

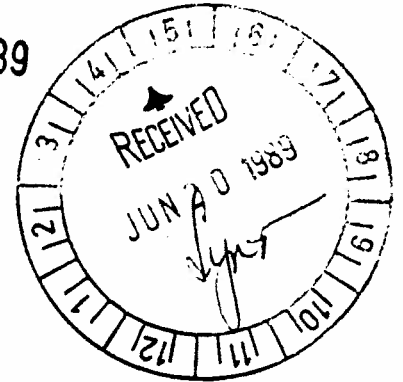


Territory of Guam

Territorio Guam

OFFICE OF THE GOVERNOR
 UFSINAN I MAGA'LAHI
 AGANA, GUAM 96910 U.S.A.

Recondy Seny JUN 20 1989



The Honorable Joe T. San Agustin
 Speaker
 Twentieth Guam Legislature
 Agana, Guam

Dear Mr. Speaker:

Transmitted herewith is Substitute Bill 299 which I have signed into law as Public Law 20-31.

I have signed this measure because of this administration's continuing commitment to the independence of the Public Utility Commission. In acting, I had two reservations, first, expansion of the government is contrary to this administration's commitment to an efficient, smaller, reorganized government. However, the Public Utility Commission has had before it several important matters affecting provision of basic services to the people such as an improved power system and a more modern telephone system. Action of these essential issues has been excruciatingly slow, jeopardizing the delivery of services in the future. Changing the status of the Commission to a fully operational, autonomous entity should streamline its consideration of the various proposals from Guam's public utilities.

My second reservation results from a serious technical defect of Section 5 of the measure. Section 5 amends 12 GCA Section 12001 regarding the legal standing of the Commission to make it "a public corporation and autonomous instrumentality" of the government. The amendment apparently was intended to affect only the opening paragraph of the section. However, the amendment results in the deletion of Subsections (a) through (j).

When the amendatory act purports to set out the original act or section as amended, all matter in the act or section that is omitted in the amendment is considered repealed.
Sutherland Statutory Construction, Section 22.32

Although the anomaly created by Section 5 might be corrected

The Honorable Joe T. San Agustin
Page Two

through legal gymnastics, the defect in Section 5 could be easily corrected through remedial legislation. I request that the Legislature act expeditiously to correct this problem.

Sincerely,

A handwritten signature in black ink, appearing to read 'FRANK F. BLAS', with a horizontal line extending to the right.

FRANK F. BLAS
Governor of Guam
Acting

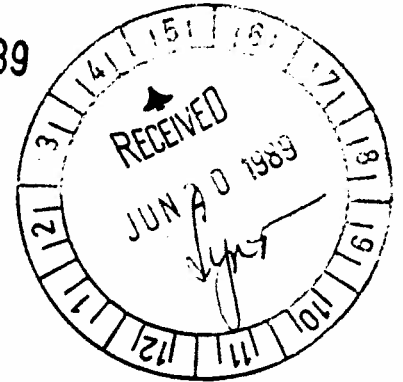


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The Honorable Joe T. San Agustin
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I have signed this measure because of this administration's continuing commitment to the independence of the Public Utility Commission. In acting, I had two reservations, first, expansion of the government is contrary to this administration's commitment to an efficient, smaller, reorganized government. However, the Public Utility Commission has had before it several important matters affecting provision of basic services to the people such as an improved power system and a more modern telephone system. Action of these essential issues has been excruciatingly slow, jeopardizing the delivery of services in the future. Changing the status of the Commission to a fully operational, autonomous entity should streamline its consideration of the various proposals from Guam's public utilities.

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When the amendatory act purports to set out the original act or section as amended, all matter in the act or section that is omitted in the amendment is considered repealed.
Sutherland Statutory Construction, Section 22.32

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The Honorable Joe T. San Agustin
Page Two

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Sincerely,

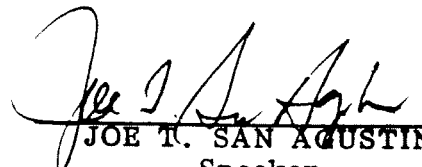
A handwritten signature in black ink, appearing to read "FRANK F. BLAS", with a horizontal line extending to the right.

FRANK F. BLAS
Governor of Guam
Acting

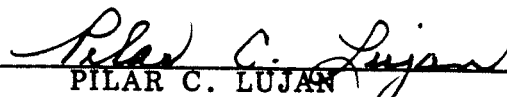
TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Substitute Bill No. 299 (COR), "AN ACT TO REPEAL AND REENACT SECTIONS 21151 AND 21154, AND TO AMEND SECTION 21153, ALL OF THE GOVERNMENT CODE, TO REPEAL AND REENACT SECTION 12002, AND TO AMEND §§12001 AND 12004, ALL OF TITLE 12, GUAM CODE ANNOTATED, TO PERMIT APPEALS TO THE PUBLIC UTILITIES COMMISSION" was on the 1st day of June, 1989, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker


Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 8th day of June, 1989,
at 10:30 o'clock A.m.


Assistant Staff Officer
Governor's Office

APPROVED:


FRANK F. BLAS
Governor of Guam
Acting

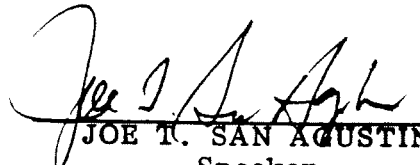
Date: June 20, 1989

Public Law No. 20-31


TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR


This is to certify that Substitute Bill No. 299 (COR), "AN ACT TO REPEAL AND REENACT SECTIONS 21151 AND 21154, AND TO AMEND SECTION 21153, ALL OF THE GOVERNMENT CODE, TO REPEAL AND REENACT SECTION 12002, AND TO AMEND §§12001 AND 12004, ALL OF TITLE 12, GUAM CODE ANNOTATED, TO PERMIT APPEALS TO THE PUBLIC UTILITIES COMMISSION" was on the 1st day of June, 1989, duly and regularly passed.


JOE T. SAN AGUSTIN
Speaker


Attested:


PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 8th day of June, 1989,
at 10:30 o'clock A.m.


Assistant Staff Officer
Governor's Office

APPROVED:


FRANK F. BLAS
Governor of Guam
Acting

Date: June 20, 1989

Public Law No. 20-31

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 299 (COR)
As Substituted by the
Committee on Energy, Utilities
and Consumer Protection

Introduced by:

D. Parkinson
T. S. Nelson
J. P. Aguon

E. P. Arriola
J. G. Bamba
M. Z. Bordallo
D. F. Brooks
H. D. Dierking
E. R. Duenas
E. M. Espaldon
C. T. C. Gutierrez
F. C. Lujan
G. Mailloux
M. D. A. Manibusan
F. J. A. Quitugua
E. D. Reyes
M. C. Ruth
J. T. San Agustin
F. R. Santos
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO REPEAL AND REENACT
SECTIONS 21151 AND 21154, AND TO AMEND
SECTION 21153, ALL OF THE GOVERNMENT
CODE, TO REPEAL AND REENACT SECTION
12002, AND TO AMEND §§12001 AND 12004,
ALL OF TITLE 12, GUAM CODE ANNOTATED,
TO PERMIT APPEALS TO THE PUBLIC
UTILITIES COMMISSION.

- 1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. Subsection (3) of Section 21151 of the Government Code of
3 Guam is repealed and reenacted to read:
4 "Commission means the Public Utilities Commission."
5 Section 2. Section 21154 of the Government Code is repealed and
6 reenacted to read:
7 "The Commission shall promulgate rules and regulations for

1 entertaining the appeals provided by Section 21153."

2 Section 3. Section 21153 of the Government Code is amended to read:

3 "Section 21153. Appeal From Agency Action. "(a) If an agency
4 statement is adverse to a customer, the customer may within thirty
5 (30) days of the issuance of the Agency statement take appeal to the
6 Commission which shall have jurisdiction to resolve the dispute.
7 During the pendency of said appeal, no action adverse to the customer
8 with respect to the disputed amount may be undertaken. The taking
9 of appeal pursuant to this Section shall operate as a stay. The
10 deposit shall remain in escrow until resolution of the appeal."

11 "(b) If the Agency's determination is reversed by the
12 Commission, then the Commission shall award reasonable attorney's fees
13 to the customer and costs."

14 Section 4. Section 12002 of Title 12 Guam Code Annotated is ~~repealed~~
15 and reenacted to read:

16 "Section 12002. Operation of Commission.

17 (a) The Commission shall retain on an as needed basis those
18 professional services required by the Commission in the performance of
19 its duties. The Commission may employ administrative staff personnel
20 for the conduct of Commission business.

21 (b) The Commission may also appoint an attorney, who shall
22 serve at the pleasure of the Commission and whose duties and
23 compensation shall be fixed by the Commission. The attorney, who
24 must have been admitted to practice before the District Court of Guam,
25 shall advise the Commission on all legal matters to which the
26 Commission is legally interested and may represent the Commission in
27 connection with legal matters before the Legislature, Boards and other
28 agencies of the Territory. The Attorney General of Guam shall
29 represent the Commission in litigation concerning the affairs of the
30 Commission, provided that he or she may delegate this duty to the
31 attorney of the Commission with respect to any such litigation. The
32 Commission is authorized to establish by rule or order that each public
33 utility regulated under this Chapter shall be assessed the costs

1 incurred by the Commission for professional services rendered by the
2 attorney."

3 Section 5. §12001 of Title 12, Guam Code Annotated, is amended to
4 read:

5 "Section 12001. Public Utilities Commission: Number,
6 Appointment of Commissioners.

