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## OFFICE OF THE ATTORNEY GENERAL

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June 30, 2010

**OPINION**

Ref.: LEG 09-1191 & LEG 09-1211

**To:** Hon. Judith T. Won Pat, Speaker, Guam Legislature

**From:** The Attorney General

**Re:** **Senator Matt Rector**

On December 10, 2009, you sent our office a letter, requesting assistance in answering six questions regarding Senator Matt Rector.

Before we could respond, we had to acquire certain documents and then ascertain whether those documents were subject to restrictions on public disclosure. We contacted via telephone the California Department of Justice Legal Keeper of Records of the Bureau of Criminal Information and Analysis. We explained to her that the Office of the Attorney General was investigating alleged improprieties relating to an individual who had been previously arrested in California. We further explained that the individual in question claimed that the case had been expunged and that although we had already received a certain report from California, there was no reference therein to an expungement. The Keeper of Records expressed concern that it appeared to her that confidential information seemed to be flowing freely all over Guam media outlets. We informed her that our office took the issue of expungement very seriously and that we did not wish to inadvertently base any decision on expunged records.

The Keeper of Records informed us that the usual procedure following an order of expungement would be for the local court that issued the order to forward a report of this to the California Department of Justice where it would be entered into a disposition report. According to the Keeper of Records, based upon all documents that were available for her review, there is no indication that there was ever an expungement. She qualified the statement by saying that she can only base this statement upon what is presently available to the Department of Justice and that she does not have the ability to review court records where original orders could have been entered. She also explained that the report that we had previously received had a section where such expungements under California Penal Code Section 1203.4 would be notated and that section was not checked off. We confirmed this on the copy sent to us.

The Keeper of Records refused our request to send us a written statement verifying what she had told us, because she felt this went beyond the scope of her responsibilities and that she would first have to consult with her bureau chief. She also asked us to send our request in writing,

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which we did. In response to our request, we received a document containing certain information which bears a legend stating, "Unauthorized Use is a Criminal Offense", together with a cover letter from the Unit Manager, asking us to "please be aware that the document attached to the declaration is confidential and restricted pursuant to California Penal Code."

Since we have received these documents, we are now able to proceed with our responses to your questions. We are aware of the fact that Senator Rector resigned his seat in the Legislature since you first posed the six questions. However, due to the importance of the question of the definition of moral turpitude, we are addressing your inquiry in order to clear up any misunderstanding that the Legislators may have concerning this issue. Our responses to your questions are as follows.

**Question 1:** Are there records indicating that Senator Rector was convicted of a crime in California or another jurisdiction?

**Response 1:** Mr. Rector has publicly admitted to a criminal misdemeanor conviction in California. In addition, we understand that another agency, acting independently and without the advice of the Attorney General, has provided you with information that may supply the answer to this question.

**Question 2:** If the records indicate conviction of a crime, was that conviction expunged, sealed, pardoned, or in any other way qualified or the status as a convicted offender affected pursuant to California law?

**Response 2:** We have made the appropriate inquiries in performing the due diligence necessary to address this question. Based upon our review of all available official records, there is no evidence of a dismissal or expungement of the prior criminal conviction that Mr. Rector has publicly admitted to.

**Question 3:** If the records indicate conviction of a crime, please inform me of the date of conviction for that crime and whether the offender was prosecuted as an adult or juvenile or other status pursuant to California law.

**Response 3:** Mr. Rector has publicly admitted that his conviction stems from an incident that occurred over 26 years ago, when he was 19 years old. Since he was 19 years old at the time of the incident, we have no reason to believe that he was prosecuted as anything other than an adult.

**Question 4:** If the records indicate conviction of a crime pursuant to California law, please state the crime and whether the conviction was for a felony or a misdemeanor.

**Response 4:** Mr. Rector has publicly admitted to conviction of burglary as a misdemeanor in California.

**Question 5:** If a misdemeanor, was the conviction for a crime of moral turpitude pursuant to California law? If a misdemeanor, was the conviction for a crime of moral turpitude pursuant to Guam law?

