ATTORNEY GENERAL OPINION

October 3, 2013

Honorable Aline Yamashita
I Mina’trentai Dos Na Liheslaturan Guåhan
324 West Soledad Avenue, Suite 101
Hagåtña, Guam 96910

Honorable Michael T. Limtiaco
I Mina’trentai Dos Na Liheslaturan Guåhan
865 S. Marine Corps Drive, Suite 106
Tamuning, Guam 96913

Re: Legislation Relative to Term Limits and Staggered Elections for Senators of I Liheslaturan Guåhan; Reference Nos.: LEG 13-0472 and LEG 13-0679

Dear Senators Yamashita and Limtiaco:

This is in regards to requests received from both offices regarding term limits and staggered elections for senators of I Liheslaturan Guåhan and whether the legislature has the authority to establish term limits and staggered terms both of which are not expressly contained in the Organic Act of Guam.

The government of Guam has only those powers conferred by the Organic Act of Guam. 48 U.S.C. § 1421a. The power of the Guam legislature is defined by 48 U.S.C. § 1423a: 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.

The term "local application," as used in congressional legislation conferring on a territory the power to enact legislation having local application, may be no broader, most liberally interpreted, than all rightful subjects of legislation; the term implies limitation to subjects having relevant ties within the territory and laws growing out of the needs of the territory and governing relations with it.

In 1952, an attorney general opinion provided that term limits and staggered terms were not inconsistent with the Organic Act or United States laws applicable to Guam and therefore the legislature was authorized to enact legislation to establish terms for senators. A copy is attached for your convenience.

The opinion noted that other territories of the United States expressly set forth the term of office. According to the opinion, since the Organic Act of Guam does not specify a term, the legislature can determine the term for which its members shall hold office. However, the opinion did not cite any cases in support of its conclusion.

The Organic Act of Guam does provide for the qualifications of legislators. It states:

No person shall sit in the legislature who is not a citizen of the United States, who has not attained the age of twenty-five years and who has not been domiciled in Guam for at least five years immediately preceding the sitting of the legislature in which he seeks to qualify as a member, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights.

48 U.S.C.A. § 1423f

The Organic Act is unambiguous in regard to legislative qualifications. However, the issue is whether the qualifications are meant to be exclusive or whether Congress intended to leave it to the Guam legislature to set legislative terms.

The general rule is that if a state constitution establishes specific eligibility requirements or prescribes qualifications for holding a particular constitutional office, the constitutional criteria are exclusive1. Labor's Educational and Political Club-Independent v. Danforth, 561 S.W.2d 339 (Mo. 1977); Oklahoma State Election Bd. v. Coats, 1980 OK 65, 610 P.2d 776 (Okla. 1980); Cathcart v. Meyer, 2004 WY 49, 88 P.3d 1050 (Wyo. 2004). “The legislature has no power to add to the qualifications, or to require different qualifications, for a constitutional office, unless the constitution, expressly or impliedly, gives the legislature the power to do so.” Labor's Educational and Political Club-Independent v. Danforth, 561 S.W.2d 339 (Mo. 1977); Daniels v. Dennis, 365 Ark. 338, 229 S.W.3d 880 (2006); Opinion of the Justices, 291 Ala. 581, 285 So. 2d 87 (1973). Further, “[n]egatively phrased qualifications for specific offices imply that those qualifications are exclusive.” Reale v. Board of Real Estate Appraisers, 880 P.2d 1205 (Colo. 1994).

1“A critical distinction exists between a ‘qualification’ for office and an ‘eligibility requirement’ for office. A qualification is an element of performance requiring a particular ability on the part of the person seeking the position, such as physical agility or the attainment of a particular level of education. Eligibility requirements, on the other hand, have nothing to do with one's ability to perform the duties of the office in question, and include such matters as age and residency requirements. A term limit also is an eligibility requirement because it has nothing to do with the particular person's ability to perform the job.” Minneapolis Term Limits Coalition v. Keefe, 535 N.W.2d 306 (Minn. 1995).
Most state constitutions expressly provide for term limits or staggered terms. Maine’s constitution is similar to Guam’s in that it does not provide for terms. Maine’s qualifications also provide for age and residency requirements as well as setting elections biennially. The Supreme Judicial Court in Opinion of the Justices, 623 A.2d 1258 (1993), concluded that terms of representatives and senators are within the legislative power.

