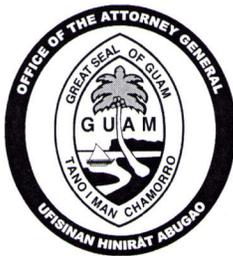


LEONARDO M. RAPADAS
Attorney General



PHILLIP J. TYDINGCO
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

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
OPINION

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.

Granville-Smith v. Granville-Smith, 349 U.S. 1, 75 S. Ct. 553, 99 L. Ed. 773 (1955).

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 proscribing 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,

A handwritten signature in black ink, appearing to read 'Leonardo M. Rapadas', with a long horizontal flourish extending to the right.

Leonardo M. Rapadas
Attorney General of Guam

Enclosure

FIRST GUAM LEGISLATURE
ISLAND OF GUAM

A. B. WON PAT
Speaker

FRANK D. PEREZ
Vice-Speaker

ANTONIO S. N. DUENAS
Legislative Secretary



Box 373, Agana, Guam
Denver 981 Ext. 332

June 23, 1953

REV. FATHER FLORES
Chaplain
JOHN A. BOHN
Counsel

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 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.

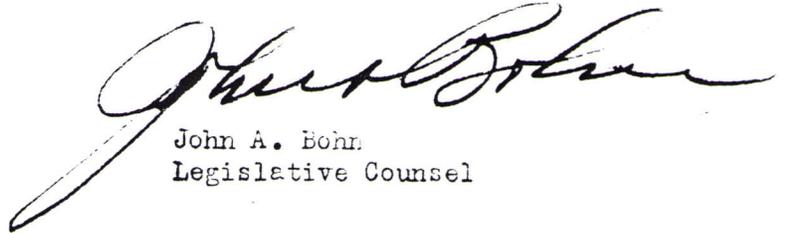
In order to accomplish this result, it would be necessary to provide that the 1953 elections be upon the basis that approximately one-half of the members be elected for a four-year terms and the remainder be elected for a two-year term. Those elected for a two-year term would serve until 1955, at which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

A handwritten signature in cursive script, appearing to read "John A. Bohn".

John A. Bohn
Legislative Counsel

52-37

June 27, 1951

John W. Bonn, Legislative Counsel
First Guam Legislature
Agaña, Guam

Dear Mr. Bonn:

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 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 has the right to exercise similar discretion in determining the term for which its members shall hold office.

Therefore, it cannot be said that the result of this opinion would be to curtail the Legislature power which it may abuse, since, by section 10 of the Organic Act, Congress retains final legislative power over all acts of this Government.

Sincerely yours,

RUSSELL L. STEVENS
Acting Attorney General

HWBurnett:jc
CC: Attorney General ✓

Vice-Speaker
Antonio S. L. Duenas
Legislative Secretary

ISLAND OF GUAM
P.O. Box 375, Agaña, Guam
Denver 981 Ext. 737

June 23, 1955

Hon. Father ...
Chairman

John A. Bohn
Counsel

Mr. Russell Stevens
Acting Attorney General
Government of Guam
Agaña, Guam

Dear Mr. Stevens:

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 terms 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 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

HWBurnett:jg
CC: Attorney General ✓

June 27, 1951

John A. Bohn, Legislative Counsel
First Guam Legislature
Agaña, 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 biannually 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 19 of the Organic Act, Congress retains final legislative power over any act of this Government.

Sincerely yours,

RUSSELL L. STEVENS
Acting Attorney General

HWBurnett:jg
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 get 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 Steven's 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

... OF LIBERTY BY THE PEOPLE OF GUAM IS CELEBRATED TODAY THE UNAVOIDABLE
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BILL WOULD PROVIDE PERIOD THEREFORE I WOULD BE INCLINED TO APPROVE THE
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FIRST GUAM LEGISLATURE
1952 (SECOND) Regular Session

1
2 Bill No. 230

3 Introduced by E. T. Calvo
4

5 An Act to add Section 91.5 to Chapter
6 1, Division IV, of Public Law 34, Tenth
7 Guam Congress, relating to the terms
8 and elections of members of the Guam
9 Legislature.