**Response 5:** We have provided a detailed analysis of the legal definition of a crime of moral turpitude. In Part I, we discuss whether a California burglary conviction constitutes a crime of moral turpitude for purposes of Guam law. In Part II, we discuss whether a California burglary conviction constitutes a crime of moral turpitude for purposes of California law. In Part III, we apply our analysis to the specific facts of Mr. Rector's conviction.

### **Part I: Is California Burglary a Crime of Moral Turpitude under Guam Law?**

Section 6114 of the Guam Elections Law provides in pertinent part that "candidates for any elected public office . . . must not have been convicted of a felony . . . or crime of moral turpitude." 3 G.C.A. § 6114. The sole statutory definition of a crime of moral turpitude in Guam law, section 33104 of the Model Notary Law, provides that "[a] crime involving moral turpitude includes any felony committed in Guam or any crime committed outside Guam that would be a felony under Guam law, any crime involving personal injury, and any crime involving a breach of official duty if done willfully." 5 G.C.A. § 33104(4). Although this definition states that it applies to "this Chapter", i.e., the Model Notary Law, we believe it provides guidance in other contexts. Guam case law, on the other hand, has generally proved unhelpful. See People v. Estrebor, 1987 WL 109390, \*1 n.1 (D. Guam App. Div. 1987) (acknowledging that federal immigration law recognizes second degree felony theft as a crime involving moral turpitude for purposes of deportation), remanded, 848 F.2d 1014 (9th Cir. 1988); see also Territorial Prosecutor v. Super. Ct., 1983 WL 30224, \*4 (D. Guam App. Div. 1983) (mentioning that Guam law provided that territorial prosecutor could be removed for conviction of felony involving moral turpitude).

#### **A. Guam's Organic Act Suggests Federal Definition of Moral Turpitude is Appropriate**

The Organic Act of Guam provides that "[n]o person shall sit in the legislature . . . who has been convicted . . . of a crime involving moral turpitude and has not received a pardon restoring his civil rights." Organic Act § 1423f, 48 U.S.C. § 1423f. Since the Organic Act is codified as federal law, it is appropriate to look to federal law for the definition of moral turpitude. The federal courts have developed a large body of case law concerning the definition of moral turpitude because of its application to immigration law: under the Immigration and Nationality Act (INA), "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible." INA § 212(a)(2)(A)(i), 8 U.S.C. § 1182(a)(2)(A)(i).

The concept of moral turpitude as used in immigration law is vague and nebulous, Marmolejo-Campos v. Gonzales, 503 F.3d 922 (9th Cir. 2007), but not unconstitutionally so. Jordan v. De George, 341 U.S. 223, 232, 71 S. Ct. 703, 708, 95 L. Ed. 886 (1951). Courts generally define

moral turpitude as referring “to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.” Medina v. United States, 259 F.3d 220, 227 (4th Cir. 2001) (quoting Matter of Danesh, 19 I. & N. Dec. 669, 670 (Bd. Immigration App. 1988)). The United States Government has published the following definition: “A crime of moral turpitude . . . in general is a crime with an intent to steal or defraud; a crime where physical harm is done or threatened; a crime where serious physical harm is caused by reckless behavior; or a crime of sexual misconduct.” U.S. Citizenship & Immigration Servs., Office of Citizenship, U.S. Dep’t of Homeland Security, *Welcome to the United States: A Guide for New Immigrants* at 18 (revised ed., 2007) (available at <<http://www.uscis.gov/files/nativedocuments/M-618.pdf>>).

### **B. Elements of Burglary under California Law**

To determine whether a crime involves moral turpitude, courts first examine the statute defining the crime. In California, section 459 of the Penal Code defines the offense of burglary. See Cal. Penal Code § 459. Section 459 has undergone several amendments since the early 1980s. Stripping away these amendments reveals the California burglary statute as it stood, more or less, in the early 1980s:

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code, when the doors are locked, aircraft as defined by Harbors and Navigation Code § 21, or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

Cal. Penal Code § 459 (prior to amendments of 1984, 1987, 1989, and 1991).

Under California law, the burglary of an inhabited dwelling, also known as residential burglary, constitutes a first degree burglary. Cal. Penal Code § 460(a). First degree burglary is punishable by imprisonment in the state prison for two, four, or six years and a maximum fine of \$10,000. See Cal. Penal Code §§ 461(1) & 672. Because the maximum potential sentence for first degree burglary exceeds one year, first degree burglary is always a felony.