7 There shall be within, and a public corporation and autonomous
8 instrumentality of, the Government of Guam, a Public Utilities
9 Commission composed of seven (7) members to be called Commissioners,
10 who shall be selected as follows:"

11 Section 6. Section 12004 of Title 12, Guam Code Annotated, is hereby
12 amended by adding at the end thereof:

13 "The Commission shall have the power to enter into contracts and
14 execute all instruments necessary or convenient in the exercise of its
15 powers, adopt a seal, and sue or be sued in its own corporate name."

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 299

Date: 6/1/89

Resolution No. _____

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
J. P. Aguon	✓			
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
C. T. C. Gutierrez	✓			
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth			✓	
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka				✓
A. R. Unpingco			✓	

18

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1

SENATOR DON PARKINSON

MAJORITY LEADER
20th GUAM LEGISLATURE

CHAIRMAN, COMMITTEE ON ENERGY,
UTILITIES & CONSUMER PROTECTION

163 CHALAN SANTO PAPA STREET
AGANA, GUAM 96910

May 23, 1989

Honorable Joe T. San Agustin
Speaker, 20th Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Energy, Utilities and Consumer Protection wishes to report out its findings on BILL NO. 299(COR): AN ACT AMENDING SECTIONS 21151 AND 21154 OF THE GOVERNMENT CODE, AND SECTION 12002 OF CHAPTER 12, TITLE 12 GUAM CODE ANNOTATED, RELATIVE TO THE PUBLIC UTILITIES COMMISSION.

TO PASS: _____ -10- _____

NOT TO PASS: _____ -0- _____

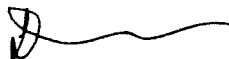
ABSTENTIONS: _____ -0- _____

REPORT OUT ONLY: _____ -2- _____

OFF-ISLAND: _____ -1- _____

A copy of the Committee Report and all pertinent documents are attached for your information.

Sincerely,



Senator Don Parkinson
Chairman, Committee on
Energy, Utilities and
Consumer Protection

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**COMMITTEE ON ENERGY, UTILITIES AND
CONSUMER PROTECTION**

VOTING SHEET ON:

**BILL NO. 299(COR): AN ACT AMENDING SECTIONS 21151
AND 21154 OF THE GOVERNMENT CODE AND SECTION 12002 OF
CHAPTER 12, TITLE 12 GUAM CODE ANNOTATED, RELATIVE TO THE
PUBLIC UTILITIES COMMISSION.**

<u>COMMITTEE MEMBERS:</u>	<u>INITIAL</u>	<u>TO PASS:</u>	<u>NOT TO PASS:</u>	<u>REPORT OUT:</u>
Sen. Don Parkinson	<i>DP</i>	✓		
Sen. Herminia Dierking	<i>HD</i>	✓		
Sen. George Bamba	<i>GB</i>	✓		
Sen. Madeleine Bordallo	<i>MB</i>	✓		
Sen. Doris Brooks				✓ <i>DRB</i>
Sen. Gordon Mailloux	<i>GM</i>	✓		
Sen. Marilyn Manibusan	<i>MM</i>	✓		
Sen. Ted Nelson	<i>TN</i>	✓		
Sen. Franklin Quitugua	<i>FQ</i>	✓		
Sen. Martha Ruth	<i>MR</i>	✓ <i>5/5/89</i>		
Sen. Frank Santos	<i>FS</i>			<i>no mark-up</i>
Sen. Antonio Unpingco	<i>AU</i>			✓ <i>6-15-89</i>
Spkr. Joe T. San Agustin	<i>JS</i>	✓		

jla(20-32/voting.doc)

**REPORT OF THE COMMITTEE ON ENERGY,
UTILITIES AND CONSUMER PROTECTION ON
BILL NO. 299(COR): AN ACT AMENDING SECTIONS
21151 AND 21154 OF THE GOVERNMENT CODE, AND
SECTION 12002 OF CHAPTER 12, TITLE 12 GUAM CODE
ANNOTATED, RELATIVE TO THE PUBLIC UTILITIES
COMMISSION.**

PREFACE

The Committee on Energy, Utilities and Consumer Protection conducted a public hearing on Wednesday, April 26, 1989 at 10:00 a.m. in the Legislative Session Hall on BILL NO. 299(COR): AN ACT AMENDING SECTIONS 21151 AND 21154 OF THE GOVERNMENT CODE, AND SECTION 12002 OF CHAPTER 12 GUAM CODE ANNOTATED, RELATIVE TO THE PUBLIC UTILITIES COMMISSION. Committee Members present at the public hearing were: Senator Don Parkinson, Chairman; Senator Nelson, Senator Ruth, Senator Quitugua and Senator Brooks.

TESTIMONY

Present at the public hearing on behalf of the Public Utilities Commission (PUC) was Mr. Joseph Duenas, Chairman of the PUC. Mr. Duenas verbally testified and submitted a written testimony labeled Exhibit 'A'. Mr. Duenas testified in favor of Bill No. 299, however, with the Department of Interior's approval, the Public Utilities Commission should be established as an appeal body to which consumers who have a billing disagreement with one of the utilities may consult the PUC. In essence the PUC should become a Public Corporation and autonomous instrumentality of the Government of Guam. The main thrust of the amendment to PUC's enabling Legislation is to allow consumer complaints to be heard by the PUC and to put the PUC on an equal standing with the utilities which is charged with regulating. Presently, consumers with billing disagreements with a utility must appeal through the Superior Court of Guam. Additionally, the Bill proposes to allow the PUC to appoint an attorney to provide the PUC with legal services as provided by other agencies. The PUC desires the ability to hire its own attorney, in order that they may fully carry out its role and duties as a regulatory body, with oversight over utilities and without any conflicts, arising if represented by the Attorney General, who also represents the Government of Guam.

Written testimony was submitted after the public hearing from Mr. Jesus Maanao, Acting Director, Office of Suruhanu. This testimony is labeled Exhibit 'B'. Mr. Maanao stated that if Bill 299 is passed, it would duplicate Public Law 14-99, as further amended by Public Law 15-83, which created the Office of the Suruhanu and gave it the responsibility to investigate and resolve individual problems citizens may have with their government; and, ultimately hold a respective department or agency accountable for the solution of the problem. According to Mr. Maanao, the Office of the Suruhanu is to reduce and untangle red tape and bureaucracy in government. Funding has been provided for its staff and other operating expenses, therefore, additional public funds to implement Bill 299 would duplicate costs for what amounts to the same function. PUC should be kept as a regulatory Commission and the Office of the Suruhanu should be allowed to continue to provide complaints service to the people of Guam. Mr. Maanao was against PUC becoming a Public Corporation and an autonomous instrumentality of the Government of Guam.

Written testimony was submitted after the public hearing by Attorney Harry M. Boertzel, Public Utilities Commission Legal Counsel. This testimony is labeled Exhibit 'E' and is in response to Mr. Jesus Maanao's, letter dated April 27, 1989 and labeled "Exhibit 'B'". Attorney Boertzel stated that even though the Suruhanu's jurisdiction under P.L. 14-99 extends to public utility consumer complaints, his authority is grounded more on the power of persuasion and recommendation rather than a mandate. Section 1418 provides that the provisions of the Suruhanu law seems to anticipate that another agency may be empowered to consider and act upon consumer appeals. Therefore, Attorney Boertzel sees nothing inconsistent with the PUC's proposed authority under Sections 1, 2 and 3 of Bill No. 299 and the Suruhanu's existing jurisdiction.

During the public hearing Senator Brooks questioned Mr. Duenas as to whether the PUC is currently receiving consumer complaints? Mr. Duenas responded that PUC does not receive consumer complaints however, the Superior Court is currently the agency that handles the complaints.

Mr. Duenas expressed desire for the Public Utilities Commission to be given the authority to set rates for PUAG and for PUAG to be made an autonomous agency.

FINDINGS AND RECOMMENDATIONS

The Committee on Energy, Utilities and Consumer Protection of the 20th Guam Legislature finds that Bill No. 299 if enacted into law, will strengthen the Public Utilities Commission, further isolating it from any political influence. It will make the Public Utilities Commission become a Public Corporation and an Autonomous Instrumentality of the Government of Guam and a truly independent rate-making authority. This particular Bill enhances rather than diminishes the authority which the Public Utilities Commission is entitled to. The hiring of attorney by the PUC will eliminate any conflict of interest by the Attorney General who represents the Government of Guam. Therefore, the Committee on Energy, Utilities and Consumer Protection hereby recommends that Bill No. 299 as Substituted by the Committee be passed by the 20th Guam Legislature.

Section 4 of Substituted Bill No. 299 amends P.L. 17-74 in that it will allow the Public Utilities Commission to hire its own attorney without having to depend on the Attorney General of Guam and that their amendment is also in support of Section 5 which will make the Public Utilities Commission a Public Corporation and an Autonomous Agency.

The proposed amendment is not detrimental to the intent of Public Law 17-74. On the contrary, it further strengthens the intent of P.L. 17-74 and frees the Commission from political interference. The proposed amendment were given approval, in writing, by the Department of Interior through its Field Representative on Guam.

EXHIBITS

- | | |
|-------------|--|
| Exhibit "A" | Written testimony by Mr. Joseph Duenas, Chairman, Public Utilities Commission. |
| Exhibit "B" | Written testimony by Mr. Jesus Maanao, Acting Suruhanu. |
| Exhibit "C" | Letter from the Department of Interior Field Representative regarding proposed amendment to the Public Utilities Law - P.L. 17-74. |
| Exhibit "D" | Letter from Attorney Harry Boertzel regarding Public Corporation. |
| Exhibit "E" | Written testimony by Attorney Harry Boertzel |
-

in response to Mr. Jesus Maanao's letter
dated April 27, 1989.