Certain requirements are specified in the Constitution for representatives and senators. Those requirements consist of a period of citizenship, a minimum age, a period of state residency, and a period of residency in the district that the official will represent. The requirements are the same for representatives and for senators except for a difference in the minimum age. Me. Const. art. IV, pt. 1, § 4; art. IV, pt. 2, § 6.4 The requirements are stated in the negative and expressly disqualify any person not a citizen, or not a resident, or under the stated age.5 Such a specific statement of disqualification does not clearly and unmistakably give rise to an implication that the Legislature is without authority to prescribe additional qualifications for representatives or senators, provided the added qualifications are reasonable, do not conflict with those in the Constitution, and violate no guaranteed rights. See Annotation, Legislative Power to Prescribe Qualifications for or Conditions to Constitutional Office, 34 A.L.R.2d at 166-68; see e.g., Boughton v. Price, 70 Idaho 243, 247, 215 P.2d 286, 290 (1950).

Prescribing additional qualifications by statute does implicate the constitutionally guaranteed right of suffrage, but reasonable restrictions on the eligibility for holding office only incidentally involve that right. Me. Const. art. II, § 1. Cf. Snider v. Shapp, 45 Pa.Cmwlth.Ct. 337, 405 A.2d 602, 613 (1979) (finding that a statute requiring candidates to file financial disclosure statements and prescribing conduct involving conflicts of interest did not unconstitutionally limit the field of candidates from which voters might choose).

It is our opinion that the limitations contained in L.D. 751 on the terms of office for secretary of state, treasurer, attorney general, representatives, and senators are within the legislative power and, if enacted, would be valid.

Opinion of the Justices, 623 A.2d 1258, 1263 (Me. 1993)

Maine Supreme Court’s opinion is consistent with the 1952 attorney general opinion. Notwithstanding this authority, we note that Guam’s legislative authority is limited. The United States Supreme Court held that the Guam Legislature could not enact a law which the Organic Act did not specifically permit. Territory of Guam v. Olsen, 431 U.S. 195, 197 S.Ct. 1774, 52 L.Ed.2d 250 (1977) (The Organic Act did not specifically permit the Guam Legislature to enact a law which took from the District Court all appellate jurisdiction).

In this instance, Congress promulgated qualifications or more appropriately eligibility requirements to be a Guam senator and did not specifically permit term limits or staggered terms for the Guam legislature. Arguably, under Olsen, the Guam legislature’s authority to enact terms for its members is limited to the qualifications established in the Organic Act.
As noted, there is differing court opinions on whether constitutionally prescribed qualifications for holding a constitutional office are exclusive. Again, the general view is that they are exclusive. Although the enactment of the Organic Act of Guam is unlike state constitutions, it serves the function of a constitution for Guam. The limitation on Guam’s legislative authority as expressed by the United States Supreme Court coupled with the general view that legislative qualifications are exclusive, compels this office to recommend to the legislature to follow the more conservative approach and ascribed general view that the qualifications are exclusive and the legislature cannot change, add to, or diminish the qualifications for legislative service enumerated in the Organic Act.

Sincerely,

Leonardo M. Rapadas
Attorney General of Guam

Enclosure
There is in contemplation the introduction of a bill to make an amendment to the elections code to provide for four-year terms for members of the Guam Legislature in such a fashion as to stagger these terms so that approximately one-half of the members of the Guam Legislature will be elected every two years.

In order to accomplish this result, it would be necessary to provide that the 1953 elections be upon the basis that approximately one-half of the members be elected for a four-year term and the remainder be elected for a two-year term. Those elected for a two-year term would serve until 1955, at which time elections would be held for full four-year terms to fill these posts.

It does not appear to me that such a bill would be prohibited by the Organic Act. This act merely provides in Section 10 that there shall be a single house to be elected at large and that "general elections to the Legislature shall be held on Tuesday next after the first Monday in November bi-annually in even numbered years". Nowhere in the act do I find a provision specifying the terms of members of the Legislature and the fact that the act provides that members of the existing Legislature at the time of its passage shall continue to serve until "the next election held in accordance with the laws of Guam and until their successors have duly qualified" would seem to lend at some strength to the argument that it is within the legislative power of Guam to provide the length of the term of its members.

Nor could it be said that this power could be used to ridiculous extremes. Under Section 19 of the Organic Act, Congress has reserved the power to annul any act of the Guam Legislature. Thus, the United States would not be without power to correct abuses.
The purpose of this letter is to seek your concurrence with our views and to request your opinion as to the legality of such an act of the Guam Legislature, assuming of course that the act were passed and approved by the Governor.

Very truly yours,

[Signature]

John A. Bohn
Legislative Counsel
June 27, 1952

John A. Bond, Legislative Council
First Guam Legislature
Agana, Guam

Dear Mr. Bond:

As requested in your letter of June 23rd, I have studied the legality of legislation which you state is designed to extend the term of members of the Guam Legislature to four years, and to stagger these terms in such a manner that approximately one-half would be elected every two years. It is my opinion that such legislation would be proper and is not prohibited by the Organic Act.

