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OPINION

Ref: DOA 07-0341

TO: Director of Administration
FROM: Attorney General *all*
SUBJECT: Reissuing Checks

Office of the Legislative Secretary
Senator Tina Rose Mufia Barnes
Date 6-19-08
Time 4:00
Received by E. McDonald

You have requested our Opinion as to your authority to reissue checks once issued by you in payment of various amounts due to others. You have given several examples, including re-issuance of stale checks and, presumably, lost checks due deceased payees where one or both are deceased.

The answer depends upon the circumstances and must be done only in accordance with the applicable law or regulations.

In the case of stale or lost checks, you may reissue them to the payee, but only upon satisfactory evidence that the checks are stale or lost. You already have an affidavit form for persons seeking reissuance of lost payroll checks.¹ Something similar could be used

¹ 5 G.C.A. § 21116 applies to unclaimed or unpaid checks:

(a) Upon audit caused by the Director of Administration, the amounts of all government of Guam checks or drafts which shall have been unclaimed or outstanding for more than one year from the respective dates thereof, shall be accounted for separately and a record made of each such check or draft.

(b) All such unclaimed checks or drafts shall be cancelled as of the date of the audit. Upon demand by the lawful claimant thereof within three years after such cancellation, the Director of Administration shall issue a new check or draft in lieu thereof.

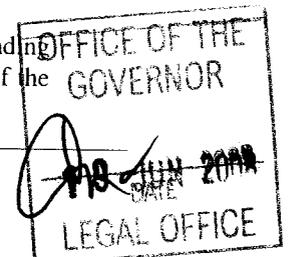
(c) Upon presentation of any such outstanding check or draft within three years of the date of audit thereof to the Director of Administration by the lawful holder thereof, the Director shall cancel the check or draft so presented and issue a new check or draft in lieu thereof.

(d) The amounts of all checks or drafts which shall have been unclaimed or outstanding for more than three years from the date of audit shall be paid into the Treasury as revenue of the General Fund.

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generally, but you need not make it an affidavit. This new document would be just as valid if sworn to under the penalty of perjury pursuant to 6 GCA §4308.

If the check is in the names of both a deceased payee **AND** living payee, you may not reissue that check unless you have documents indicating to whom the check is to be issued. Once a person has died, he or she may no longer receive money in his or her name. Instead, all of the deceased's property is immediately transferred by operation of law into "the estate of" the deceased and distributed from there according to the laws of Estates and Probate, 15 GCA §1401, which provides:

(a) Upon a person's death, the title to such person's property, real and personal, passes immediately to the person or persons to whom it is devised or bequeathed by such person's last will, or, in the absence of such disposition, to the person or persons who succeed to such person's estate provided in Division 2 of this Title.

Likewise, 15 GCA Chapter 31 governs the disposal of a person's property if he has a small estate as defined therein, and those who are due COLA payments under the recent judgment.

Finally, there are special provisions for payment of deceased employees' accounts. This law is found in 4 GCA Chapter 7. There are special provisions here, also, for making COLA payments from the court judgment, and for direct payments to certain designated beneficiaries.

We have already sent you a Guidance and Information report on a certain EITC recipient who was divorced in the meantime. We repeat our advice here as an Opinion generally, that you may reissue such checks only in accordance with the rules and regulations of the Department of Revenue and Taxation, or a definite and clear court order on the subject.

If the check is issued to one payee who is deceased or divorced **OR** another payee, then only one payee need sign, which, of course, would be the living payee where the other is deceased, or either payee in the case of a divorce. The issuance of a check to one person **OR** another means that either one has a rightful claim to the whole amount of the check.

If you have any more questions, especially regarding the operation of the particular laws mentioned in this Opinion, please let us know.

Charles H. Troutman

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