Second degree burglary, commonly known as commercial burglary, encompasses all other kinds of burglary which are not first degree burglary. See Cal. Penal Code § 460(b). Second degree burglary is a “wobbler” offense which may be charged as a misdemeanor or a felony, depending on the circumstances of a particular case and the accused’s criminal history. A person convicted of second degree burglary as a felony faces sixteen months, or two or three years in the state prison and a maximum fine of \$10,000. A person convicted of second degree burglary as a

misdemeanor faces up to one year in a county jail and a maximum fine of \$1,000. See Cal. Penal Code §§ 461(2) & 672.

The California burglary statute, reduced to its essential elements, requires proof of the following:

1. entry
2. into any of the enumerated structures
3. with intent to commit
  - a. theft or
  - b. some other felony.

Thus, in California, the crime of burglary is divisible between entry to commit theft and entry to commit another felony.

### **C. Whether or Not California Burglary is a Crime of Moral Turpitude under Guam Law**

If an offense includes an element of moral turpitude, then it is a crime of moral turpitude. In the case of burglary, entry to commit theft is a crime involving moral turpitude, because the theft element itself encompasses an act of moral turpitude (i.e., stealing). Entry to commit another felony, on the other hand, may or may not be a crime involving moral turpitude, depending on what that other felony is. If the other felony for which entry was made is not defined as an offense that involves moral turpitude, then the burglary in that case is not crime involving moral turpitude. Fernandez-Ruiz v. Gonzales, 468 F.3d 1159, 1163 (9th Cir. 2006) (applying the categorical and modified categorical approaches as set forth in Taylor v. United States, 495 U.S. 575, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990)).

When the statute under which an individual was convicted criminalizes both conduct that does and does not involve moral turpitude, courts look beyond the language of the statute to the record of conviction to determine whether the offense of conviction is a crime of moral turpitude. Fernandez-Ruiz, 468 F.3d at 1164; see Toutounjian v. I.N.S., 959 F. Supp. 598, 601 (W.D.N.Y. 1997) (“Where, however, the statute is divisible or separable and so drawn as to include within its definition crimes which do and some which do not involve moral turpitude, the record of conviction . . . may be examined to ascertain therefrom whether the requisite moral obloquy is present.”). The record of conviction includes the “charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which [the defendant] assented.” United States v. Vidal, 504 F.3d 1072, 1086 (9th Cir. 2007) (citing Shepard v. United States, 544 U.S. 13, 16, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005)). However, in order to implement the goals of the statute and avoid evidentiary quibbles, courts in immigration cases must not “look beyond the record of conviction itself to the particular facts underlying the conviction.” Vidal, 504 F.3d at 1086 (quoting, *inter alia*, Fernandez-Ruiz, 468 F.3d at 1164).

In the case of burglary, California law criminalizes both conduct that does involve moral turpitude and conduct that does not. Therefore, to determine whether a California burglary

conviction is a crime of moral turpitude, one must look beyond the language of the statute to the record of conviction, including the charging document, the written plea agreement, the transcript of the plea colloquy, and any explicit factual findings by the trial judge to which the defendant agreed. Since we are not dealing with an immigration matter in this case, we may also review the particular facts underlying the conviction, such as would be found in the underlying police report or unsworn extrajudicial statements. California police reports are public records under the California Public Records Act, Cal. Gov't Code § 6252, and therefore admissible under an exception to the hearsay rule if properly certified or authenticated. See Guam R. Evid. 803(6) (making admissible records of regularly conducted activity, even if the declarant is available); see also Guam R. Evid. 902(11) & (12) (governing self-authenticating records). Furthermore, any statements made by a suspect and reproduced in a police report would be admissible as a statement against interest, an exception to the hearsay rule. See Guam R. Evid. 804(b)(3) (creating hearsay exception for statement against interest when declarant is unavailable).

**D. Summary: California Burglary May or May not be  
a Crime of Moral Turpitude under Guam Law**

We conclude that, in Guam, for purposes of section 6114 of the Guam Elections Law:

- a felony burglary conviction under California Penal Code section 459 constitutes a conviction of a felony;
- a misdemeanor burglary conviction under California Penal Code section 459 constitutes a conviction of a crime of moral turpitude if committed with the intent to commit either theft or a felony involving moral turpitude;
- a misdemeanor burglary conviction under California Penal Code section 459 does not constitute a conviction of a crime of moral turpitude if committed with the intent to commit a felony not involving moral turpitude.