It is generally held that the legislative power of every territory shall extend to all rightful subjects of legislation that are not inconsistent with its Organic Act or the Constitution and laws of the United States. I believe that the bill which you propose is not inconsistent with any of these.

A study of the Organic Act of numerous other territories of the United States discloses that Congress, in making provisions for the legislatures of these territories, has, in most instances, expressly set forth the number of legislators, the terms for which they are to be elected, and the time of their election. That is not the case with the Organic Act of Guam. The Act does not specify with certainty either the number of legislators, or their terms, and, in section 10, provides merely for a single house of not more than 21 members, and for general elections biennially in even numbered years. The Legislature is clearly given the right to exercise discretion as to how many members it shall have within the set maximum. By implication, it can further be held that the Legislature may the right to exercise similar discretion in determining the terms which its members shall hold office.

Consequently, it cannot be said that the result of this opinion would be as to the legislature power which it might have, since, in section 10 of the Organic Act, Congress retains all legislative power over the Act of this Government.

Sincerely yours,

Rochelle L. Otani
Acting Attorney General

H.W.Burnett Jr.
CC: Attorney General
Mr. Russell Stevens
Acting Attorney General
Government of Guam
Agana, Guam

Dear Mr. Stevens:

There is in contemplation the introduction of a bill to make an amendment to the election code to provide for four-year terms for members of the Guam Legislature in such a fashion as to stagger these terms so that approximately one-half of the members of the Guam Legislature will be elected every two years.

In order to accomplish this result, it would be necessary to provide that the 1953 elections be upon the basis that approximately one-half of the members be elected for a four-year term and the remainder be elected for a two-year term. Those elected for a two-year term would serve until 1955, at which time elections would be held for full four-year terms to fill these posts.

It does not appear to me that such a bill would be prohibited by the Organic Act. This act merely provides in Section 10 that there shall be a single house to be elected at large and that "general elections to the Legislature shall be held on Tuesday next after the first Monday in November bi-annually in even numbered years". Nowhere in the act do I find a provision specifying the terms of members of the Legislature and the fact that the act provides that members of the existing Legislature at the time of its passage shall continue to serve until "the next election held in accordance with the laws of Guam and until their successors have duly qualified" would seem to lend any strength to the argument that it is within the legislative power of Guam to provide the length of the term of its members.

Nor could it be said that this power could be used to ridiculous extremes. Under Section 19 of the Organic Act, Congress has reserved the power to annul any act of the Guam Legislature. Thus, the United States would not be without power to correct abuses.

The purpose of this letter is to seek your concurrence with these views and to request your opinion as to the legality of such an act of the Guam Legislature, assuming of course that the act were passed and approved by the Governor.

Very truly yours,

/s/ John A. Bohn

John A. Bohn
Legislative Counsel
June 27, 1941

John L. Bohn, Legislation Counsel
First Guam Legislature
Agana, Guam

Dear Mr. Bohn:

As requested in your letter of June 23rd, I have studied the legality of legislation which you state is designed to extend the term of members of the Guam Legislature to four years, and to stagger these terms in such a manner that approximately one-half would be elected every two years. It is my opinion that such legislation would be proper and is not prohibited by the Organic Act.

It is generally held that the legislative power of every territory shall extend to all rightful subjects of legislation that are not inconsistent with its Organic Act or the Constitution and laws of the United States. I believe that the bill which you propose is not inconsistent with any of these.

A study of the Organic Act of numerous other territories of the United States discloses that Congress, in making provisions for the legislatures of these territories, has, in most instances, expressly set forth the number of legislators, the terms for which they are to be elected, and the time of their election. That is not the case with the Organic Act of Guam. The Act does not specify with certainty either the number of legislators, or their terms, but, in Section 10, provides merely for a single house of not more than 21 members, and for general elections bimannually in even numbered years. The Legislature is clearly given the right to exercise discretion as to how many members it shall have within the set maximum. By implication, it can further be held that the legislature has the right to exercise similar discretion in determining the term for which its members shall hold office.

Further, it cannot be said that the result of this opinion would be to give the Legislature power which it might abuse, since, by Section 15 of the Organic Act, Congress retains final legislative power over any act of this Government.