Exhibit "F" Witness Sign-In-Sheet; Displayed for Witness
Signatures during the Public Hearing.

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TWENTIETH GUAM LEGISLATURE
1989 FIRST REGULAR SESSION

Bill No. 299(COR)
As Substituted by the
Committee on Energy, Utilities
and Consumer Protection

Introduced By:

D. Parkinson



AN ACT AMENDING SECTIONS 21151 AND 21154 OF THE
GOVERNMENT CODE, AND SECTION 12002 OF CHAPTER 12, TITLE 12
GUAM CODE ANNOTATED, RELATIVE TO THE PUBLIC UTILITIES
COMMISSION.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Subsection (3) of Section 21151 of the
Government Code of Guam is repealed and reenacted to read:

"Commission means the Public Utilities Commission."

Section 2. Section 21153 of the Government Code is
amended to read:

"Section 21153. Appeal From Agency Action. "(a)

If an agency statement is adverse to a customer,
the customer may within thirty (30) days of the
issuance of the Agency statement take appeal to
the Commission which shall have jurisdiction to
resolve the dispute. During the pendency of said
appeal, no action adverse to the customer with
respect to the disputed amount may be undertaken.
The taking of appeal pursuant to this Section
shall operate as a stay. The deposit shall remain
in escrow until resolution of the appeal."

"(b) If the Agency's determination is reversed by the Commission, then the Commission shall award reasonable attorney's fees to the customer and costs."

Section 3. Section 21154 of the Government Code is repealed and reenacted to read:

The Commission shall promulgate rules and regulations for entertaining the appeals provided by Section 21153."

Section 4. Section 12002 of Chapter 12, Title 12 Guam Code Annotated is repealed and reenacted to read:

"Section 12002. Operation of Commission.

"(a) The Commission shall retain on an as needed basis those professional services required by the Commission in the performance of its duties. The Commission may employ administrative staff personnel for the conduct of Commission business.

"(b) The Commission may also appoint an attorney, who shall serve at the pleasure of the Commission and whose duties and compensation shall be fixed by the Commission. The attorney, who must have been admitted to practice before the District Court of Guam, shall advise the Commission on all legal matters to which the Commission is legally interested and may represent the Commission in connection with legal matters before the Legislature, Boards and other agencies of the

Territory. The Attorney General of Guam shall represent the Commission in litigation concerning the affairs of the Commission, provided that he may delegate this duty to the attorney of the Commission with respect to any such litigation. The Commission is authorized to establish by rule or order that each public utility regulated under this Chapter shall be assessed the costs incurred by the Commission for professional services rendered by the attorney."

Section 5. Section 12001 up to Section 12001(a) of Public Law 17-74 is amended to read as follows:

"Section 12001. Public Utilities Commission: Number, Appointment of Commissioners.

There shall be [a] within, and a public corporation and autonomous instrumentality of, the Government of Guam, a Public Utilities Commission [within the Executive Branch of the Government] composed of seven (7) members to be called Commissioners, who shall be selected as follows:

Section 6. The following paragraph is added to the end of Section 12004 of Public Law 17-74:

"The Commission shall have the power to enter into contracts and execute all instruments necessary or convenient in the exercise of its powers, adopt a seal, and sue or be sued in its own corporate name.

**TWENTIETH GUAM LEGISLATURE
1989 (First) Regular Session**

Introduced

FEB 14 '89

Bill No. 299(Cont)

Introduced by:

Don Parkinson

AN ACT AMENDING SECTIONS 21151 AND 2154 OF THE GOVERNMENT CODE,
AND SECTION 12002 OF CHAPTER 12, TITLE 12 GUAM CODE ANNOTATED,
RELATIVE TO THE PUBLIC UTILITIES COMMISSION.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Subsection (3) of Section 21151 of the Government Code of Guam is repealed and reenacted to read:

"Commission means the Public Utilities Commission."

Section 2. Section 21153 of the Government Code is amended to read:

"Section 21553. Appeal From Agency Action.

"(a) If an agency statement is adverse to a customer, the customer may within thirty (30) days of the issuance of the Agency statement take appeal to the Commission which shall have jurisdiction to resolve the dispute. During the pendency of said appeal, no action adverse to the customer with respect to the disputed amount may be under taken. The taking of appeal pursuant to this section shall operate as a stay. The deposit shall remain in escrow until resolution of the appeal.

"(b) If the Agency's determination is reversed by the Commission, then the Commission shall award reasonable attorney's fees to the customer and costs."

Section 3. Section 21154 of the Government Code is repealed and reenacted to read:

"Section 21154. Same.

The Commission shall promulgate rules and regulations for entertaining the appeals provided by Section 21153."

Section 4. Section 12002 of Chapter 12, Title 12 Guam Code Annotated is repealed and reenacted to read:

"Section 12202. Operation of Commission.

"(a) The Commission shall retain on an needed bases those professional services required by the Commission in the performance of its duties. The Commission may employ administrative staff personnel for the conduct of Commission business.



PUBLIC UTILITIES COMMISSION

P.O. BOX 862
AGANA, GUAM 96910

April 26, 1989

Senator Don Parkinson
Chairman
Committee on Energy, Utilities, and Consumer Protection
20th Guam Legislature
P.O. Box CB
Agana, Guam 96910

Dear Mr. Chairman and Members of the Committee:

I am appearing before you today as the Chairman of the Public Utilities Commission to offer testimony in favor of Bill # 299 (COR), conditioned upon the inclusion of additional language (copy of which is attached). Bill # 299 (COR) plus the additional language attached to my testimony were the contents of Bill # 342 (LS) which was introduced in the first session of the Nineteenth Guam Legislature and was approved by the Department of Interior in a letter dated Aug. 17, 1988 and Jan. 19, 1989 from Janet J. McCoy, Principal Deputy Assistant Secretary, Territorial and International Affairs, Department of Interior, to the Chairman of this Committee, Sen. Don Parkinson.

The main thrust of these amendments to PUC's enabling Legislation is to allow consumer complaints to be heard by the PUC and to put the PUC on an equal standing with the utilities which it is charged with regulating.

Thank you for this opportunity to testify before you and I would be glad to try to answer any questions you may have.

Sincerely,

Joseph T. Duenas
Chairman

JTD/crt
attachment

"Exhibit A"

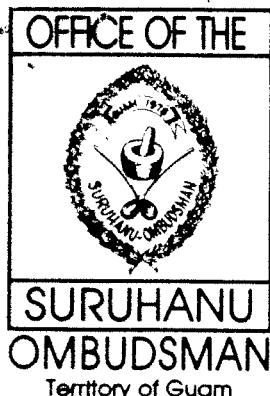
Section 5. Section 12001 up to Section 12001(a) of Public Law 17-74 is amended to read as follows:

"Section 12001 Public Utilities Commission: Number, Appointment of commissioners.

There shall be [a] within, and a public corporation and autonomous instrumentality of, the Government of Guam, a Public Utilities Commission [within the Executive Branch of the Government] composed of seven (7) members to be called Commissioners, who shall be selected as follows:

Section 6. The following paragraph is added to the end of Section 12004 of Public Law 17-4:

"The Commission shall have the power to enter into contracts and execute all instruments necessary or convenient in the exercise of its powers, adopt a seal, and sue or be sued in its own corporate name.



Date/Time Recd	Apr. 27, 1989
Received by	Sammy Sumagayay
Exec. Ass't	
SENATOR	
Chrono File by	
Orig. Filed at	
Orig. Filed by	
Other Action	John - exhibit (2) 4. Bill 299

April 27, 1989

The Honorable Don Parkinson
Chairman, Committee on Energy,
Utilities and Consumer Protection
20th Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Senator Parkinson:

I am very concerned about the article which appeared in today's Pacific Daily News on Bill No. 299 which would allow the Public Utilities Commission to hear complaints against Guam Power Authority and Guam Telephone Authority. I would have testified on the bill if the title had made reference to complaints.

Bill 299, if passed, would duplicate Public Law 14-99, as further amended by Public Law 15-83(See Attachment), which created the Office of the Suruhanu and gave it the responsibility to investigate and resolve individual problems citizens may have with their government; and, ultimately hold a respective department or agency accountable for the solution of the problem. The enabling legislation which created the Office of the Suruhanu includes complaints against Guam Power Authority and Guam Telephone Authority.

It is imperative and absolutely essential to hear and place all complaints against the government under one umbrella. After all, the rationale behind the Office of the Suruhanu (Ombudsman) is to reduce and untangle red tape and bureaucracy in government. What we may be doing is confusing the public as to where to go to place their complaints. Ideally, centralization is essential and more practical.

Furthermore, the Office of the Suruhanu has been provided funding for its staff and other operating expenses, and as such spending additional public funds to implement Bill 299 would duplicate costs for what amounts to the same function.

228 Archbishop
F.C. Flores Street
Agana, Guam 96910
Telephone
(671)477-9803/04/05

Exhibit "B"

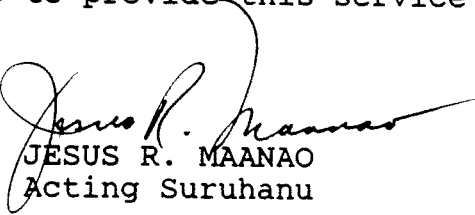
Senator Don Parkinson
Bill 299
April 27, 1989
Page Two

This is certainly not in the best interests of the people of Guam.

