



Office of the Attorney General

Office of the Legislative Secretary
Senator Tina Rose Mufia Barnes

Date 6-12-08
Time 1:30
Received by A. McDonald

1/23/07 - DWO-1051
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Ref: PAG 06-1259

MEMORANDUM (Opinion)

To: General Manager, Port Authority of Guam
From: Attorney General *ass*
Subject: Port Financing

OFFICE OF THE GOVERNOR
12 JUN 2008
DATE 1:12pm
LEGAL OFFICE

You have requested our formal opinion as to the legality of the Pt's securing a loan for the purchase of a new gantry crane. There are two levels of inquiry. First, are your powers under your local law, 12 GCA Chapter 10. Here, 12 GCA sec. 10105(d) authorizes you to obtain loans from either the Government of Guam or from the United States Government. 12 GCA sec. 10105(e) authorizes you to enter into indebtedness generally. I have not seen or reviewed the actual documents of indebtedness you propose, so this opinion must be general only.

Secondly, the Organic Act regulates government of Guam bonding. The pertinent part of 48 U.S.C.A. sec 14223a states:

... and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

The question of Guam's limit on general fund borrowing is being considered by in U.S. Supreme Court. A decision is expected before the end of the Court's term in June. However, if the Port's loan is secured solely from revenues of the Port, then that borrowing is exempt from the Organic Act's limits and is not general fund borrowing. In 1976, the District Court of Guam held, in *GTA v. Rivera*, 416 F.Supp. 283, that a bond was a general obligation bond if the government of Guam agreed to pay off the bond should revenues of the project or enterprise fall short. The Organic Act says that to be a revenue bond, the money to pay back the loan must be only from revenues, with no general fund backup.

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Therefore, if your proposed borrowing meets the requirements of a revenue bond or other instrument secured solely from revenues (or from the crane, itself) of the Port, then the Organic Act language would not prohibit the loan. We will, of course, need to see the actual documents before agreeing to them.



J. Patrick Mason
Deputy Attorney General