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

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

13 "Sec. 91.5. Members of the Legislature shall
14 be elected for terms of four years, except that in
15 the general election to be held on the Tuesday next
16 after the first Monday in November, 1952 ten members
17 of the Legislature shall be elected for a term of
18 four years and eleven members for a term of two years.
19 In the said 1952 general election, the ten candidates
20 receiving the highest number of votes shall be elected
21 for terms of four years and the eleven candidates
22 receiving the next highest number of votes shall be
23 elected for terms of two years. In the event of a tie
24 vote, the candidate or candidates to be seated or the
25 length of the term shall be determined by lot in such
26 a manner as the other duly elected members shall deter-
27 mine immediately after organization of the Legislature.
28 None of the candidates with tie votes shall be seated
29 until the result of the lot shall have determined the
30 issue."

31 Section 2. This is an urgency measure and shall become
32 effective upon its approval by the Governor.

FIRST GUAM LEGISLATURE
1952 (SECOND) Regular Session

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.



A. B. WON PAT
Speaker

ATTESTED:



A. S. N. DUENAS
Legislative Secretary

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



MANUEL N. L. GUERRERO
Acting Secretary of Guam

APPROVED:



R. S. HERMAN
Acting Governor of Guam

Dated: July 28, 1952

FIRST TERM LEGISLATURE
SACRAMENTO, CALIFORNIA

CERTIFICATE OF PASSAGE OF AN ACT TO THE GOVERNOR

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



A. B. WICK PAT
Speaker

ATTESTED:



A. B. N. GUENAS
Legislative Secretary

This Act was received by the Governor this 21st
day of November, 1952, at 10:54 o'clock A. M.



MARCEL F. L. GUERRERO
Acting Secretary of State

RECORDED:



NOV 27 1952

P.L. 1-88

[Public Law 88—First Guam Legislature]

[1952 (SECOND) Special Session]

[G. L. 1]

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 3, 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 32, 33, 34, 35.
- 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, 265 - 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. XLVIII" 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, 23, 24, 26; Sec. 3 of Public Law 27; Public Laws 28, 30, 31, 32; 33 except Sec. 11, 13 and 14 of said Public Law 33; Public Laws 34, 35, 36, 40, 41, 42, 43, 44, 47, 48, 56, 57, 59, 61, 62, 67, 68, 71, 72, 73, 75, 76, 78, 79, 80, 81, 83, 84, 85, 86.

Public Law 88-187
Second Special Session

ARTICLE 6

g) Civil Regulations with the Force and Effect of Law in Guam, Chapters 1-48 inclusive.

h) Executive Orders numbered 1-46, 2-46, 4-46, 5-46, 6-46, 8-46, 10-46, 12-46, 13-46, 14-46, 15-46, 17-46, 18-46, 19-46, 20-46, 21-46, 25-46, 28-46, 29-46, 2-47, 3-47, 4-47, 5-47, 6-47, 7-47, 9-47, 10-47 (all except first two lines), 11-47, 12-47, 13-47, 15-47, 16-47, 17-47, 19-47, 20-47, 21-47, 22-47, 23-47, 1-48, 2-48, 4-48, 5-48, 1-49, 2-49, 3-49, 4-49, 5-49, 6-49, 7-49, 8-49, 9-49, 10-49, 11-49, 12-49, 1-50, 2-50, 3-50, 4-50.

i) Proclamations numbered or dated 1-47, August 7, 1947, December 4, 1947, 3-49, 4-49, 7-49, 8-49, 2-50, 11-50.

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, 1510-1515.

m) Letters of the Governor numbered and dated Jan. 1, 1947, Serial 986, Sept. 3, 1947, Serial 3132, Oct. 8, 1947, Serial 3650, Feb. 6, 1948, Serial 589.

n) Memoranda numbered and dated Nov. 22, 1948, Oct. 20, 1950, Jan. 3, 1951, April 9, 1951, 24-51.

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.