If a particular candidate for election has a felony burglary conviction, then, under section 6114, he is disqualified from seeking elected public office on the basis of that felony conviction. If, however, a particular candidate has a misdemeanor burglary conviction, then, depending on the circumstances of his case, he may or may not be disqualified under section 6114 from seeking elected public office. Further inquiry would be needed into the nature of the burglary to ascertain whether it involved an element of theft or other felony of moral turpitude.

**Part II: Is California Burglary a Crime of Moral Turpitude under California Law?**

In addition to inquiring about the law of moral turpitude in Guam, you have also asked us to provide you with an analysis of California law governing the definition moral turpitude. The California statutes do not define moral turpitude. California case law, on the other hand, has addressed the definition of moral turpitude because the courts there use the commission of a crime of moral turpitude as a criterion for disqualifying and impeaching witnesses.

In People v. Castro, 38 Cal. 3d 301, 211 Cal. Rptr. 719, 696 P.2d 111 (1985), the California Supreme Court loosely defined moral turpitude as “a readiness to do evil.” Id. at 314; see also People v. Lopez, 129 Cal. App. 4th 1508, 1522 (Cal. Ct. App. 2005) (defining moral turpitude as a willingness to lie). The Castro court held that any felony conviction which involves moral turpitude can be used for impeachment purposes in a criminal proceeding. Id. at 306. As yet, however, no clear, comprehensive definition or test has emerged to determine whether a particular crime is one that involves moral turpitude. People v. Sanders, 10 Cal. App. 4th 1268, 1272, 13 Cal. Rptr. 2d 205 (Cal. Ct. App. 1992). Instead, the issue has been left to the courts to determine on a case-by-case or statute-by-statute basis. Id. at 1272-73.

In People v. Statler, 174 Cal. App. 3d 46, 219 Cal. Rptr. 713 (Cal. Ct. App. 1985), the California Court of Appeals addressed the issue of whether burglary is a crime involving moral turpitude. The defendant argued that his felony burglary conviction could not be used to impeach him because it did not involve moral turpitude, but instead involved entry into a structure to commit another felony which did not itself entail moral turpitude. Id. at 53. Relying on Castro, the California Court of Appeals disagreed with the defendant and held that felony burglary is a crime of moral turpitude, even if the underlying felony does not involve moral turpitude:

The essence of the crime of burglary . . . is the unauthorized entry with the dangers inherent thereto and not simply the intent to commit a crime, whether or not that crime involves moral turpitude.

We are of the view that entry into a building or structure with the secret intent to commit theft or any felony therein not only evinces dishonesty on the part of the perpetrator, but also necessarily evinces the perpetrator’s “readiness to do evil”[, i.e., moral turpitude]. Every burglary conviction, therefore, is relevant on the issue of credibility and is admissible to impeach the testimony of any witness, including a defendant-witness.

Statler, 174 Cal. App. 3d at 54 (citing Castro, 38 Cal. 3d at 313-15).

Other appellate courts in California have reached the same conclusion, i.e., that felony burglary involves moral turpitude and can be used to impeach a witness in a criminal proceeding. People v. Williams, 169 Cal. App. 3d 951, 957, 215 Cal. Rptr. 612 (1985); People v. Hunt, 169 Cal. App. 3d 668, 675, 215 Cal. Rptr. 429 (1985). Subsequent court decisions have concluded that even misdemeanor convictions for crimes of moral turpitude can be used to impeach a witness in a criminal proceeding. People v. Wheeler, 4 Cal. 4th 284, 295-96 (Cal. 1994); Lopez, 129 Cal. App. 4th at 1522. However, we have found no California case that categorizes misdemeanor burglary as a crime of moral turpitude for the purpose of impeaching a witness in a criminal proceeding.

