



GUAM ELECTION COMMISSION

Kumision Ileksion Guåhan

Your VOTE is your voice. ✓ BOTA ya un ma kuenta.



February 14, 2014

32-14-1283
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 2.14.14
Time 9:54 am
Received by [Signature]

Honorable Judi T. Won Pat, Ed.D.
Speaker and Chairperson, Committee on
Education, Public Library and Women's Affairs
I Mina'Trentai Dos Na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

Hafa Adai Speaker Won Pat:

The Guam Election Commission Legal Counsel rendered a legal opinion (enclosed) on the Legislative Submission received on February 4, 2014. The legal opinion will be acted upon at the next Guam Election Commission meeting on Thursday, February 27, 2014, at 5:31 p.m. at the GEC Conference Room, Hagatna. Please let us know if you require additional information. Si Yu'os ma'ase'.

Sinsaramente,

MARIA PANGELINAN
Executive Director

cc: Honorable Rory J. Respicio, Chairman, Committee on Rules, Federal, Foreign & Micronesian Affairs, Human & Natural Resources, and Election Reform

FEB 14 2014 10:00

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Chairman
Republican

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Vice Chairperson
Democrat

Dot H. Chargualaf
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Democrat

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Johnny P. Taitano
Member
Republican

Jeffrey A. Cook, Esq.
Legal Counsel

Maria I.D. Pangelinan
Ex Officio Secretary
Executive Director

1283

F. RANDALL CUNLIFFE
JEFFREY A. COOK

JEFFREY A. MOOTS

LAW OFFICES

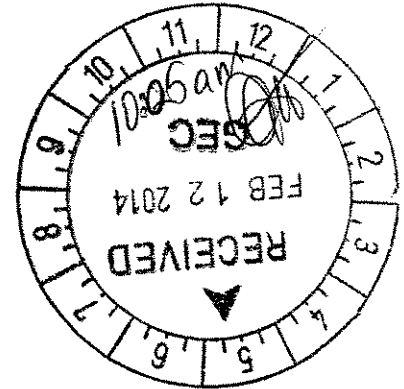
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MEMORANDUM

February 11, 2014



TO: Maria Pangelinan, Executive Director
GUAM ELECTION COMMISSION

FR: Jeffrey A. Cook, Esq.
CUNLIFFE & COOK

RE: **LEGISLATIVE SUBMISSION OF REFERENDUM RELATED TO MEDICAL USE OF CANNABIS, Bill 215-32**

On February 4, 2014, the Speaker of the 32nd Guam Legislature had delivered to Guam Election Commission ("GEC") Substitute Bill 215-32. Counsel has been asked to review this bill which directs GEC to place the issue before the voters at the 2014 General Election. For the reasons set forth herein, counsel's advice is to seek declaratory relief that the action of the Guam Legislature is inorganic, and therefore, it would be a violation of law for the GEC to proceed as the bill directs it to.

The Organic Act of Guam, 48 USC 1421 et. seq., is the equivalent of Guam's constitution. It controls the executive, legislative and judicial branches of the Government of Guam. §1422a (a) states, "The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam." The members of the Legislature are the elected representatives of the people of Guam, but they are not the people of Guam. There is no provision in the Organic Act for a legislative submission of a bill to the voters, except for the specific provision in §1422a (b) permitting two thirds of the members to put a referendum to the voters to recall certain government officials. This is true whatever it is called, i.e. initiative, referendum, or legislative submission, as those, are defined in 3 GCA §16102.

The Organic Act also clearly states "No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, ..." 48 USC 1423b. The Organic Act also sets forth the methodology for approval of bills. 48 USC 1423i states, "Every bill passed by the Legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor."

Said section goes on to describe such a bill becoming law either by the signature of the Governor, or an override of a Governor's veto by the Legislature. There is no provision in this section of the Organic Act that permits a bill passed by the Legislature to be put to the voters for approval.

Therefore, except for the initiative and referendum process allowed for by the Organic Act, which is an action of the people, the Guam Legislature cannot pass the responsibility of passing a law to the voters. In Stoutenburgh v. Hennick, 129 U.S. 141, 9 Sup. Ct. 256, 32 L.E.D. 637, the United States Supreme Court stated that "...the rule is fundamental that the power to make laws cannot be delegated,...". In this particular case the court was discussing delegation of law making power to municipal corporations that were created by the State's constitution. There is no authority in the Organic Act to so delegate law making authority except by the people by the initiative and referendum process.

Counsel is only aware of one instance where the Guam Legislature passed a law pertaining to placing an initiative on the ballot. In 1995 PL 23-01 placed the initiative to reduce the size of the legislature on the ballot. But prior to passage of PL 23-01, 7000 voters of Guam had signed initiative petitions for the matter to be put on the ballot. So the initiative would have been on the ballot without the legislation. PL 23-01 dealt with when the measure would be presented to the voters, and what votes would be counted in determining the results on the measure.

Counsel's advice to the GEC is to advise the Legislature and the Governor of the concerns raised herein. If the Legislature determines it disagrees with counsel and continues to direct GEC to proceed under Bill 215-32, counsel recommends that GEC promptly seek declaratory relief from the Superior Court of Guam as to whether Bill 215-32 violates the Organic Act. As the GEC is very well aware there are considerable costs in putting a measure on the ballot, especially the education pamphlet required by Chapter 16, 3 GCA. Therefore, this matter should be resolved as soon as possible to make sure public funds are not spent by GEC to proceed with a process that violates the Organic Act.

Respectfully submitted this 11th day of February, 2014.

CUNLIFFE & COOK



JEFFREY A. COOK