Mr. Joseph Duenas was quoted as saying that under the current system, a consumer must hire an attorney or go to Small Claims Court to settle a complaint. This may be so in some cases, but the twelve (12) complaints that came in to us against GPA and GTA as of January 1989, did not require an attorney for their resolution.

I feel that the two proposed amendments to the bill are appropriate and they will provide the proper mechanism for Public Utilities Commission to be more effective in the exercise of its power.

The Public Utility Commission is a regulatory Commission, so let's keep it at that. The Office of the Suruhanu was established to handle complaints against the government and should be allowed to continue to provide this service to the people of Guam.


JESUS R. MAANAO
Acting Suruhanu

Attachment

cc: Public Utilities Commission,
Chairman

Section 2. Section 60005 of the Government Code of Guam is hereby amended as follows:

§60005. The Corporation has the power to do any and all things necessary to further the purposes of this Chapter and to perform the duties imposed by §§6003, 6004 and 60014."

Section 3. The sum of One Hundred Fifty Thousand Dollars (\$150,000) is hereby appropriated to the Public Defender Corporation exclusively to meet increased costs occasioned by the Corporation's assistance and legal aid to landowner claimants, through December 31, 1979. Use of such funds shall include the recruitment of legal counsels, land investigators, interviewers and such other staff personnel as may be required, all of whom shall be in the unclassified service.

Section 4. The Public Defender Corporation shall exert all efforts to insure that fair compensation is awarded to those landowners, their heirs and/or legatees who were paid less than fair market value as a result of (1) duress, unfair influence or other unconscionable actions, or (2) unfair, unjust and inequitable actions of the United States, as mandated by Section 204(a) of U.S. P.L. 95-134.

Section 5. The Public Defender Corporation shall submit quarterly reports to the Governor and the Legislature on its activities and progress in representing claims by landowners.

Section 6. This Act shall take effect immediately upon its enactment and shall expire December 31, 1979, unless otherwise extended by law.

PUBLIC LAW 14-99

Bill No. 14-98
Enacted: January 31, 1978
Governor's Action: Approved
Riders: None

Introduced by: F.F. Blas

AN ACT TO ADD CHAPTER V TO TITLE II OF THE GOVERNMENT CODE RELATIVE TO ESTABLISHING THE OFFICE OF THE SURUHANU (OMBUDSMAN).

- Section 1 New Chapter V, "Office of the Suruhanu (Ombudsman)."
- 1-100 Legislative finding and intent
- 1-101 Definitions
- 1-102 Creation of office
- 1-103 Nomination and appointment
- 1-104 Qualifications
- 1-105 Term of office
- 1-106 Removal and vacancy
- 1-107 Compensation
- 1-108 Organization of office
- 1-109 Powers
- 1-110 Investigation of complaints
- 1-111 Rights of complainant; communication with same
- 1-112 Rights of agency
- 1-113 Recommendations
- 1-114 Reports
- 1-115 Suruhanu's immunities
- 1-116 Witnesses' privileges
- 1-117 Obstruction
- 1-118 Relation to other laws
- 1-119 Severability
- Section 2 Authorizes an appropriation for Section 1.
- Section 3 Repeals Chapter II, Title IX GC.
- Section 4 Section 1 is effective upon appropriation.

NOTE: Chapter V previously enacted "Audit of Governmental Accounts and Financial Transactions".

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter V is added to Title II of the Government Code to read:

"CHAPTER V

Office of the Suruhanu (Ombudsman)

§1400. Legislative Finding and Intent.

The Legislature finds that government bureaucracies have a tendency to serve group needs and forget individual needs. In today's system of government, the individual citizen with a problem often does not know where to start nor to whom to seek to solve his problem.

Elected representatives are usually receptive to individual requests for assistance, but they can only approach constituent requests on a one-to-one basis. Other responsibilities make it difficult for elected representatives to follow through on all problems submitted to them.

Some system of overview is needed to expedite governmental action on individual complaints or requests for services, to hold the governmental agency accountable for satisfying a legitimate request for assistance and to suggest necessary legal or administrative changes to prevent continued abuses of an individual rights.

The legislative intent of this bill is to create the Office of Ombudsman or Suruhanu and charge this office with the responsibility to correct and solve the individual problems citizens may have with their government to provide a method by which each citizen will have open access to an expert in dealing with the Government so that each citizen will know his complaint will be investigated and the department or agency responsible for the solution will ultimately be held accountable for that solution.

It is the intent of the Legislature to establish, in addition to other remedies or rights of appeal of any person under law, an independent and partial office readily available to the public, responsible to the Legislature, empowered to investigate the acts of the administrative agencies and to recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting high standards of competency, efficiency and justice in the administration of territorial law.

§1401. Definitions.

As used in this Chapter:

(a) 'Agency' means any department, organization, board, commission, council, institution or other governmental entity of the government of Guam, and any official, officer, employee or member thereof acting or purporting to act by reason of his connection with the government of Guam, except:

- (1) any court, judge and pertinent judicial staff;
- (2) the Legislature, its members, its committees, its staff and its employees;
- (3) the Governor and his personal staff; and
- (4) the Lieutenant Governor and his personal staff.

(b) An 'act of an agency' means any action, decision, failure to act, omission, rule or regulation, interpretation, recommendation, policy, practice or procedure of any agency.

(c) 'Person' means any individual, aggregate of individuals, corporation, partnership or unincorporated association.

(d) 'Suruhanu' also means 'Suruhanana'. In the case that the person elected is female, reference to the office shall be in the feminine, that is to the Suruhana.

§1402. Creation of Office.

The Office of the Suruhanu is created.

§1403. Nominations and Appointment.

The Legislature shall elect the Suruhanu by a two-thirds (2/3) vote of the membership.

§1404. Qualifications.

(a) The Suruhanu shall be a person of recognized judgment, objectivity and integrity who is well equipped to analyze problems of law, administration and public policy.

- (b) No person while serving as Suruhanu:
- (1) shall be actively involved in political party activities;
 - (2) shall be candidate for or hold other public office, whether elective or appointive; or
 - (3) shall be engaged in any other occupation, business or profession.

§1405. Term of Office.

- (a) The Suruhanu shall serve for a term of six (6) years commencing at 12 o'clock noon on April 1 of the year he takes office. He may be reappointed for additional terms.

§1406. Removal and Vacancy.

- (a) Qualified voters of Guam may initiate a petition for the removal of the Suruhanu by presenting a petition to the Election Commission signed by voters equal in number to ten percent (10%) of all votes counted for all candidates for the Governor at the last preceding general election at which a Governor was elected. The format of the petition shall comply with the Election Commission regulations and upon certification by the Election Commission, the petition shall be presented to the Legislature.

- (b) The Legislature, upon receipt of the certified petition, may by a vote of two-thirds (2/3) of the members present and voting remove the Suruhanu from office. The Legislature may also on its own initiative remove the Suruhanu for cause by the same two-thirds (2/3) vote.

- (c) If the position of Suruhanu becomes vacant for any reason, the Legislature shall elect a person to fill the vacant position to serve only until the end of his predecessor's term.

§1407. Compensation.

- The Suruhanu shall receive the same salary as the Presiding Judge of the Superior Court.

§1408. Organization of Office.

- (a) The Suruhanu shall select, appoint and fix the compensation with the amount available by appropriation of such other officers and employees, and include a Segundo Suruhanu as he may deem necessary to discharge his responsibilities under this Chapter. All officers and employees of his office shall be unclassified and shall serve at the Suruhanu's pleasure.

- (b) The Suruhanu may delegate to members of his staff any of his authority, powers or duties except this power of delegation and his duty to make any report under this Chapter. However, the Suruhanu may authorize the Segundo Suruhanu to act in his stead during illness, absence, leave or disability.

- (c) The Suruhanu and his staff shall be entitled to participate in any employee benefit or retirement plan available to the government of Guam employees.

§1409. Powers.

The Suruhanu shall have the following powers:

- (a) To investigate, on complaint of a person but not an agency, on his own motion, any act of an agency without regard to its finality.
- (b) To adopt, promulgate, amend and rescind rules and regulations required for the discharge of his duties, including procedures for receiving and processing complaints, conducting investigations and reporting his findings. However, he may not charge any fees for the submission or investigation of complaints.
- (c) To examine the records and documents of any agency except those records and documents privileged from inspection because of their confidential nature, including but not limited to juvenile court records, tax records and other records specifically made confidential by law.
- (d) To enter and inspect without notice the premises of any government agency.
- (e) To subpoena any employee or agent of the government of Guam to produce documentary or other evidence that is reasonably material to his inquiry.
- (f) To undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as might lead to improvements in the functioning of agencies.

(g) To obtain such information and make such inquiries from any agency or person as he shall require for the discharge of his duties.

(h) To maintain secrecy in respect to all matters and the identities of the complainants or witnesses coming before him.

(i) To concern himself with the strengthening of procedures and practices which lessen the risk that objectionable administrative acts will occur.

§1410. Investigation of Complaints.

(a) The Suruhanu shall investigate any complaint alleging that an act of an agency is:

- (1) contrary to or inconsistent with law, regulation or agency practice;
- (2) based on mistaken facts or irrelevant considerations;
- (3) inadequately explained when reasons should have been revealed;
- (4) inefficiently performed; or
- (5) unreasonable, unfair or otherwise objectionable, even though in accordance with law.

Unless the Suruhanu at his discretion decides not to investigate a complaint because:

- (1) the complainant could reasonably be expected to use another remedy or channel, and then the Suruhanu shall furnish the complainant with written instructions on the procedural steps to be taken in connection with such other remedy or channel;
- (2) the complaint is trivial, frivolous, vexatious or not made in good faith;
- (3) the complaint has been too long delayed to justify present examination; and
- (4) his resources are insufficient for adequate investigation in which case the Suruhanu shall refer the complaint to the proper legislative committee for investigation.

