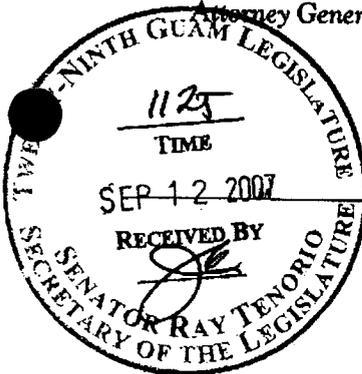


Alicia G. Limtiaco
Attorney General



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OFFICE OF THE ATTORNEY GENERAL

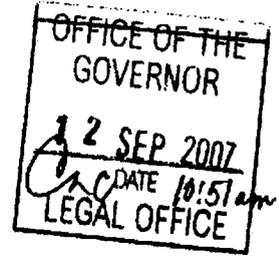
September 11, 2007

Ref: LEG 07-0473

OPINION

To: Senator Rory J. Respicio
Senator Judith P. Guthertz
Senator Tina Rose Muna Barnes
Senator David L.G. Shimizu

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From: Attorney General *AL*

Subject: Requirement for Voter Approval of Some Fees Changed in Public Law 29-02

You have requested our opinion answering your question whether all or just part of Public Law 29-02 (P.L. 29-02) must be submitted to the voters in order to raise the fees prescribed therein. We are of the opinion that no voter ratification is required for the fees.

In this matter, there is a conflict between P.L. 29-02, Chapter V, Part IX, Section 1 (Section 1), and 3 GCA §§17311 and 17312. The Ninth Circuit has examined laws which are absolutely contrary to each other, such as the two dealt with here. In *Awa v. GMH*, 726 F.2D 594 (CA9, 1984), the court said:

In so holding, we recognize that statutes have a strong presumption of validity and courts must make every effort to construe them to maintain the legislative intent.
[Citations omitted]

P.L. 29-02 evidences within its four corners and language, the intent that the law will go into effect immediately as to all its parts unless there is another date specified in the law. Our previous opinion on this subject (CDLO 03-01) said that the Legislature could bypass the requirement of a voter submission by using the word "Notwithstanding." However, there are many other ways of showing intent.

P.L. 29-02, Section 1 indicates that new and increased fees, charges and taxes were to go into effect upon passage of the law in May 2007. P.L. 29-02, Section 1 states:

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Effective Date. (a) The effective date for all fees, charges, penalties, provisions, exemptions and moratoriums, excluding any de-appropriation penalties, contained in this Act *shall* be May 1, 2007.

Subsection (b) of Section 1 goes on to require that certain agencies notify the public of the new fees imposed by "this Act" within ten days of its enactment. Further provision is made for annual hearings on modifying the fees and charges beginning in FY 2008. All of this shows an unmistakable intent to make the new fees and charges effective upon the enactment of Public Law 29-02 in May 2007.

However, this May 2007 effective date is in direct conflict with 3 GCA §§17311 and 17312. Section 17311 provides that any increase in certain taxes do not go into effect until after "approval of the voters of Guam in a referendum held during a General Election." Section 17312 provides the same referendum requirement when new fees are established for services already provided by the government but previously funded through other sources. Hence, under these statutes, any new fees would not go into effect until after approval by the voters at the next general election in fiscal year 2009. But as discussed above, the Legislature very clearly indicated that the new fees in P.L. 29-02 were to go into effect when the law was passed in May 2007, not sometime after the general election in FY 2009.

How can the two inconsistent laws be reconciled? In *Awa*, the court could not reconcile two inconsistent provisions because they were in the same law passed at the same time. Here, we have a later law, P.L. 29-02, containing provisions which are at odds with a prior law, 3 GCA Chapter 17. As we have said before, one legislature cannot bind another. Faced with two inconsistent public laws, we must conclude that the later public law (P.L. 29-02) must prevail, as to the inconsistent subject matter, over the former public law when the manifest intent and language of the later law are clear. See *Abalos v. Cyfred*, 2006 Guam 7, ¶ 20 (when two statutes are in irreconcilable conflict, the latter act, to the extent of the conflict, constitutes an implied repeal of the earlier act (citations omitted)).

Since the language of P.L. 29-02 evidences a clear intent that the law will take effect upon enactment, this intent overrides the referendum requirement to 3 GCA §§17311 and 17312. As a result, the fees established in P.L. 29-02 went into effect upon passage of the law in May 2007, unless otherwise stated in P.L. 29-02.

In addition, your question also raises an Organic Act issue. Section §1423a of the Organic Act (48 U.S.C.A. §1423a) contains both the general power of the Legislature and the power to tax and impose fees. The pertinent part of §1423a reads:

The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam. **Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and**

concessions may be imposed for the purposes of the government of Guam as may be uniformly provided by the Legislature of Guam

(emphasis added) Thus, under the Organic Act, the authority to impose certain taxes and fees is given to the Legislature.

Case law has established the legal principle that where a Constitutional (or Organic Act) power is given to a person or entity, the Legislature may not delegate that power elsewhere. See *Amalgamated Transit Union Local 587 v. Washington*, 11 P. 3d 762, 799 (2000) (holding that an initiative, which would have automatically required that all new state tax legislation be submitted to the voters for approval through the state referendum process was an unconstitutional infringement on legislative authority because all future state measures of a certain class – in this case certain taxes – would require voter approval).

Under 3 GCA §§ 17311 and 17312, when the Legislature passes a law increasing certain taxes or establishing new fees for government services, the law must be approved by the voters in a referendum. In §§ 17311 and 17312, not only is the Legislature delegating away a power given to it in the Organic Act, but it also is losing its ability to assure tax uniformity because some fees established by P.L. 29-02 would go into effect immediately; some fees, if accepted by the voters, would go into effect after the FY 2009 election and some fees, if rejected by the voters, would not go into effect at all. (For a general discussion of Legislative power see *In re: Request of Governor Felix P. Camacho Relative to the Interpretation and Application of Sections 6 and 9 of the Organic Act of Guam*, 2004 Guam 10.) Hence, although the Organic Act gives the Legislature the authority to tax and set fees, this exclusive legislative authority has been transferred to the voters under §§ 17311 and 17312.

The U.S. Supreme Court has described *referendums* as follows:

Referendums are exceptions to the normal legislative process, and passage of a referendum is not itself essential to the functioning of government.

Gutierrez v. Ada, 120 S.Ct. 740 (slip op. 3, U.S. Supreme Ct. 2000).

The raising of taxes and fees is essential to the operation of government even though the amounts are discretionary. The Organic Act has given the authority to perform this essential function to the Legislature. Thus, it appears that requiring a vote of the electorate to raise fees for government services is beyond the scope of the Legislature's authority to delegate.

Based on the language of P.L. 29-02 and the powers granted the Legislature in the Organic Act, it is our opinion that the fees in P.L. 29-02 went into effect upon passage of the law in May 2007, unless otherwise indicated in the public law.

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Re Voter Approval of Fees

Changed in P.L. 29-02

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This is a formal opinion of the Attorney General and is intended to be an interpretation of Guam law as of the date of the Opinion.

Charles H. Troutman

CHARLES H. TROUTMAN

Assistant Attorney General