

In accordance with §8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated, in each fiscal year beginning with Fiscal Year 2007 and continuing through Fiscal Year 2011, the government's rate of contribution to the Government of Guam Retirement Fund shall annually increase by no less than 0.84% in order to reach the contribution rate of 26% or the actuarial recommended contribution rate.

The basic rule of statutory interpretation is that one must find the meaning within the law, if at all possible, before looking elsewhere. This law gives no hint of the actual rate to be charged. The rate increase must be at least 0.84% over that of FY 2006, but may be more. But at least we can see the purpose of the law and, perhaps, derive a formula from it. Examining 4 GCA §8137(e), referenced in Section 3, we see that this subsection sets up a plan for the Retirement Fund to contribute at the full actuarially sound rate in the future, but by a graduated process. This Section 3 continues that process. A clear reading does show that the reference to actuarial standards is to the final rate, 26% or actuarial standards. This is not a reference to the yearly increases. The yearly increases can be found by simple mathematics.

Additionally, this section must be read in conjunction with a lawsuit brought against the Retirement Fund, and which directed the Fund, not the Government, to take certain actions. *Bautista et al. v. Perez et al.*, CV1848-01, Superior Court of Guam, filed 2003. The Fund was directed to seek a contribution rate which should meet actuarial standards of soundness. Section 3 attempts to do just that, but fails

to state what actuary or what standards to use. Looking to *Bautista*, it is the business of the Retirement Fund to determine its soundness.

Therefore, under existing law, the Department of Administration and Bureau of Budget and Management Research must have a Resolution from the Board of Trustees of the Guam Retirement Fund stating what actuarial rate is sought for FY 2011 and the reasons for this determination if the number is greater than the 26% set in current law. The Resolution should also indicate the percentage increase that should be applied each year, including FY 2007, to achieve that goal.

With these standards in mind, Section 3, though murky, gives sufficient guidance to the Executive and Fund to avoid being an unlawful delegation of powers or being void for vagueness.

If the Bureau has the appropriate Resolution from the Fund giving the higher rate mentioned in its request for an Opinion, then this higher rate should be used as the STATUTORY RATE for FY 2007.

Finally, I wish to suggest that, to avoid further potential difficulties and unnecessary lawsuits, the Executive pay the higher rate for FY 2007. Should they want to challenge it on any grounds, then they should proceed to do so in the manner they desire, and arrange for credits against future payments should the lower rates be found at a later time to apply. This way, there will be no need to once again catch up with contributions.

*Charles H. Troutman*

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