(b) The Suruhanu in his discretion may investigate any administrative act of an agency not enumerated in Subsection (a).

(c) If the Suruhanu declines to investigate a complaint he shall not be barred from reviewing on his motion acts of an agency whether or not included in the complaint.

§1411. Rights of Complainant - Communication With Complainant.

(a) After the Suruhanu has decided whether or not to investigate a complaint, he shall suitably inform the complainant.

(b) The Suruhanu shall, if requested by the complainant, report the status of his investigation to the complainant.

(c) After investigation of a complaint, he shall suitably inform the complainant of his conclusion or recommendation, if appropriate, any action taken or to be taken by the agency involved.

(d) A letter to the Suruhanu from a person held in custody including by detention, incarceration and hospitalization - by an agency shall be forwarded immediately, unopened to the Suruhanu. A letter from the Suruhanu to such person shall be immediately delivered, unopened to the person.

(e) No person who files a complaint pursuant to this Chapter shall be subject to any penalties, sanctions or restrictions in connection with his employment because of such complaint.

§1412. Rights of Agency.

(a) If the Suruhanu decides to investigate a complaint, he may, if he deems it appropriate, suitably inform the agency involved.

(b) Before announcing or reporting a conclusion or recommendation that criticizes or is adverse to an agency, the Suruhanu shall consult with that agency and permit the agency reasonable opportunity to reply.

(c) If any report that he issues criticizes or is adverse to an agency, the Suruhanu shall include any brief statement the agency may provide.

§1413. Recommendations.

(a) If, after investigation, the Suruhanu is of the opinion that an agency should:

- (1) consider the matter further;
- (2) modify or cancel an act;

(3) offer a regulation, practice or ruling;
(4) explain more fully the act in question;
(5) rectify an omission; or
(6) take any other action; he shall state his recommendations and reasons therefor to the agency. If the Suruhanu so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendation or the reasons for not complying with them. After a reasonable period of time has elapsed, the Suruhanu may issue a report.

(b) If the Suruhanu believes that an action has been dictated by laws whose results are unfair or otherwise objectionable and should be revised, he shall bring his views concerning desirable statutory change to the attention of the Legislature and agency.

(c) If the Suruhanu believes that any person has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities without notice to that person.

§414. Reports.

The Suruhanu shall annually report on his activities to the Governor and to the Legislature.

§415. Suruhanu's Immunities.

(a) No proceeding, conclusion, recommendation or report of the Suruhanu or member of his staff shall be reviewable in any court, unless it contravenes the provisions of this Chapter.

(b) The Suruhanu and his staff shall have the same immunities from civil and criminal liabilities as a judge of this Territory.

(c) The Suruhanu and his staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Chapter.

§416. Witnesses' Privileges.

Any person required to provide information under this Chapter shall be paid the same fees and travel allowances and accorded the same privileges and immunities, including right of assistance of counsel, as witnesses whose attendance has been required in the Superior Court.

§417. Obstruction.

Any person who willfully obstructs or hinders the proper and lawful exercise of the Suruhanu's powers or willfully misleads or attempts to mislead the Suruhanu in his inquiries, shall be guilty of a misdemeanor and subject to a fine of not more than One Thousand Dollars (\$1,000).

§418. Relation to Other Laws.

The provisions of this Chapter are in addition to and do not in any manner limit or affect the provisions of any other statute under which any remedy or right of appeal is provided for any person or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Suruhanu may be exercised notwithstanding any provision in any statute to the effect that any administrative action shall be final or unappealable.

§419. Severability.

If any part of this Chapter shall be declared invalid, all other parts shall remain in full force and effect; the provisions of this Chapter are declared to be severable."

Section 2. Appropriation. There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Section 3. Chapter II of Title IX (being §§8050 through 8071) of the Government Code is repealed.

Section 4. Effective Date. The provisions of Section 1 of this Act shall take effect upon appropriation of funds for operation of the Office of the Suruhanu and appointment of a Suruhanu

by the Legislature. The Suruhanu who takes office shall serve until March 31, 1984. Subsequent terms of office shall begin on April 1.

PUBLIC LAW 14-100

Bill No. 3948
Enacted: January 21, 1978
Governor's Action: Approved
Riders: Yes
Amended by: P.L. 14-104

Introduced by:	K.B. Aguon
E.T. Charfauros	B.V.D. Ada
J.F. Ada	F.F. Blas
J.R. Duenas	E.M. Espaldon
E.M. Calvo	E.R. Duenas
A.M. Palomo	C.T.C. Gutierrez
B.M. Palomo	F.J. Quitugua
J.M. Rivera	J.T. San Agustin
F.R. Santos	R.F. Taitano
T.V.C. Tanaka	H. Trapp
J.H. Underwood	A.R. Unpingco

AN ACT MAKING APPROPRIATIONS FOR IMPROVEMENT OF P.C. SANTOS MEMORIAL PARK IN PITI AND AFLEJE BEACH PARK IN AGAT.

- Section 1 Appropriation of \$89,000 for Santos Memorial Park.
Section 2 Appropriation of \$85,000 for Afleje Beach Park.
Section 3 Dept. of Parks & Rec. and Guam Visitors Bureau as administrators.
Section 4 Amends P.L. 14-33, Sec. 3a. relative to Territorial Highway Fund.
Section 5 Amends PUAG appropriation in P.L. 12-114, Sec. 16.
Section 6 Appropriation of \$475,000 for §15012 GC.
Section 7 When Section 6 appropriation may be used.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. There is hereby appropriated from any available balance in the Tourist Attraction Fund the sum of Eighty-Nine Thousand Dollars (\$89,000) for construction of chamorro huts or a reasonable facsimile thereof and picnic facilities and improvement of the parking area, for the construction of a pedestrian wooden bridge and restroom facilities and for general improvement of the P.C. Santos Memorial Park in the municipality of Piti.

Section 2. There is hereby appropriated from any available balance in the Tourist Attraction Fund the sum of Eighty-Five Thousand Dollars (\$85,000) for repair of the pavilion and construction of new restroom facilities at the Afleje Beach Park to provide the basic facilities needed for the relaxation and enjoyment of the local people, military personnel and off-island visitors.

Section 3. The appropriations made by Sections 1 and 2 of this Act shall be administered by the Department of Parks and Recreation in coordination with the Guam Visitors Bureau.

Section 4. Section 3, including Subsection a of P. L. 14-33 is amended to read:

"Section 3. There is hereby appropriated from any available balance of the Territorial Highway Fund the sum of Five Million Twelve Thousand Five Hundred Thirty-Seven Dollars (\$5,012,537) including Three Million Four Hundred Two Thousand Six Hundred Seventy-Seven Dollars (\$3,402,677) in FHWA funds for the following projects:

- a. Route 14 reconstruction from Route 1 to Guam Memorial Hospital \$ 1,725,000"

Section 5. Section 16 of P.L. 12-114 is repealed and reenacted to read:

"Section 16. There is hereby appropriated from the General Fund to PUAG the sum of Twenty-Five Thousand Dollars (\$25,000) for the purpose of rectifying the sewer connection problem along Gutierrez Drive in Agana Heights."

Section 6. There is hereby appropriated from the General Fund the sum of Four Hundred Seventy-Five Thousand Dollars (\$475,000) to implement the provisions of §15012 of the Government Code.

(b) The schedule of tuitions and fees shall exempt persons over the age of fifty-five (55) from payment of said tuition and fees; provided that such individuals meet the admission requirements of the Guam Community College."

Section 7. Subsection (C) of Section 7 of Part Four of P.L. No. 15-66 is repealed and reenacted to read:

"(C) Notwithstanding the provisions of §§5162 and 5163 of the Government Code (as enacted in Section 6 of P.L. No. 15-48) to the contrary, the University of Guam is authorized to use all revenues derived from its own sources, including tuition, upon resolution by the Board of Regents, for the benefit of the University."

Section 8. Sections 5 through 7 of this Act shall be retroactive in effect to October 1, 1979.

PUBLIC LAW NO. 15-83

Bill No. 394S

Enacted: December 28, 1979

Governor's Action: Approved

Riders: Yes

Introduced by: T.V.C. Tanaka

AN ACT TO RENUMBER CHAPTER V, TITLE II OF THE GOVERNMENT CODE AND TO ADD NEW SECTIONS 1404 AND 1446 TO SAID CODE RELATIVE TO CERTIFICATES OF APPOINTMENT.

- Section 1 Said purpose.
- Section 2 Adds §§1404 and 1446 to GC, Certificates of Appointment.
- Section 3 Amends §1409(e) [renumbered by Section 1 to §1434].
- Section 4 Amends P.L. No. 14-150, Section 17 relative to classified positions for the Mental Health & Substance Abuse Agency.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Chapter V, Title II (beginning with §§1400 through 1410) of the Government Code (P.L. No. 14-99) is renumbered Chapter V-A, Title II and begins with §§1425 through 1445.

Section 2. New Sections 1404 and 1446 are added to the Government Code to read:

"Certificates of Appointment. Immediately after declaring the results of any election, the Legislative Secretary shall cause to be prepared 'certificates of appointment'. The form of such certificate shall be prescribed by the Legislative Secretary and shall contain the essential facts of the appointment. The Legislative Secretary shall cause to be placed in the hands of the appointed person a copy of such certificate which shall constitute evidence of that person's right to office. The Legislative Secretary shall preserve the original certificate for a period of ten (10) years."

