

**GUAM LEGISLATURE  
PROTOCOL OFFICE**

MAY 10 2023

ME: 1020 [✓] AM [ ] PM

RECEIVED BY: Gwen Yangur



May 10, 2023



**OFFICE OF LEGAL COUNSEL**

*Uffisina / Maga'hagan Guåhan, Office of the Governor*

Date: 5/10/2023  
Time: 10: AM  
Received By: KWR

Ref: LEG 23-0081

**Honorable Therese M. Terlaje**  
Speaker

**OFFICE OF THE SPEAKER**  
**THERESE M. TERLAJE**

**Honorable Tina Muna Barnes**  
Vice-Speaker

*Mina'trentai Siette Na Liheslaturan Guåhan*  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

~~05-10~~ 2023

Time: 10:19 am  
Received: AU

5/10/23  
1029am  
KCMA  
VICE SPEAKER

**Subject: Legal Opinion- Effect of Alleged Open Government Law Violation on Acts of the 36<sup>th</sup> Guam Legislature**

*Hafa Adai* Senator Barnes:

You transmitted to this Attorney General a February 21, 2023 letter requesting our legal opinion. Our response is as follows:

**Question Presented**

Does the failure to post a notice of a public legislative meeting on the Guam Public Notice Website pursuant to the Guam Open Government Law, void the actions of the Guam Legislature which were taken at such meetings?

Answer: No. Under the 1950 Organic Act of Guam, upon certification by the Guam Legislature, vis-à-vis the Legislative Secretary, that the engrossment and enrollment process is completed and the document (bill, resolution, etc.) is ready to transmit, the Legislative Branch has duly acted and purported violations of the Open Government Law will not void or otherwise affect the validity of the bill, resolution or other document being transmitted.

**RECEIVED**

MAY 10 2023

**GUAM LAW LIBRARY  
COMPILER OF LAWS**

**Office of the Attorney General**  
**Douglas B. Moylan · Attorney General of Guam**

390 S. Marine Corps. Drive · ITC Bldg., Ste. 901 · Tamuning, Guam 96913 · USA  
671-475-3324 · 671-475-4703 (fax) · dbmoylan@oagguam.org · www.oagguam.org

**"Guam's Toughest Law Enforcers"**

*Magen W. Sorden*  
*M. Sorden* 10:37 am

ORDER OF THE COURT



MAY 10 1953

RECEIVED

RECEIVED

MAY 10 1953

COURT OF LAWS  
LIBRARY

## Discussion

We received a request for a determination of the “validity of the actions of the 36<sup>th</sup> Guam Legislature.” This request was made after questions were raised concerning whether certain actions of the 36<sup>th</sup> Guam Legislature were potentially invalid under existing laws pertaining to the Open Government Law and its application to bills.

The question was raised due to an alleged failure to post proper notices on the Government of Guam Public Notice Website in accordance with Guam’s Open Government Law. There are no allegations made that the public notices were not provided in the other prescribed manners. The question posed pertains to a specific matter concerning specific facts.

### **Guam’s Open Government Law Does Not Invalidate Bills or Resolutions Certified by the Guam Legislature as Having Complied with Its Rules**

The Open Government Law provides that, with certain exceptions, every meeting of a public agency shall be open and public. 5 GCA § 8103 (a). The Legislature is a public agency when it is holding a daily session. 5 GCA § 8104 (a)(3). A committee of the Guam Legislature is a “public agency” when it is holding a hearing. 5 GCA § 8104 (a)(4).

A “meeting” is defined to be the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. 5 GCA § 8104 (b). Any public agency which holds a meeting required by statute, regulation or resolution must provide the public with notice of such meeting. 5 GCA § 8107. Such notice must be given two times. The first notice is given five (5) working days before the meeting, the second notice is given at least forty eight (48) hours prior to the start of the meeting. 5 GCA § 8107 (a). A “special meeting” of a public agency, that is, a meeting “not previously scheduled by statute, regulation, or resolution, or for which notice is not already provided for by law” also requires “five (5) working days public notice of such meeting, and a second notice at least forty-eight (48) hours, prior to the start of such meeting. 5 GCA § 8107 (b).

