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OPINION MEMORANDUM

Ref. DOA 18-0692

To: Director, Department of Administration

From: Attorney General of Guam

Subject: Organicity of Freeze on Salary Increments and Merit Bonuses in Public Law 34-116, the General Appropriations Act of 2019

This Office is in receipt of your November 29, 2018 request for legal guidance on the freeze of salary increments, merit bonuses and upward pay adjustments in Chapter XIII, Part I, Section 3 of Public Law 34-116.

QUESTIONS/ANSWERS

Does the Legislature's freeze of salary increments and merit bonuses in Chapter XIII, Part I, Section 3 of Public Law 34-116 violate the doctrine of separation of powers? The answer is NO.

Does the Legislature's freeze on upward pay adjustments in Chapter XIII, Part I, Section 3 of Public Law 34-116 violate the doctrine of separation of powers? This depends on the type of upward pay adjustment as described herein. See discussion.

DISCUSSION

Chapter XIII, Part I, Section 3 of P.L. 34-116 imposes a legislative prohibition on increments, promotions, reclassifications, merit bonuses, and any other upward pay adjustments for all government employees during the current Fiscal Year. Section 3 provides:

Salary Increments Freeze. Notwithstanding any other provision of law, rule or regulation, there *shall* be a freeze on all salary increments, promotions, reclassifications, merit bonuses, and any other upward pay adjustment, which *shall* take effect October 1, 2018 and *shall* remain in effect through September 30, 2019; and *shall* be applicable to all positions in the Executive, Legislative, and Judicial branches, to include all government of Guam departments and agencies, public corporation, bureaus, instrumentalities, entities, and sub-entities. Upon the lifting of such salary increments and merit

bonus freeze, the payment of increments or merit bonuses *shall* not be retroactively applied and *shall* only be prospectively paid.

Pub. L. No. 34-116: XIII:I:3.

The Organic Act requires the salaries of government employees be established by law. “The *salaries* and travel allowances of the Governor, Lieutenant Governor, the heads of the executive departments, other officers and employees of the government of Guam, and the members of the legislature, shall be paid by the government of Guam at rates prescribed by the laws of Guam.” 48 U.S.C. § 1421d (emphasis added). By law, therefore, the Legislature is empowered to set the compensation of Government of Guam employees. (4 GCA Chapter 6, Article 2. Salary increments and merit bonuses are provided therein at 4 GCA §§ 6202 and 6203, respectively.)

Moreover, the authority of the Legislature to change terms of compensation by statute has been recognized by the Supreme Court of Guam which held that the Legislature’s authority to set the compensation of government employees stems from its plenary power of appropriation. *See In re Request of I Mina’ Trentai Dos Na Liheslaturan Guåhan Relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund*, 2014 Guam 15 ¶ 42 (“[T]he Legislature’s power of appropriation includes the power to impose conditions upon the expenditure of appropriated funds. Accordingly, we have held that the Legislature may designate positions and salaries within the government.”) (citations and internal quotation marks omitted) (emphasis added).

The compensation of salary increments and merit bonuses is a power solely vested in the Legislature. This power is not limited by the Governor’s Organic authority. In exercising its authority, the Legislature may suspend or freeze such benefits in its plenary discretion. Accordingly, the freeze of salary increments and merit bonuses by the Legislature does not infringe on the Governor’s Organic Act authority to supervise and control the executive branch.

With regard to “other upward pay adjustments,” the Legislature does not define this term. The most common personnel actions that result in an increase in compensation are promotions, reclassifications or desk audits, and detail or acting appointments. We have, heretofore, opined that legislative limitations on promotional hiring is inorganic because it impinges on the Governor’s Organic Act authority to supervise and manage the government of Guam. This same analysis needs to be applied to detail and acting appointments, which most often occur within mid-management and supervisory level positions in agencies as a result of retirements, resignations and temporary absences. This vacuum is normally filled immediately through either detail or acting appointments. Such appointments are critical to the day-to-day operation of government. For example, law enforcement agencies depend often on detail appointments to fill the temporary gaps created by large numbers of classified employees being deployed. Furthermore, a detail or acting appointment is also an immediate stop-gap measure to temporarily fill critical vacancies. As such this type of a personnel action that results in an upward pay adjustment for the person temporarily detailed or on acting duty is a critical part of government operations, and therefore, within the Governor’s Organic Act general supervision and control authority in 48 U.S.C. § 1422. A freeze by the Legislature on “upward pay adjustments” affecting detail or acting appointments violates this authority of the Governor.

The same does not, however, apply to an upward pay adjustment through a reclassification or desk audit, which is a review of an employee's job-related duties in comparison to the employee's job description to determine whether the employee is being paid appropriately. It can result in an upward (and sometimes downward) pay adjustment in line with audit findings. It is a determination of compensation and salary related to actual work performed. As such, as opined above, the Legislature is within its Organic authority to limit government compensation.

Finally, this opinion recognizes the lump sum nature of the Fiscal Year 2019 General Appropriations Act. This form of appropriations affords the Governor great flexibility in managing the operations of the entire Government of Guam under his Organic Act authority.

CONCLUSION:

For the foregoing reasons, we opine that the freeze of salary increments and merit bonuses in Public Law 34-116:XIII:I:3, and an upward pay adjustment resulting from a reclassification or desk audit, all of which involve the concept of salary and compensation, does not violate the separation of powers doctrine and therefore is organic and enforceable.

We further opine that prohibitions on detail or acting appointments to fill vacancies violates the separation of powers doctrine and therefore is inorganic and unenforceable.



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Attorney General

cc: Governor of Guam
Acting Speaker, 34th Guam Legislature