Section 3. Subsection (e) of §1409 of the Government Code, as renumbered §1434 under Section 1 of this Act, is amended to read:

"(e) To subpoena any employee or agent of the government of Guam to appear, give sworn testimony or to produce documentary or other evidence that is reasonably material to his inquiry and to administer oaths and affirmations in all matters incident to his duties;"

Section 4. Section 17 of P.L. No. 14-150 is amended to read:

"Section 17. Positions in the classified service shall be established for the Mental Health and Substance Abuse Agency pursuant to §4107 of the Government Code. Provided, however, the administrator, deputy administrator and their secretaries shall be in the unclassified service of the Government. The Civil Service Commission shall establish these positions to be effective July 1, 1979. Said positions shall be filled in accordance with personnel rules and regulations governing the filling of vacancies."



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



JAN 19 1989

Senator Don Parkinson
Chairman, Committee on Energy,
Utilities and Consumer Protection
19th Guam Legislature
P.O. Box CB-1
Agana, Guam 96910

Dear Chairman Parkinson:

This letter is to clarify the Department of Interior's position on a proposed bill that would, among other things, designate the Public Utility Commission as a "public corporation."

In a December 6, 1988 letter of clarification from the PUC's legal counsel, the precise and limited legal meaning of the term is stated as "an entity separate from the general government insofar as its board is empowered to independently conduct its prescribed activities." A copy of the letter is attached.

It is our further understanding from this letter that the designation was included in the bill solely to establish that as a "public corporation" the PUC would be a "structural entity for conducting autonomous governmental and proprietary operations" and that the PUC "would be put on equal standing with the utilities which it is charged with regulating."

With this understanding of the limited legal meaning and intent of the term, and with the further understanding that this is the meaning and intent of the Guam Legislature in proposing the bill, the Department of the Interior has no objection to it being included in the bill and becoming law.

Sincerely,

Janet J. McCoy
Assistant Secretary for
Territorial and International Affairs

Date/Time Recd	1-30-89 7:30 AM
Received by	J. Brown
Exec. AD	
SEN. TOR	
Ch. Sec.	
Ch. File	Incoming
Orig. Filed by	
Other action	JOHNN L

Enclosure

"Exhibit C"

Celebrating the United States Constitution

LAW OFFICES

MOORE, CHING, BOERTZEL & LAWLOR

A PROFESSIONAL CORPORATION

JOHN E. MOORE
EDWIN K. W. CHING
HARRY MASON BOERTZEL
PAUL A. LAWLOR
FREDERICK J. KERLEY
G. PATRICK CIVILLE
THOMAS L. ROBERTS
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December 6, 1988

HAND DELIVER

Mr. Joseph T. Duenas
Chairman
PUBLIC UTILITIES COMMISSION
c/o Room 232, Second Floor
Julale Shopping Center
Agana, Guam 96910

RE: PUBLIC CORPORATION

Dear Mr. Duenas:

In furtherance of my October 12, 1988 letter, I understand that the Department of Interior has requested that the Commission provide a definition of the term "public corporation".

Superior Court of Guam Judge Janet Weeks has defined a public corporation as:

. . . an entity separate from the general government insofar as its board is empowered to independently conduct its prescribed activities.

Guam Telephone Authority v. Settle Superior Court of Guam Civil Case No. 727-78, Decision and Order dated January 5, 1983 (copy enclosed).

I am also enclosing the District Court of Guam Appellate Division's decision in Bordallo v. Reyes, 610 F.Supp. 1128 (D.C. Guam 1984) which provides, at pages 1134-1136, a thorough review of the status and nature of "public corporations" on Guam.

The Commission's status as a "public corporation" would be appropriate for two reasons:

1. The Government has customarily used the "public corporation" as the structural entity for conducting autonomous governmental and proprietary operations.

"Exhibit D"

HAND DELIVER

Mr. Joseph T. Duenas, Chairman
PUBLIC UTILITIES COMMISSION
December 6, 1988
Page Two

2. The Commission would be put on equal standing with the utilities which it is charged with regulating.

Please let me know if I can be of further assistance.

Cordially,

MOORE, CHING, BOERTZEL & LAWLOR



Harry M. Boertzel

HMB/d1
F#PUC-01
D#HBLTRS A#1

Enclosures

IN THE SUPERIOR COURT OF GUAM FILED

TERRITORY OF GUAM JAN 5 2 59 PM '83

SUPERIOR COURT
CIVIL CASE NO. 727-78

GUAM TELEPHONE AUTHORITY,

Plaintiff,

vs.

DECISION AND ORDERLINDA B. SETTLE,
aka LINDA B. FRIAS,

Defendant.

This matter came before the court upon defendant's motion to dismiss for failure to prosecute pursuant to Code of Civil Procedure § 583.¹ Robert Klitzkie, Esq., appeared as Special Assistant Attorney General on behalf of plaintiff Guam Telephone Authority (GTA); Terry Timblin, Esq., appeared for defendant. The motion was argued on 14 October 1982 and decision was reserved.

This lawsuit was commenced on 29 September 1978; an answer was filed on 30 October 1978. Approximately two years and seven months later, on 14 May 1981, summary judgment was granted in favor of plaintiff after counsel for defendant failed to oppose. Judgment for plaintiff was entered on 7 July 1981.

However, on 15 December 1981, that judgment was set aside pursuant to Rule 60(b)(1) of the Rules of Civil Procedure. On 29 April 1982, almost exactly three years and six months after the answer was filed, defendant asserted the instant motion for dismissal.

¹The court notes that Section 583 was repealed on 17 December 1982, subsequent to submission of this motion. P.L. 16-120.

Civil Case No. 121-10
Decision and Order
Page 2

1 In opposition, plaintiff points to Section 584 of the Code
2 of Civil Procedure and contends that section limits the court's
3 power to dismiss for want of prosecution where, as here, the
4 Government of Guam is a party plaintiff. The operative effect of
5 Section 584 need not be determined in the present case however,
6 since the court does not agree with plaintiff that it should
7 apply.

8 Section 584 reads as follows: "No actions in which the
9 government of Guam is a plaintiff shall be dismissed without the
10 consent of the Attorney General of Guam." The threshold question
11 presented is thus whether GTA, "a public corporation and autono-
12 mous instrumentality. . . of the Government of Guam," (Government
13 Code § 21602), may avail itself of Section 584 to avoid dismissal.

14 The express language of Section 584 does not include refer-
15 ence to governmental agencies or corporations. This is in
16 contrast to Government Code Section 6500(a)(1) and Rule 12(a) of
17 the Rules of Civil Procedure, wherein mention is made of agencies
18 and officers, in addition to the government. While the appli-
19 cability of the latter sections to the autonomous agencies is at
20 least arguable in light of the references therein to "agencies,"
21 the same may not be said of Section 584. By its own terms,
22 Section 584 prevents dismissal without the consent of the Attorney
23 General only in actions "in which the Government of Guam is a
24 plaintiff. . ."

25 Government Code Section 21602 declares that GTA is a public
26 corporation and autonomous agency of, and within, the Government
27 of Guam. Words of both inclusion and exclusion render this
28 provision distressingly ambiguous for purposes of construing

1 Section 584. A public corporation is an entity separate from the
2 general government insofar as its board is empowered to indepen-
3 dently conduct its prescribed activities. The word "autonomy"
4 denotes sovereign or political independence. Black's Law
5 Dictionary 170 (4th Ed. 1968). Hence, legislative intent does
6 not reveal itself in the literal meaning of the above relevant
7 statutes.

8 Nor have the parties apprised the court of any statutory
9 amendment or case law interpreting Section 584. Research reveals
10 also that Section 584 exists without a trace of legislative
11 history to aid the court in construing it.

12 It is clear from previous local decisions that the autonomous
13 agencies may be considered as part of the government for some
14 purposes and as separate entities for others. See: Ramos v.
15 Guam Memorial Hospital Authority, (Civil Case No. 172-81, Superior
16 Court, pending), Chong v. Guam Power Authority, 1 Guam Reports
17 595 (1979), Manibusan v. Guam Memorial Hospital, (Civil Case No.
18 285-78, Superior Court) and Hawaiian Rock v. Guam Housing and
19 Urban Renewal Authority, (Civil Case No. 175-82, Superior Court,
20 pending) (Government Claims Act inapplicable to suits against the
21 public authorities); Guerrero v. Government of Guam, (District
22 Court No. Civ. 80-0043A, Superior Court Civil Case No. 157-79)
23 (for purposes of worker's compensation, Guam Power Authority is
24 an agency and instrumentality of Government and its employees are
25 employees of Government); Guam Rent a Car v. Guam Airport
26 Authority, et al., 1 Guam Reports 606 (1979) (decision of the
27 Board of Guam Airport Authority is one of a government agency
28 and is reviewable only for accordance with law or substantial

1 supporting ence under Government \$ 24140); Guam Telephone
2 Authority v. Rivera, 416 F.Supp. 283 (1976) (Issuance of GTA
3 bonds with contingent backing of Government is part of public
4 indebtedness).

5 For purposes of Section 584, the court finds that GTA is a
6 separate and autonomous entity empowered to sue in its own name.
7 It follows that Section 584 does not bar dismissal pursuant to
8 Section 583, since the Government of Guam itself is not a party
9 plaintiff.

10 Statutory provisions like Section 584, as well as the common
11 law doctrine that 'no time runs against the state,' are often
12 justified by the principle of public policy that public interest
13 should not be prejudiced by any negligence of public officers
14 charged with protecting such important interests. See White v.
15 State, 150 P. 716 (1915). One presumes its legislative intent
16 was to protect government interests which are entrusted solely to
17 the office of the Attorney General.