Public Notice means a publication by newspaper of general circulation or by radio and television which is reasonably calculated to provide notice of the facts it announces to the public at large, and by electronic publication on the Guam Public Notice Website. 5 GCA § 8104 (a)(5)(a). The Guam Public Notice Website is found in 5 GCA § 8107.1. This provision requires the Department of Administration to create the website to allow a public agency or entity to post any public notice information that the agency or entity is required to post under the statute. 5 GCA § 8107.1 (d)(1).

When a violation of the Open Government Law occurs or is threatened, any interested person may bring an action in the Superior Court for the purpose of stopping or preventing a violation or a threatened violation. 5 GCA §§ 8115 (a) and (c). “Any action taken at a meeting in

violation of any section of this chapter shall be void and of no effect.” 5 GCA § 8114. See also, *Sule v. Guam Board of Examiners for Dentistry*, 2011 Guam 5.

5 GCA §§ 8115 and 8114 would seem to be conclusive. In the instant matter if one believes that there has been an Open Government Law violation the matter would be brought to the Superior Court of Guam for resolution. This question, however, is not so simply answered since it would require the judicial branch of government to determine the validity of bills passed by the legislative branch of our government.

Under Section 1423b of the Organic Act, the Legislature has the authority to make its own rules of procedure. 48 USC § 1423b. See also *Calvo v. I Mina' Trentai Kuâttro Na Liheslaturan Guåhan*, 2018 Guam 6. The Standing Rules of the 36<sup>th</sup> Guam Legislature provided that, before final passage of legislation, a bill must be engrossed and enrolled. See Standing Rule 36<sup>th</sup> Guam Legislature § 6.04 (d) (6) and (7). The enrolling of a bill and attestation of that enrolled bill by the presiding officer represent the Legislature's final factual determination that a bill has validly passed. *Calvo, supra* at ¶ 11 (citations and quotations omitted). Each Guam Legislature controls its rules of procedure, and is the adjudicator of those procedures as a separate and independent branch of the Government of Guam. *Id.*

Under the Organic Act and Guam's tripartite system of government, the Legislature has the final say whether a bill validly passed through its enrollment and attestation process. *Id.* at ¶ 13. If the Court were to act as adjudicator of fact and find that past bills of the 36<sup>th</sup> Guam Legislature were not validly passed, the Court may well be usurping the legislative authority vested in the legislature under the Organic Act. *Id.*

In addition, the Supreme Court of Guam in *Calvo, supra*, recognized the principal of the political question doctrine. This doctrine “provides that a question will be considered nonjusticiable where, among other things, it is appropriate under our system of government of attributing finality to the action of the political departments...” (internal quotations and citations omitted). The nonjusticiability of a political question is primarily a function of the separation of powers. *Id.* The Court further stated that the Organic Act requires the application of the constitutional doctrine of separation of powers to government of Guam functions<sup>1</sup>. *Id.*, citing *Hamlet v. Charfauros*, 1999 Guam 18 ¶ 9.

Title 48 USC § 1423a of the Organic Act vests the legislative powers of the Government of Guam solely in the legislative branch. *Calvo, supra*. “[T]he determination of whether legislation has validly passed *in fact* is a question solely within the purview of the legislative branch.” *Id.* at ¶ 10. Here, notwithstanding a procedural law may have been broken, not only does the legislative *Speech or Debate Clause* provide to the legislators immunity from outside intrusion into their actions in discussing or passing legislation, but the Organic Act also provides to the Senators the power to certify that the actions taken in passing a bill or resolution are final,

---

<sup>1</sup> 48 U.S.C.A. § 1421a states that “[t]he government of Guam shall consist of three branches, executive, legislative, and judicial...”

valid and official acts of the Legislative Branch. 48 USC § 1423b. *Hamlet v. Charfauros*, 1999 Guam 18 ¶ 21.

The Question presented herein concerns the question of what effect, if any, would an alleged violation of Guam's Open Government Law by the Guam legislature have on the validity of bills passed during any session where such a violation is alleged to have occurred. In a prior case, the Supreme Court of Guam turned to Wisconsin law for guidance concerning the interpretation of Guam's Open Government Law. In *Joseph v. Guam Board of Allied Health*, 2015 Guam 4, our High Court found that the Supreme Court of Wisconsin case of *State Ex Rel. Buswell v. Tomah Area School District*, 732 N.W. 2d 804 (Wis. 2007), was instructive in the Court's examination of whether Guam should adopt the Wisconsin standard of reasonableness as to how specific a public entity should be when specifying the "business to be transacted" in the Notice of Hearing pertaining to a special meeting<sup>2</sup>. *Joseph, supra*, at ¶¶ 17-18. The Supreme Court of Guam adopted Wisconsin's reasonableness standard which required taking into account the circumstances of the case in determining whether the notice was sufficient. *Id.* at ¶ 21.

