


MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
TWENTY-EIGHTTH GUAM LEGISLATURE
2005 (FIRST) Regular Session

Bill No. 133 (re)

Introduced by:

A. B. Palacios, Sr. 

AN ACT TO REPEAL § 30102 AND TO REPEAL AND REENACT §§ 30103 & 5121(b) OF TITLE 5, TO AMEND § 2103(b) OF TITLE 3, AND TO AMEND §§ 8112 AND 14109 OF TITLE 12, ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO CLARIFYING THE STATUS OF THE ATTORNEY GENERAL OF GUAM AS THE GOVERNMENT'S CHIEF LEGAL OFFICER IN ORDER TO PROTECT THE PUBLIC INTEREST, UNIFY LEGAL POLICY AND TO REDUCE LEGAL EXPENSES FOR THE PEOPLE OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1.** Section 30102 of Chapter 30, Division 3 of Title 5 of the Guam Code
2 Annotated is hereby *repealed*.

3 **Section 2.** Section 30103 of Chapter 30, Division 3 of Title 5 of the Guam Code
4 Annotated is hereby *repealed and reenacted* to read as follows:

5 **"Section 30103. Powers of Attorney General.**

6 (a) **Legislative Intent.** In 1998 and 1999 both Congress and *I*
7 *Liheslaturan Guåhan* chose to transform the position of Attorney General of
8 Guam from an appointed position to that of an elected office. The Attorney

1 General became the chief legal officer of the Government of Guam in 1998.
2 On January 6, 2003 the Attorney General became elected and began exercising
3 all the powers and duties afforded and required of the post.

4 Disputes shortly arose thereafter surrounding whether Congress and *I*
5 *Liheslaturan Guåhan* intended that the Attorney General preside over the
6 autonomous agencies.

7 *I Liheslaturan Guåhan* finds that the People of Guam have duly elected
8 and chosen their attorney, and that is through the elected office of Attorney
9 General. The Attorney General is the attorney who has a right and obligation
10 to provide legal services for all of the Government of Guam, including all
11 autonomous agencies and other instrumentalities of the Government of
12 Guam. The duty of the Attorney General includes to protect the public
13 interest, to provide uniform legal policy and to reduce legal expenses for the
14 entire Government of Guam, which include all autonomous agencies and its
15 instrumentalities.

16 It is the intent of *I Liheslaturan Guåhan* and this legislation to make clear
17 that the Attorney General control all legal services throughout the
18 Government of Guam, consistent with the Office's authority as the chief legal
19 officer status, and that all laws inconsistent with this intent be superceded
20 and changed. This Section shall be construed so as to fulfill the intent of *I*
21 *Liheslaturan Guåhan* that the elected Attorney General control and supervise
22 all legal policy throughout all parts of the Government of Guam.

23 *I Liheslaturan Guåhan* finds that substantial Government resources are
24 being depleted and wasted in litigating the issue of whether private counsel

1 may be retained by Government of Guam autonomous agencies and
2 instrumentalities. It is in the best interests of our Community that *I*
3 *Liheslaturan Guåhan* eliminate all doubt as to the People of Guam's intent that
4 the Attorney General serve as the People's attorneys throughout all parts of
5 this Government.

6 **(b) Common Law Powers.** Notwithstanding any other provision of
7 law, the Attorney General shall have, in addition to the powers expressly
8 conferred upon him by this Chapter and other laws, those powers
9 attributable to the Attorney General at the common law, which include, but
10 are not limited to, the right to bring suit to challenge laws which the Attorney
11 General believes to be unconstitutional and to bring action on behalf of Guam
12 representing the citizens as a whole for redress of grievances which the
13 citizens individually cannot achieve.

14 **(c) Chief Legal Officer.** Notwithstanding any other provision of law,
15 the Attorney General shall have cognizance of all legal matters, involving the
16 government of Guam, its agencies, including autonomous agencies;
17 government instrumentalities; public corporations; and the Mayors Council.

18 **(d) Retained Counsel.**

19 **(i) Attorney General's Office.** Notwithstanding any other
20 provision of law, the Attorney General may retain attorneys on
21 contract and not as employees, for the propose of handling projects,
22 investigations or cases, or to handle temporary overloads in the Office,
23 or because of their particular talents or expertise in a particular matter.
24 Said attorneys shall be designated as Special Assistant Attorneys

1 General. All such attorneys shall be subject to the supervision of the
2 Attorney General, or a designee.

3 **(ii) Other Agencies and Instrumentalities.** Notwithstanding
4 any other provision of law, the Attorney General shall provide all legal
5 services to all autonomous agencies, autonomous public corporations
6 and instrumentalities of the Government of Guam, including, but not
7 limited to, the Department of Education, the Guam Economic
8 Development and Commerce Authority, the Guam Election
9 Commission, the Consolidated Commission on Utilities, the Guam
10 Power Authority, the Guam Waterworks Authority, the University of
11 Guam, the Guam Community College and the Guam Visitors Bureau.
12 No autonomous agency, public corporation or other instrumentality of
13 the Government of Guam shall be permitted to retain legal counsel,
14 *except* through the Office of the Attorney General and under the
15 Attorney General's direct supervision and control. The autonomous
16 agency, public corporation or instrumentality of the Government of
17 Guam shall reimburse the Office of the Attorney General for such legal
18 services provided from funds of said agency or autonomous public
19 corporation. Said reimbursement shall be deposited in the General
20 Fund and credited to the Office of the Attorney General. In addition,
21 and notwithstanding any other law to the contrary, any agency,
22 including autonomous agency, or public corporation of the
23 government of Guam may advance funds to the Office of the Attorney
24 General for services and incidental travel to be rendered by said office

1 on behalf of said agency or autonomous public corporation.”