18 However, it is currently the practice of the Authorities to
19 hire their own counsel for litigation purposes. Their lawsuits
20 are ordinarily not entrusted to public officers who have less
21 time and resources to diligently pursue such cases. Instead,
22 private counsel who are subject to direct supervision and over-
23 sight by the Authority are retained. Therefore, the policy
24 rational upon which Section 584 is based has less force when
25 applied to Authority litigation.

26 The only interpretive guidance available to the court in
27 this case was found at 27 C.J.S. Dismissal and Nonsuit, § 65(1)
28 (1959). It notes that the inherent power of the court to dismiss


1 cases for . . . of prosecution remaini .mpaired unless it is
2 limited expressly by statute. One 1929 case is cited which
3 interprets a similar governmental exception to the rule of
4 dismissal. In Savoy Oil Co. v. Emery, 277 P. 1029 (1929), the
5 Supreme Court of Oklahoma construed the statutory exception to
6 prohibit dismissal in cases where the state is an interested
7 party and either the Attorney General or Assistant Attorney
8 General appears as attorney of record for the state. Nonethe-
9 less, the court interpreted the Oklahoma law to be inapplicable
10 unless the state was actually a named party to the action.
11 There, an action was filed to declare a state bank's interest in
12 disputed real property. The bank became insolvent after com-
13 mencement of the suit, had been taken over by the state bank
14 commissioner, and the Attorney General had, in fact, filed a
15 motion to substitute the state of Oklahoma as party plaintiff
16 prior to the judgment.

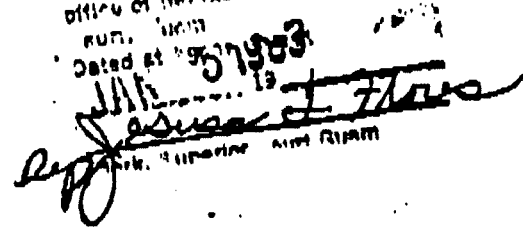
17 The decision in Savoy Oil Co. v Emery rests on extremely
18 technical grounds. The same may appear to be true in the present
19 case from the technical construction giving narrow scope to
20 Section 584. However, as stated in the Oklahoma case, "here we'
21 are dealing with a prescribed procedure for parties to an action.
22 Savoy, supra, at 1033. Since the state had not yet been substi-
23 tuted as plaintiff in place of the bank, the procedural rule did
24 not apply. Similarly, since the Government of Guam is not a
25 party to the present action, Section 584 should not prevent
26 dismissal where, as here, over three years have passed since
27 defendant answered the complaint.

28

1 Moreover, the court believes that . . broad an application
2 of Section 584 will inevitably lead to harsh and inequitable
3 results. In the present case, no justification or explanation
4 has been offered to the court for the extensive delay. Defendant
5 has submitted by affidavit that her main witness in defense of
6 this action has long since departed the island without any
7 intention of returning. In the absence of any clear indication
8 of legislative intent to confer the protection of Section 584
9 upon GTA, this court is compelled to grant defendant's motion to
10 dismiss pursuant to Code of Civil Procedure § 583.

11 SO ORDERED, this 5th day of January 1983

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15 JANET HEALY WEEKS, Judge
16 Superior Court of Guam
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I do hereby certify that the foregoing is a full and correct copy of the original on file in the office of the Clerk of the Superior Court.
Dated at San Juan P.R. January 5, 1983

Clerk, Superior Court of Guam

Ricardo J. BORDALLO, Governor of
Guam, Plaintiff,

v.

Tony REYES, Taro Kanai, Roberto
Olaya, and Carl Peterson,
Defendants.

Civ. No. 83-0095.

United States District Court,
D. Guam.

Feb. 8, 1984.

Governor of Guam filed complaint for injunction and declaratory relief alleging that Guam Visitors Bureau was an instrumentality of the government of Guam and thus that statute setting forth composition and appointment of its board of directors was in derogation of governor's authority. The District Court, Duenas, J., held that the Guam Visitors Bureau was not an instrumentality of the government of Guam, and therefore the statute was not in derogation of the governor's authority.

Judgment accordingly.

Judgment affirmed, 9th Cir., 763 F.2d 1098.

1. Constitutional Law \S 58
Territories \S 22

Guam Visitors Bureau, a public corporation created by the Guam legislature, was not an instrumentality of the executive branch by virtue of statute providing that Bureau has power to adopt rules and regulations pursuant to the Administrative Adjudication Act as may be necessary, notwithstanding that the Act excludes in its application the legislative and judicial branches; therefore, statute setting forth composition and appointment to the Bureau's board of directors was not in derogation of governor's authority to supervise and control an instrumentality within the executive branch pursuant to Organic Act of Guam, \S 6, 48 U.S.C.A. \S 1422.

2. Constitutional Law \S 58

That pursuant to provisions of Guam Code Annotated employment of personnel of Guam Visitors Bureau, a public corporation created by the Guam legislature, was pursuant to section pursuant to which all listed boards and authorities are mandated to adopt personnel rules did not compel finding that the Bureau was an instrumentality of the executive branch; therefore, statute setting forth composition and appointment to the Bureau's board of directors was not in derogation of governor's authority to supervise and control an instrumentality within the executive branch pursuant to Organic Act of Guam, \S 6, 48 U.S.C.A. \S 1422.

3. Constitutional Law \S 58

That by virtue of public law section employees of Guam Visitors Bureau, a public corporation, were members of the government of Guam retirement fund did not compel finding that the Bureau automatically became an instrumentality of the executive branch of the government, as retirement law clearly indicated that employees of public corporations were not employees of the government; therefore, statute setting forth composition and appointment to the Bureau's board of directors was not in derogation of governor's authority to supervise and control an instrumentality within the executive branch pursuant to Organic Act of Guam, \S 6, 48 U.S.C.A. \S 1422.

4. Constitutional Law \S 58

Guam Visitors Bureau, a public corporation created by the Guam legislature, is not an instrumentality of the government of Guam; therefore, statute setting forth composition and appointment to the board of directors is not in derogation of Governor's authority to supervise and control an instrumentality within the executive branch pursuant to Organic Act of Guam, \S 6, 48 U.S.C.A. \S 1422.

Nancy Nye, Asst. Atty. Gen., Agana,
Guam, for plaintiff.

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Agana, Guam, 1984

BORDALLO v. REYES

Cite as 410 F.Supp. 1120 (D.C.Guam 1984)

1120

Gary Hull, Baumann & Hull, Agana, Guam, for defendants.

MEMORANDUM ORDER

DUENAS, District Judge.

On December 13, 1983, Ricardo J. Bordallo, Governor of Guam (hereinafter referred to as "Governor"), filed a complaint for Injunction and Declaratory Relief. Named as defendants in this action are Tony L.G. Reyes, Taro Kanai, Roberto Olaya, and Carl Peterson, directors, elected by the existing Guam Visitors Bureau (hereinafter referred to as "GVB"). It is the contention of the Governor that GVB is an instrumentality of the Government of Guam. The injunctive relief sought by the Governor had earlier been denied by the Court and the only issue remaining before the Court is one for declaratory relief.

Public Law 17-32, as enacted by the Guam Legislature, became effective on November 22, 1983, when the Legislature agreed to pass the bill, notwithstanding non-approval of the measure by the Governor, by a vote of two-thirds of all the members of the Legislature.

Public Law 17-32 repealed Chapter 1 of Title 34 of the Government Code of Guam. Title 34 (Sections 38000-38005) was enacted by the First Guam Legislature on July 3, 1952, under Public Law 67. Section 4 of Public Law 67 provides:

"The Guam Visitors Bureau shall be a non-profit organization formed for the purpose of promoting the establishment of travel industries on Guam and whose constitution and bylaws and amendments thereof, shall be approved by the Governor."

Public Law 17-32 enacted Article 1 of Chapter 9 of Title 12 of the Guam Code Annotated (GCA). Article 1 consists of Sections 9101 to 9116, inclusive.

Under Section 9102, GVB is established as a public corporation.

"Section 9102. Creation. There is hereby created a public corporation to be known as the 'Guam Visitors Bureau' as hereinafter provided. The corporation

shall be a non-stock, non-profit membership corporation to be governed in accordance with the applicable general corporation laws of the Territory of Guam, except as provided otherwise by this Article. No articles of incorporation shall be required; this Article shall be its charter."

It is the Governor's contention that Public Law 17-32 is a nullity, specifically Section 9106 setting forth the composition and appointment of the Board of Directors as such is a derogation of his authority to supervise and control an instrumentality within the Executive Branch of the Government of Guam. 48 U.S.C. § 1422.

Section 9106 provides:

"Section 9106. Board. (a) The exercise of the powers of the Bureau shall be directed by the Board of Directors composed of nine (9) members selected in accordance with this Section. Four (4) directors, referred to as 'appointed directors' shall be members and shall be appointed by the Governor with the advice and consent from the Legislature. One of the appointed directors shall be a commissioner or assistant commissioner selected by the Commissioner's Council. Four (4) directors, referred to as 'elected directors' shall be contributing members in good standing elected by the membership. The four (4) appointed and four (4) elected directors shall then select the ninth (9th) director by a vote requiring concurrence of six (6) of the directors. The ninth (9th) director shall be actively and directly involved in the tourism industry. The Board of Directors shall elect from amongst its body a chairperson and vice-chairperson. The ninth director from a previous board shall not be held over solely to act as the ninth director of a new board. The ninth director of a previous board may be appointed as the ninth director of any subsequent board as set forth herein."

Section 1422 of 48 U.S.C. provides in part:

... and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam."