In *State ex Rel. Ozanne v. Fitzgerald*, 798 N.W. 2d 436 (Wis. 2011), the lower trial court enjoined the publication of a bill enacted by the legislature on the grounds that the legislature violated Wisconsin's Open Meetings Law. On the question of whether the Act passed by the legislature was invalid because certain notice provisions of the open meetings law were not followed, the Supreme Court of Wisconsin addressed the matter as follows:

It also is argued that the Act is invalid because the legislature did not follow certain notice provisions of the Open Meetings Law for the March 9, 2011 meeting of the joint committee on conference. It is argued that Wis. Stat. § 19.84(3) required 24 hours notice of that meeting and such notice was not given. It is undisputed that the legislature posted notices of the March 9, 2011 meeting of the joint committee on conference on three bulletin boards, approximately 1 hour and 50 minutes before the start of the meeting. In the posting of notice that was done, the legislature relied on its interpretation of its own rules of proceeding. The court declines to review the validity of the procedure used to give notice of the joint committee on conference. See *Stitt*, 114 Wis.2d at 361, 338 N.W.2d 684.<sup>3</sup> As the court has explained when legislation was challenged based on allegations that the legislature did not follow the relevant procedural statutes, "this court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments." *Id.* at 364, 338 N.W.2d 684. "[W]e will not intermeddle in what we view, in the absence of constitutional directives to the contrary, to be purely legislative concerns." *Id.* The court's holding in *Stitt* was grounded in separation of

---

<sup>2</sup>

<sup>3</sup> The Court was interpreting the notice provisions pertaining to special meetings found in 5 GCA §8108. *State of Wisconsin ex rel. Follette v. Stitt, et al.*, 114 Wis. 2d 358, 338 N.W.2d 684 (Wis. 1983).

powers principles, comity concepts and “the need for finality and certainty regarding the status of a statute.” *Id.* at 364–65, 338 N.W.2d 684.

*Ozanne*, 798 N.W. 2d 436, 440.

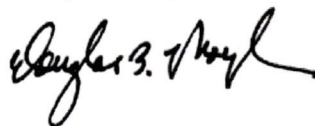
The holding of the *Ozanne* Court appears consistent with Guam’s position relating to the Separation of Powers doctrine as stated in *Calvo* above. Since the Supreme Court of Guam in interpreting Guam’s Open Government Law has previously relied on Wisconsin’s interpretation of their Open Meetings Law, it is reasonable to conclude that substantial weight should be given to other legal interpretations that Wisconsin provided for in interpreting their law, to include the *Ozanne* opinion.

In summary, in keeping with the Organic Act of Guam, which is a law above any locally passed statute, including the Open Government Law, a prior Guam Legislature cannot bind or restrain the rules or procedures that each Legislature adopts, including for each legislation or resolution certified as having been properly passed in that particular session of the Guam Legislature. Therefore, prior bills that became law that may *not* have complied with Guam’s Open Government Law, are not invalid. The attestation by the Legislative Secretary pursuant to the rules adopted by the Guam Legislature certify that the document being certified (bill or resolution) has complied with the rules and procedures that the Senators chose to follow in performing their official act of approving that bill or resolution.

### Conclusion

All documents (bills, resolutions, etc.) previously acted upon by the 36<sup>th</sup> Guam Legislature, certified by the Legislative Secretary and transmitted are presumed to be valid. This includes bills having been certified by the Legislative Secretary and transmitted to the Governor and subsequently passed into law. As part of the legislative procedure, the Legislative Secretary provides the necessary and official certification that the bill or resolution transmitted is the official action of the Senators that has met all Legislative procedures that the Senators wishes to apply in the final act of transmitting that bill, resolution or other document. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "Douglas B. Moylan". The signature is fluid and cursive, with the first name "Douglas" being more prominent.

**Douglas B. Moylan**  
Attorney General of Guam