



OFFICE OF PUBLIC ACCOUNTABILITY

Doris Flores Brooks, CPA, CGFM  
Public Auditor

January 20, 2011

Honorable Leonardo M. Rapadas, Esq.  
Attorney General of Guam  
Office of the Attorney General  
287 West O'Brien Drive  
Hagåtña, Guam, 96910

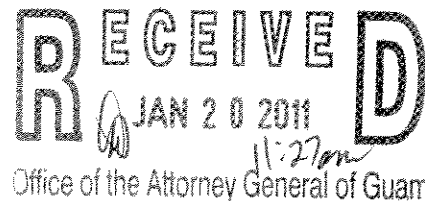
**RE: Request for reconsideration of December 30, 2010 legal opinion regarding  
DOA/DRT/BBMR and OPA Bonuses. A.G. Legal Opinion No. 10-0950.**

Dear Mr. Rapadas,

The Office of Public Accountability (OPA) acknowledges receipt of the above referenced legal opinion on January 3, 2011. After reviewing the opinion, I am encouraged by its finding that classified employees who received a bonus payment under the Department of Administration's (DOA) Special Achievement Awards Program may keep such payments if they were qualified to lawfully receive a Merit Bonus pursuant to 4 G.C.A. §6203. However, I question the opinion's finding that the Special Achievement Awards Program is not a proper compensation program and its general conclusion that Government of Guam Employees must repay any bonus funds they received. On behalf of the classified Government of Guam employees at OPA, DOA, DRT and BBMR, who received a Special Achievement Bonus and who may become adversely affected by the opinion, I respectfully ask that you reconsider the opinion's findings and rescind it.

Please note that on January 7, 2011, I repaid the \$3,500 bonus I received back in July 2009. This request is for reconsideration of the bonus received by the above mentioned classified employees and not to be construed as reconsideration for myself or other unclassified personnel.

The Special Achievement Awards Program is authorized mainly, by 4 G.C.A. §6302(a). That statute authorizes the Director of DOA to adopt and apply the currently used unified pay schedule based on the Hay methodology or any other classification methods and **salary administration to the extent he deems appropriate** (Bold Emphasis Added). 4 G.C.A. §6302(a). Paragraph 2, page 2 of the opinion summarily concludes that this section only applies to an employee's bi-weekly salary and does not authorize lump-sum awards such as the Special Achievement Award Program. This



narrow construction and interpretation is not supported by the statute's broad language nor is it supported by the laws governing the compensation of Government of Guam Employees.

Generally, statutory interpretation requires that the plain language of the statute must be the starting point, and the task is to determine whether the statutory language is plain and unambiguous, and this is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. *Derrick M. Guerrero, et. al., v. Dennis J. Santo Thomas, et.al.*, 2010 Guam 11, ¶12 (Supreme Court of Guam). The language of 4 G.C.A. §6302(a) is unambiguous and the statute's plain language does not indicate the statute's term "salary administration" is limited to an employee's bi-weekly salary as stated in the opinion. Nor does reading the broader context of the statute as a whole support the opinion's narrow interpretation. All aspects of compensation (base salaries, benefits, pay differentials, and other factors) will be considered as a **total reward and incentive package to employees** and shall be consistent and uniformly administered through the government (Bold Emphasis Added). 4 G.C.A. §6301(5). Further, compensation structures and administrative policies should also recognize and reward individual employees commensurate with performance. 4 G.C.A. §6301(4). Thus, the plain and unambiguous broad language of 4 G.C.A. §6302(a) coupled with the broader context of the statute as a whole, which includes all forms of employee compensation as a total reward and incentive package and which compensates employees commensurate with performance, gives the Director of Administration authority to implement the Special Achievement Awards Program as part of her broad authority to adopt and apply salary administration policies as she deems appropriate.

Therefore, the Director of DOA had the statutory authority to develop and implement the Special Achievement Awards Program. This program was uniformly administered throughout the Government of Guam via DOA Organizational Circular No. 2009-011. Further, the legal opinion has no finding and cites no evidence that any Government of Guam Employee who received a payment under the Special Achievement Awards Program did so in violation of the qualifying criteria of the program. Indeed, the legal opinion relies on its narrow interpretation of the broad statutory authority given to the Director of DOA to adopt and apply any other methods of salary administration he deems appropriate. As set forth above, such narrow interpretation is not in accordance with the Guam Supreme Court's methods of statutory construction. It appears that the true purpose of the legal opinion is to make the claim that the Government of Guam Employees who received a payment under the Special Achievement Awards Program must pay back such compensation. Such repayment is unnecessary due to the flawed reasoning of the legal opinion described above, and would be an unjust disservice to hundreds of deserving Government of Guam Employees who received payments under the program.

Sadly, the legal opinion's claims have overshadowed the grand and meritorious accomplishments justifying the Special Achievement Awards Program payments. Specifically, the Government of Guam's Independent Auditors issued an unqualified or

"clean" opinion concerning the government's finances for Fiscal Year 2007. This was the first time in Guam's modern history that the Government of Guam received an unqualified financial audit opinion. Historically, the Government of Guam's financial audits resulted in adverse opinions, then qualified opinions recommending serious corrective actions. Federal agencies overseeing Government of Guam finances in particular the US Department of Health & Human Services and U.S. Department of the Interior continuously found that the government took an extraordinary amount of time to implement the recommended corrective actions resulting in such federal agencies questioning whether the government was serious or willing to implement the corrective actions. Further, such delays caused such federal agencies to monitor the government's financial audits with greater scrutiny and caused the federal agencies to implement safeguards to protect federally funded programs and projects.

The employees of OPA, DOA, DRT, and BBMR who received the Special Achievement Awards Program payment took the difficult and aggressive steps to implement the overdue corrective actions and only through their collective efforts was the government's first unqualified audit in modern times achieved. Their hard work should not be taken lightly or disregarded because the past qualified financial audits jeopardized Guam's federal funding which is over \$150,000,000 annually. Instead, we should be proud of their collective effectiveness and their achievement should be lauded by the people of Guam and not allowed to be questioned or condemned by the opinion and its claims.

OPA Attorney Anthony R. Camacho and I are available to discuss the matter in greater detail with you at your convenience.

Senseramente,



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