In summary, California courts have characterized felony burglary, whatever the nature of the underlying intended offense, as a crime of moral turpitude for the purpose of attacking the credibility of a witness testifying under oath in a criminal trial. California courts have not yet characterized misdemeanor burglary as a crime of moral turpitude in these circumstances. Given

the restricted purpose and applicability of the rule, as well as the lack of a definitive ruling in the misdemeanor burglary context, we cannot conclude that misdemeanor burglary constitutes a crime of moral turpitude pursuant to California law for purposes of disqualifying a candidate who seeks election to public office.

### **Part III: Was Senator Rector Convicted of a Crime of Moral Turpitude?**

Mr. Rector made the following public statements on his website:

Senator Rector continues, “. . . When I applied for a concealed weapon permit I had forgotten that I had a misdemeanor conviction 26 years ago.” . . . Senator Rector says, “I’ll admit that my friends and I came home on Christmas break had a few drinks at my house and walked over to the mall behind my house and climbed on the roof. Unfortunately, there was a door open and we stupidly opened it and went in. After a couple of minutes we decided that it was a pretty stupid thing to do but once we climbed off the roof the police were already there and we were arrested. We eventually pled guilty to misdemeanor burglary got informal probation and a few hours of community service. . . . It was my understanding that my record was automatically sealed if I kept my nose clean, but I have since learned that I should get the record expunged which is already in the works.”

Website entry (Nov. 24, 2009, 00:55:23), available on <[www.mattrector.com](http://www.mattrector.com)>. Mr. Rector repeated these statements in testimony before the Guam Election Commission on or about January 14, 2010. See Brett Kelman, Ethics complaints tackled: GEC will pursue records, Guam Pacific Daily News, Jan. 15, 2010 (“During the Election Commission hearing last night, Rector sat before the commission members and retold the story of the crime he committed 29 years ago.”).

Mr. Rector’s legal counsel, Mr. Kutz, made the following public statement to the media:

The acts [Matt Rector] did with two other guys when he was 19 years old and he was a freshman returned home from college. What he did was pretty dumb, but what he did and what he said on his website was that he and two other guys, in the night, climbed up on top of a shopping center that was right next to his house. They got up there, they’d been done it before, not all of this was on the website, but this is what Matt will testify to if he’s called to do it: They got up there, they’re sitting there, they’ve been there before, ever since they were kids in high school. They shouldn’t have been but they were. And this particular time, one of the entrance doors going downstairs was open. One of them opened the door, they walked down the stairs, took a look and said, “Wait a minute. This is not a good thing to do”, turned around and went out. They had no intent to steal anything or do any damage. And in fact they didn’t steal anything or do any damage at all. But what happened is, as far as they can figure out, that there was a silent alarm on the door when it was opened, it wasn’t locked. By the time they

came back up to the door, and we're talking a total elapsed time of a few minutes, 5 minutes maybe, fast response time. They came out. The police were there. They were arrested.

Video (20:00) of reporters questioning Robert Kutz, legal counsel to Matt Rector, outside the Guam Legislature building (Jan. 8, 2010), available on <[www.mattrector.com](http://www.mattrector.com)>, at approx. 7:58.

The statements of Mr. Rector and his legal counsel generally square with the facts gleaned from the police reports (disclosable pursuant to the California Public Records Act, Cal. Gov't Code § 6252, and Cal. Penal Code § 1203.4) prepared by officers of the Sacramento Police Department. However, Mr. Rector and his legal counsel omitted certain details. According to the police reports, on or about November 26, 1981, a security company contacted the Sacramento Police Department ("SPD") to report that a silent burglar alarm had been tripped at Weinstock's Department Store at the Arden Fair Mall. The alarm was tripped at 0010 hours. The police were called at 0013 hours. Police began to arrive at about 0014 hours. Upon arrival, Officer Lester of the SPD observed one suspect drop to the ground from a girder in an adjacent construction site. He also observed a second suspect sliding down a rope. The officer drew his revolver and ordered both suspects to freeze. The two suspects fled and were joined by a third suspect, later identified to be Matthew J. Rector.

