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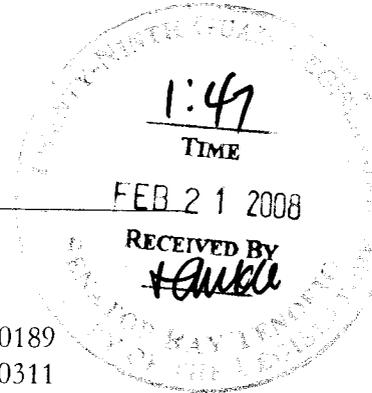


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OFFICE OF THE ATTORNEY GENERAL

June 13, 2007

Ref: CSC 07-0189
CSC 07-0311



MEMORANDUM (Opinion)

To: Executive Director, Civil Service Commission
Chairman, Guam Memorial Hospital Authority Board of Directors
Director, Department of Administration

From: Attorney General *(initials)*

Subject: Retention by CSC over GMH Employees

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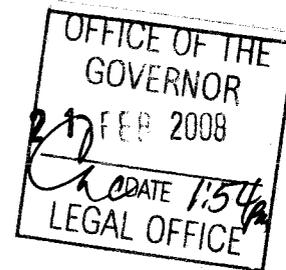
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You have asked our opinion on whether the Civil Service Commission has jurisdiction to hear appeals from employees of Guam Memorial Hospital Authority ("GMHA"). The current statutes governing this jurisdiction question are 4 GCA §4105(b) and 4 GCA §4403(h). Both statutes were amended by Public Law 28-113, Sections 4 and 5.

Title 4 GCA §4105 addresses agency personnel rules. Subsection "b" of this statute states:

Such rules shall, to the extent practicable, provide standard conditions for entry into and the other matters concerning the government service. The personnel rules adopted for the Guam Economic Development and Commerce Authority, the Guam Housing Corporation, the Guam Housing and Urban Renewal Authority, the University of Guam, the Guam Community College, the Antonio B Won Pat International Airport Authority, Guam, the Jose D. Leon Guerrero Commercial Port, the Guam Public School System, the Guam Memorial Hospital Authority, by the Director of Administration and by the Consolidated Commission on Utilities shall require that all their classified employee appeals, except academic personnel of the Guam Community College and the University of Guam in conformance with Title 4 GCA §4403(h), be heard by the Civil Service Commission ("Commission").



Title 4 GCA §4403(h), passed simultaneously with §4105(b), addresses the duties, powers and responsibilities of the Civil Service Commission ("Commission"), Subsection "h" states:

(h) The jurisdiction of the Commission shall not extend to academic personnel of the Guam Community College, the University of Guam, all personnel

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of the Guam Memorial Hospital Authority, and certified, technical and professional personnel of the Guam Power Authority and the Guam Waterworks Authority, except upon mutual consent by the governing board of the respective institution or public corporation and the Commission, nor to any position is denominated 'unclassified' in this Title, except to the extent explicitly permitted in this Section, nor shall such jurisdiction extend to the determination of whether it is practicable to place a position in the classified service.

On the surface, these two sections appear to be in direct conflict. Section 4105(b) indicates that personnel rules adopted by GMHA and other agencies shall require that all their classified employees appeals be heard by the Commission. Section 4403(h) provides that the jurisdiction of the Commission shall not extend to all personnel of the GMHA and other agencies, except upon mutual consent by the governing board and the Commission.

The common rules of statutory construction dealing with conflicting law cannot be used since there is no priority of passage – the two sections were enacted not only simultaneously but by the same law. However, if possible, "That may not be very heavy work for the phrase to perform, but a job is a job, and enough to bar the rule against redundancy from disqualifying an otherwise sensible reading." *Souter, J. in Gutierrez v. Ada*, 528 U.S. 250, 120 S.Ct. 740 (746) (2002).

In the present instance, each section deals with two square subjects. Section 4105(b) deals with personnel rules and requires that these rules, including rules for classified employees of GMHA, be heard by the CSC. This section does not specify the details of the CSC's jurisdiction, on the other hand, nor does it attempt to state the conditions upon which CSC jurisdiction is to apply to the case.

Section 4403(h) specifically states and limits the jurisdiction of the Civil Service Commission.

When there is ambiguity within a statute, the following rule of statutory construction applies:

Courts use two fundamental rules of construction to interpret a statute in the context of a statutory scheme: (1) grant specific provisions priority over conflicting general provisions; and (2) give effect to every phrase and sentence of a statute where possible. These rules are rules of construction and not rules of law and, therefore, serve merely as guidelines for courts faced with ambiguous statutes.

3 B Sutherland Statutory Construction § 77A:3 (6th ed.)

In the interpretation of the two conflicting jurisdictional statutes, the most specific of the two provisions is found in §4403(h). This statute specifically states that the jurisdiction of the CSC does not extend to the GMHA. Therefore, such a specific prohibition, about which we have no doubt as to the Legislature's intention, should prevail over a more general law providing for general applicability of appeal rights.

Still, as with the case of *Gutierrez v. Ada*, §4105(b) does have a job to do. The personnel rules must continue to have provisions for an employee to appeal so long as there is the possibility he will be given these rights under §4403(h). If the Commission and the Board of GMHA agree to have appeals go to the Commission, then the Commission will regain its jurisdiction.

We do not believe the Organic Act is implicated here because neither of these statutes, on their face, shows that its provisions cannot be a part of the government's merit system.

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