Sincerely yours,

Russell L. Stevens
Acting Attorney General

Walter Burnett
CC: Attorney General
July 14, 1952

Dear Governor:

Enclosed is a copy of bill No. 230, relative to four year terms for the Legislators, which bill was passed by the Legislature on July 8, 1952, as mentioned in my recent dispatch. I believe the bill will be of considerable interest to you, and am forwarding it with the thought in mind that if you have any objections to the bill, you may set them to me prior to the signature deadline.

This matter was discussed by John Bohn and Russell L. Stevens upon receipt by the Attorney General of Mr. Bohn's initiating letter, on the day you departed from Guam. Also enclosed for your information is a copy of Mr. Bohn's letter, and Stevens' reply.

Sincerely yours,

/s/ R. S. Herman

R. S. HERMAN
Acting Governor of Guam

The honorable Carlton Skinner
Governor of Guam
C/O Office of Territories
Department of the Interior
Washington 25, D. C.

Enclosures 3

RLStevens:acf
CC: Attorney General
SecGuam
In the celebration of the first year of independence, the President of the Marianas took the opportunity to express the importance of liberty and the need to ensure its preservation for future generations. He emphasized the critical state of the world and the importance of maintaining a strong and free Republic. The President also highlighted the unity and cooperation among the various political and industrial groups, including labor, for the common goal of protecting and defending the interests of the people.

He expressed the need for unity and cooperation among all factions of our country, emphasizing the importance of working together to achieve our goals. The President concluded by stating that the people of the Marianas, under the guidance of the United States, would continue to strive for freedom and independence.

The President also addressed the issue of the Organic Act of the United States and its impact on the Marianas. He clarified that the Organic Act, which is currently in effect, will be revised in the near future to accommodate the specific needs of the Marianas. The President emphasized the importance of the first election to be held under the new Organic Act, which will provide a voice for the people of the Marianas and ensure their participation in the governance of their own island.

The President concluded by expressing his confidence in the Marianas people's ability to work together and achieve their goals, under the guidance of the United States. He called upon all factions to support the new Organic Act and work towards a brighter future for the Marianas.
LEGISLATOR TAKES BILL CMA AND AGREES THAT NOTHING IN THE ORGANIC ACT WOULD
PROHIBIT IT PERMIT THE SENATE AND HOUSE REPORTS IN THE ORGANIC ACT CMA AND
THE SENATE READING CMA D. D. NOT INDICATE THAT THE CONGRESS HAD ANY FIXED VIEW
OR WHAT THE TERMS SHOULD BE PERIOD IT COULD BE SAID THAT THE PROVISION THAT
THEREBY BIENNIAL ELECTIONS BY IMPLICATION CONTemplates TWO YEAR TERMS CMA BUT
ON THE OTHER HAND CMA THE ORGANIC ACT DOES ALSO PROVIDE THAT WOOTE THE LEGISLATURE
IN ALL RESPECTS SHALL BE ORGANIZED AND SHALL SIT ACCORDING TO THE LAWS OF GUAM
IN FORCE ON AUGUST ONE CMA NINETEEN FIFTY AND AS AMENDED OR MODIFIED AFTER
SUCH DATE PERIOD UNQUOTE SINCE THE LAWS IN GUAM IN FORCE ON AUGUST ONE CMA
NINETEEN FIFTY MADE PROVISION FOR THE TERM OF THE LEGISLATORS CMA THE
PRESENT BILL WOULD BE AT Q AUTHORIZED AMENDMENT OR MODIFICATION OF THOSE
LAWS PARA YOU WILL BE INTERESTED TO KNOW THAT THE BILL REVISING THE VIRGIN
ISLANDS ORGANIC ACT CMA WHICH WAS PASSED BY THE HOUSE AT THE LAST CONGRESS CMA
PROVIDES FOR A TERM OF FOUR YEARS FOR THE LEGISLATIVE MEMBERS CMA BUT SAYS THAT AT THE
FIRST ELECTION HELD AFTER THE EFFECTIVE DATE OF THE BILL CMA SOME MEMBERS SHALL
BE ELECTED FOR TWO-HYphen YEAR TERMS PERIOD THIS IS ESSENTIALLY WHAT THE GUAM
BILL WOULD PROVIDE PERIOD THEREFORE CMA I WOULD BE INCLINED TO APPROVE THE
BILL PERIOD
Bill No. 230

Introduced by 

E. T. Calvo

An Act to add Section 91.5 to Chapter 1, Division IV, of Public Law 34, Tenth Guam Congress, relating to the terms and elections of members of the Guam Legislature.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Sec. 91.5 is hereby added to Chapter 1, Division IV of Public Law 34, Tenth Guam Congress, to read as follows:

"Sec. 91.5. Members of the Legislature shall be elected for terms of four years, except that in the general election to be held on the Tuesday next after the first Monday in November, 1952 ten members of the Legislature shall be elected for a term of four years and eleven members for a term of two years. In the said 1952 general election, the ten candidates receiving the highest number of votes shall be elected for terms of four years and the eleven candidates receiving the next highest number of votes shall be elected for terms of two years. In the event of a tie vote, the candidate or candidates to be seated or the length of the term shall be determined by lot in such a manner as the other duly elected members shall determine immediately after organization of the Legislature. None of the candidates with the votes shall be seated until the result of the lot shall have determined the issue."