SPD Officer Snow arrived at the scene and advised that the suspects were observed fleeing westbound. Officer Snow proceeded to that area and observed all three suspects climbing over a plywood fence. They were taken into custody without further incident. Officer Snow determined that the suspects had entered Weinstock's through a roof door. The alarm company informed police that both the roof door and an employee door alarm had been set off. It was determined that after entry into the store the suspects went downstairs and opened a door to the "will call" area. Upon realizing that there were alarm contacts on the door, the suspects immediately left via the roof and were thereafter apprehended. After the suspects were apprehended, one of them gratuitously stated to Officer Snow that he and the others had opened a roof door and walked down an interior stairway of the store. That same suspect also called over Officer LaBranch and stated to him: "[W]e were on the roof, I pushed open the door and went inside, then saw the alarm and left without taking anything. Then you guys saw us."

As part of the arrest process each of the suspects submitted a blood sample that was later tested for alcohol content. Matt Rector's blood alcohol content was 0.10%. All three suspects were charged with 459 P.C. Burglary under police report # 81-72862.

Mr. Rector has publicly admitted to pleading guilty and receiving a misdemeanor burglary conviction in California. Burglary under section 459 of the California Penal Code is a divisible crime which criminalizes both conduct that does and does not involve moral turpitude. It is therefore appropriate to look beyond the language of section 459 to the record of conviction to determine whether a California misdemeanor burglary conviction is a crime of moral turpitude. For purposes of this inquiry, we may also consider the relevant police reports.

First, we have Mr. Rector's admission that he was convicted of misdemeanor burglary in an incident that took place in California over 26 years ago, and that he was sentenced to probation and community service. Second, we consider the definition of moral turpitude found in Guam's notary law, 5 G.C.A. § 33104(4), that a crime of moral turpitude includes "any crime committed outside Guam that would be a felony under Guam law". While the crime that Mr. Rector was convicted of in California is a misdemeanor, such a crime, if convicted in Guam, could only be a felony, as demonstrated below.

The essential elements of California second degree burglary are: (1) entry, (2) into any of the enumerated structures, (3) with intent to commit theft or some other felony. Burglary on Guam can only be a second degree felony, see 9 G.C.A. § 37.20(b), and is defined as follows: "A person is guilty of burglary if he enters or surreptitiously remains in any habitable property . . . with intent to commit a crime therein". 9 G.C.A. § 37.20(a). "*Habitable Property* means any structure . . . adapted for the accommodation or occupation of persons." 9 G.C.A. § 34.10(b) (emphasis in the original). Historically, commercial structures are always included within this definition. Since Mr. Rector pleaded guilty to burglary, his conviction, although for a misdemeanor in California, would be for a felony on Guam, since the Guam burglary statute appears to be broader in scope than the California statute. Thus, the crime of burglary committed in California is a felony under Guam law.

Third, the facts in the police reports strongly suggest that theft was the underlying offense of the burglary in this case. The suspects climbed to the roof and entered into a commercial department store. The entry occurred at night. Two silent alarms were tripped. One was at a door at the point of entry on the store's roof top. The second alarm was tripped on the first floor. It was upon noting the alarm contacts on the door that the suspects fled back up through the roof. As they fled, they were confronted by an armed officer, who saw one sliding down a rope and another climbing over a wall to an adjoining construction site. He ordered them to stop. They fled and were arrested as they climbed over another wooden fence. One of the suspects admitted to police that he pushed open the door and went inside, then saw the alarm and left without taking anything. The facts point to entry with intent to commit the crime of theft. These facts do not suggest an intent to commit any other crime but theft. California has a trespass statute, Cal. Penal Code § 602, under which the suspects could have been charged if the officials had viewed the crime merely as one of unlawful entry. Thus, the only additional intent that could have made the crime a burglary was the intent to commit theft. A burglary with intent to commit theft as the underlying felony is a crime of moral turpitude.

Based on the foregoing, we conclude that Mr. Rector's misdemeanor burglary conviction in California was a conviction of a crime of moral turpitude under Guam law. As a result, his California misdemeanor burglary conviction disqualifies him from seeking elected public office under section 6114 of the Guam Elections Law.

**Question 6:** If he was found to be ineligible to run for elected office after already certified and sworn in, can the Guam Election Commission de-certify Senator Rector's election result?

**Response 6:** The Guam Election Commission's legal counsel has advised the commissioners that, under current law, they have no authority to remove a sitting senator of the Guam Legislature. The Attorney General concurs.

  
JOHN M. WEISENBERGER