2 **Section 3. Procurement Law Revision.** Section 5121(b) of Part C, Article 2, Chapter
3 5, Division 1 of Title 5 of the Guam Code Annotated is hereby *repealed and reenacted* to read
4 as follows:

5 **"(b) Approval of Contracts for Legal Services.** No contract, including any
6 small purchase or emergency procurements for the services of legal counsel in the
7 Government of Guam, including all autonomous agencies, public corporations and
8 government instrumentalities, inclusive of the Department of Education, the Guam
9 Economic Development and Commerce Authority, the Guam Election Commission,
10 the Consolidated Commission on Utilities, the Guam Power Authority, the Guam
11 Waterworks Authority, the University of Guam, the Guam Community College and
12 the Guam Visitors Bureau, shall be executed without the approval of the Attorney
13 General, who may withhold approval for any reason the Attorney General deems
14 appropriate. All negotiations for legal services by any entity of the Government of
15 Guam must include the Attorney General, or his designee's, participation. Any
16 contract executed in violation of this Section shall be null and void, and any
17 payments made to the lawyer or law firm shall be reimburseable to the Government
18 of Guam by the lawyer and law firm, in addition to by the government officials who
19 authorized the procurement and payment for legal services. Equitable legal
20 doctrines, such as quantum meruit, estoppel or waiver, shall not be used as a
21 defense to violations of this Subsection."

22 **Section 4.** Section 2103(b) of Chapter 2 of Title 3 of the Guam Code Annotated is
23 hereby amended to read as follows:

24 "(b) The Commission shall designate such subordinate officers and
25 employees as may be necessary for the efficient performance of its functions and
26 duties, each of whom, if not already employed by the government, shall receive a

1 salary to be determined in accordance with the laws of Guam.

2 The Attorney General, or his designee, shall represent the Commission. In
3 the event of any conflicts the conflicted attorney shall step away and the next most
4 senior attorney in the Office of the Attorney General, or that person's designee, shall
5 represent the Commission.

6 ~~The Board may retain an attorney who shall be admitted to practice before~~
7 ~~the courts of Guam, who shall advise the Board and its executive officer on all legal~~
8 ~~matters pertaining to the Commission. The designated counsel shall represent the~~
9 ~~Commission in litigation in which the Commission is interested or involved. The~~
10 ~~terms, conditions and compensation of employment of any such attorney shall be~~
11 ~~determined by the Board, and the attorney shall serve at the pleasure of the Board."~~

12 **Section 5.** Section 8112 of Article 1, Chapter 8 of Title 12 of the Guam Code
13 Annotated is hereby *amended* to read as follows:

14 **"Section 8112. Other Officers.** (a) The Board may also appoint a Secretary,
15 a Treasurer, and a Comptroller ~~and an Attorney~~, who shall serve at the
16 pleasure of the Board and whose duties and compensation shall be fixed by
17 the Board. The Board may appoint one or more assistants to any such office.
18 Any of such offices may be consolidated in one person.

19 (b) The Secretary shall have charge of all records and minutes of the
20 Board.

21 (c) The Treasurer shall have custody of all moneys of the Authority
22 and shall pay out such money only in accordance with the direction of the
23 Board or as provided in connection with any indebtedness incurred pursuant
24 to Article 2 of this Chapter. The Board shall however appoint the Director of
25 Administration of Guam or any agent designated by him as its trustee for the
26 payment of bonds issued by it and for any related purposes as the Board may

1 provide.

2 (d) The Board shall use the services of the Attorney General for all
3 legal work it requires. ~~The Attorney, who must have been admitted to~~
4 ~~practice before the District Court of Guam, shall advise the Board and the~~
5 ~~General Manager on all legal matters to which the Authority is a party or in~~
6 ~~which the Authority is legally interested and may represent the Authority in~~
7 ~~connection with legal matters before the Legislature, boards and other~~
8 ~~agencies of the Territory. The Attorney General shall represent the Authority~~
9 ~~in litigation concerning the affairs of the Authority, provided that he may~~
10 ~~delegate this duty to the Attorney of the Authority, with respect to any such~~
11 ~~litigation."~~

12 **Section 6.** Section 14109 of Article 1, Chapter 14 of Title 12 of the Guam Code
13 Annotated is hereby *amended* to read as follows:

14 **"Section 14109. Other Officers.** (a) The Board may also appoint a Secretary,
15 and a Treasurer,~~and an Attorney,~~ who all shall serve at the pleasure of the
16 Board and whose duties and compensation shall be fixed by the Board. The
17 Board may appoint one or more assistants to any such office. Any of such
18 offices may be consolidated in one person.

19 (b) The Secretary shall have charge of all records and minutes of the
20 Board.

21 (c) The Board shall use the services of the Attorney General for all legal
22 work it requires. ~~The Attorney, who must have been admitted to practice in~~
23 ~~Guam, shall advise the Board and the General Manager on all legal matters to~~
24 ~~which the Authority is a party or in which the Authority is legally interested~~
25 ~~and may represent the Authority in connection with legal matters before the~~
26 ~~Legislature, boards and other agencies of the Territory. The Attorney General~~

1 ~~shall represent the Authority in litigation concerning the affairs of the~~
2 ~~Authority provided that he may delegate this duty to the Attorney of the~~
3 ~~Authority, with respect to any such litigation.”~~

4 **Section 7. Severability.** *If* any provision of this Law or its application to any person
5 or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect
6 other provisions or applications of this Law which can be given effect without the invalid
7 provisions or application, and to this end the provisions of this Law are severable.