Section 2. This is an urgency measure and shall become effective upon its approval by the Governor.
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Bill Number 230, "An Act to add Section 91.5 to Chapter 1, Division IV, of Public Law 34, Tenth Guam Congress, relating to the terms and elections of members of the Guam Legislature", was on the 8th day of July, 1952, duly and regularly passed.

[Signature]
A. B. Won Pat
Speaker

ATTESTED:

[Signature]
A. S. N. Buenas
Legislative Secretary

This Act was received by the Governor this 14th day July, 1952, at 4:34 o'clock P. M.

[Signature]
Manuel F. L. Guerrero
Acting Secretary of Guam

APPROVED:

[Signature]
R. S. Herman
Acting Governor of Guam

Dated: July 28, 1952
This is to certify that Bill Number 1, "An Act to enact the Government Code of Guam and to repeal all Laws enacted late or inconsistent with said Code", was on the 16th day of October, 1952, duly and regularly passed.

A. H. REY FAI
Speaker

A. S. M. GUISAS
Legislative Secretary

This Act was received by the Governor this 31st
day of November, 1952, at 10:50, o'clock A.M.

MANUEL P. L. COHAN
Acting Secretary of Guam

P.L. 1-58
AN ACT

To enact the Government Code of Guam and to repeal all laws enacted into or inconsistent with said Code.

Be it enacted by the People of the Territory of Guam

Section 1. This Act shall be effective at midnight on the sixtieth day after its approval by the Governor.

Section 2. The following named bills of the Guam Congress, Public Laws, Executive Orders, Civil Regulations with the Force and Effect of Law in Guam, Proclamations and other enactments and all other laws inconsistent herewith are hereby repealed in their entirety:

a) All enactments of the Seventh Guam Congress.

b) Eighth Guam Congress Bills numbered 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 16, 19, 20, 21, 22, 23, 24.

c) Ninth Guam Congress Public Laws numbered 8, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 31.

d) Public Laws of the Tenth Guam Congress numbered 82, 33, 34, 85.

e) First Guam Legislature, First Special Session, Public Laws numbered 1, 2; Sections 8, 9, 10, and 11 of Public Law 3; Public Laws 4, 5.

f) Public Laws of the First Guam Legislature, First and Second Regular Sessions numbered 1, 8, 10, 11; Section 4 of Public Law 12; Public Laws 14, 15, 16; the following portions of Public Law 17: Code of Civil Procedure Sections 199-203, 205-269, 276-282 enacted by Section 1 of Public Law 17, Sec. 42, Sec. 43, Sec. 44, Sec. 45, Sec. 46, Sec. 47, in Sec. 51, the words "and Sections 23 (paragraph entitled Appeal)" to the end of the Section, in Sec. 52, the words "section 11 of Chap. XI:VIII" to the end of the section, in Sec. 56, the words "paragraph (12) of subsection (d)" through "approved Nov. 12, 1947:" Public Laws 20, 21, 22, 25, 26, 27, Sec. 8 of Public Law 27; Public Laws 28, 30, 31, 32, 35 except Sec. 11, 13 and 14 of said Public Law 33; Public Laws 34, 35, 36, 46, 41, 42, 48, 44, 47, 48, 56, 57, 59, 61, 62, 67, 68, 71, 72, 73, 75, 76, 78, 79, 80, 81, 83, 84, 85, 86.
g) Civil Regulations with the Force and Effect of Law in Guam. Chapters 1-48 inclusive.


j) Addenda to Chapter 44 of the Civil Regulations with the Force and Effect of Law in Guam dated December 24, 1930, and August 4, 1947.

k) Civil Code Sections 216-217, 1097, 1116-1133, 1270-1274.

l) Paragraph 1-8 inclusive of Penal Code Section 369, Penal Code Sections 402 (c), 402 (e), 552-556, 653, 1519-1515.


o) 1939 Tariff Schedule and Customs Regulations of Guam.

Section 3. There is hereby enacted the Government Code of the territory of Guam in numbers, words, and phrases as follows:

Approved November 29, 1952.