Counsel for the Governor, in his oral argument, contended that under the Organic Act of Guam the only governmental entity duly established by the Act are the three branches of the Government of Guam: Executive, Legislative, and Judicial. Counsel for the Governor further contended that, in the absence of any specific provision within the context of Article 1, Chapter 9, Title 12, GCA, which squarely places GVB within the purview of the legislative or judicial branches of the Government of Guam, GVB is an instrumentality of the Executive Branch of the Government of Guam.

To buttress his contention that GVB is an instrumentality of the government, as well as one within the Executive Branch, the Governor cited certain provisions of Article 1 (12 GCA Chapter 9).

"[1] A. GVB shall have the power to adopt such rules and regulations pursuant to the Administrative Adjudication Act."

Section 9105.

"Section 9105. Powers.

The Bureau shall have and exercise each and all of the following powers.

- (a) ...
- (b) ...
- (c) ...

1. Administrative Adjudication Law, Title XXV, Government Code of Guam.

"Section 24002. Agency. The word 'agency' whenever used in this Title shall mean and include any board, commission, department, division, bureau or officer of the territory of Guam authorized by law to make rules or to adjudicate contested cases. Agency does not include any entity in the legislative or judicial branches and for purposes of establishing charges for utility services, it does not include Guam Power Authority, Guam Telephone Authority or the Public Utility Agency of Guam."

"Section 24007. Rule. The word 'rule' means any rule, regulation, standard, classification, procedure or requirement of any agency, designed to have or having the effect of law or interpreting, supplementing or implementing any law enforced or administered by

... adopt such rules and regulations pursuant to the Administrative Adjudication Act as may be necessary for the exercise of the powers and performance of the duties conferred or imposed upon the Bureau or the Board or the Board by this Article; (Underscoring supplied.)

Since the Administrative Adjudication Act excludes in its application the legislative and judicial branches of the Government of Guam, the Governor concludes that by virtue of subsection (a), *supra*, GVB falls within the Executive Branch.

The term "agency," as defined in the Act, means a board, commission, department, division, bureau, or an officer of the territory of Guam authorized by law to make rules or adjudicate contested cases. It may be argued, however, that despite the non-inclusion of "public corporations" in such definition the legislature, by virtue of Section 9105(e), made it applicable to GVB.

Section 9105(e) did not mandate GVB to adopt rules and regulations under the Administrative Adjudication Act. It merely empowers GVB to do so, if necessary, for the exercise of the powers and performance or duties conferred upon it by Article 1, Chapter 9 of 12 GCA.

The basic purpose of the Administrative Adjudication Act is to provide a forum for adjudication of contested cases within the purview of a department, board, commis-

ion or to govern its organization or procedure, but does not include regulations, resolutions or directions relating solely to internal policy, internal agency organization or internal procedure which do not directly affect the rights of or procedures available to the public and does not include 'administrative adjudication'."

"Section 24008. Administrative Adjudication. 'Administrative adjudication' means that administrative investigation, hearing and determination by any agency of issues or cases applicable to particular parties."

"Section 24102. Applicability. The procedure of any agency pursuant to the provisions of this Title in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing."

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Cite as 618 F.Supp. 1128 (D.C. Guam 1984)

sion, division, bureau, or an officer of the territory. The adoption of rules under the Act is geared primarily to procedures and practices governing administrative adjudication of contested cases before an administrative forum, a quasi-judicial body, whose decisions could then be reviewed by a court of competent jurisdiction. This administrative adjudicative process as it relates to GVB is obviated by legislative provisions subjecting GVB to be sued in the first instance in a court of law.

As to other rules and regulations, outside the basic purpose of the Administrative Adjudication Act, such are amply covered by Section 9105(d) which provides as follows:

"(d) Adopt, amend and repeal reasonable by-laws, and other rules, regulations and directives, pursuant to the general corporation laws of the Territory of Guam, as may be necessary for the conduct and administration of its activities and the exercise of the powers and performance of the duties conferred or imposed upon the Bureau or the Board by this Article;"

Section 9105(e) is meaningless and has no proper stance or relevancy within the cor-

2. Section 3 of Public Law 17-32 amended Section 4104 of 4 Guam Code Annotated to include GVB. As amended, Section 4104 reads as follows:

"Section 4104. Department Personnel Rules.

Rules subject to criteria established by this Chapter governing the selection, promotion, performance evaluation, demotion, suspension and other disciplinary action, shall be adopted by the Board of Directors for the Guam Airport Authority, Board of Directors for Guam Economic Development Authority, Board of Directors for Guam Housing Corporation, Board of Commissioners for Guam Housing and Urban Renewal Authority, Judicial Council, the Board of Directors of the Guam Telephone Authority, the Board of Directors of the Port Authority of Guam, the Board of Directors of the Guam Power Authority, the Board of Education, the Board of Regents of the University of Guam, the Guam Community College Board of Trustees, the Board of Trustees of the Guam Memorial Hospital Authority, and by the Board of Directors of Guam Visitors Bureau with respect to personnel matters within their respective branches, agencies or departments, and by the

porate structures of GVB as chartered by the Guam Legislature.

- [2] B. Under Section 3 of Public Law 17-32 and Section 9110 of Article 1, employment of GVB personnel shall be pursuant to the provisions of 4 GCA Section 4105."

"Section 9110. Employment.

(a) Pursuant to the provisions of 4 GCA Section 4105, the Board shall establish rules and regulations governing selection, promotion, performance evaluation, demotion, suspension, removal and other disciplinary action for the employees of the Bureau."

Under Section 4105 all the listed boards and authorities are mandated to adopt personnel rules. Of all the listed boards and authorities adopting personnel rules, only the University of Guam, Guam Airport Authority, Guam Telephone Authority, Port Authority of Guam, Guam Power Authority, Department of Education, Guam Memorial Hospital, and the Guam Visitors Bureau are further mandated or required by their rules to provide that all their classified employee appeals be heard by the Civil

Director of Administration as to all other Executive Branch employment. Such rules shall, to the extent practicable, provide standard conditions for entry into and other matters concerning the government service. The personnel rules adopted for University of Guam, Guam Airport Authority, Guam Telephone Authority, Port Authority of Guam, Guam Power Authority, Department of Education, Guam Memorial Hospital Authority, Guam Visitors Bureau and by the Director of Administration shall require that all their classified employee appeals be heard by the Civil Service Commission. The personnel rules adopted for the Judiciary Branch by Judicial Council shall require that all their classified employee appeals be heard by the Council. Personnel rules governing any other Executive Branch entities may require that their classified employee appeals be heard by the Civil Service Commission. Rules concerning the Executive Branch shall take effect upon their approval by the Civil Service Commission, by Executive Order of the Governor and filing with Legislative Secretary. Rules concerning the Judiciary Branch shall take effect upon adoption by the Judicial Council of Guam."

110.

§10 FEDERAL GOVERNMENT

Service Commission. Section 4105 further provides that "as to all other Executive Branch employment" personnel rules shall be adopted by the Director of Administration [Department within the Executive Branch]. The rules to be adopted by the Director of Administration shall also provide that classified employees "as to all other Executive Branch employment" shall have their appeals heard by the Civil Service Commission. Section 4105 further provides:

"Personnel rules governing any other Executive Branch entities may require that their classified employee appeals be heard by the Civil Service Commission."

The personnel rules to be promulgated or adopted under Section 4105 cover employees under four different groups: *Judiciary, Boards and Authorities, Executive Branch employment, and Executive Branch entities.*

Under the rules of some Boards and Authorities, classified employees are expressly given rights of appeals to the Civil Service Commission, but such expressly given rights of appeal are silent as to the rules of other boards. Employees of "other Executive Branch employment" are given rights of appeal to the Civil Service Commission.

2. Section 8103 is a part of Guam's laws relating to retirement of public employees contained in 4 Guam Code Annotated, Chapter 8 which provides as follows:

"Section 8101. Retirement Fund: Purpose.

The purpose of the Fund is to provide retirement annuities and other benefits for the employees of the government of Guam who become aged or otherwise incapacitated, and widows' annuities and other benefits to the dependents of such employees, thereby enabling the employees to accumulate reserves for themselves and their dependents to meet, without prejudice or hardship, the hazards of old age, disability, death and termination of employment, with the objective of encouraging qualified personnel to enter and remain in the service of the Government, thus effecting economy and efficiency in the administration of the Government.

"Section 8102. Same: Title.

The Fund hereby created shall be known as the 'Government of Guam Retirement Fund.' In such name or for the account thereof, all of its business shall be transacted, all of its money invested and all of its cash, securities and other property shall be held.

As to the employees "of the other Executive Branch entities," their rights to appeal to the Civil Service Commission rest upon the discretion of the authority adopting personnel rules whoever it may be.

Once again, counsel for the Governor contended that since GVB is distinguished from the Judiciary under Section 4105, it follows that GVB and, presumably, the other listed boards and authorities, the Executive Branch employment, and the Executive Branch entities are all part of the Executive Branch of the Government of Guam.

Such a contention is without merit. It is untenable considering the nebulous structure of Section 4105.

C. Employees of GVB are members of the Government of Guam Retirement Fund.

Section 9110 of Article 1 provides:

"Section 9110. Employment.

(a) ...

(b) Employees of the Bureau, excluding the Directors, and the General Manager, shall be members of the Government of Guam Retirement Fund, subject to the provisions of 4 GCA Section 8105...."

"Section 8104. Definitions.

Word and phrases, wherever used in this Chapter, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(a) 'Fund' shall mean the 'Government of Guam Retirement Fund.'

(b) ...

(c) 'Employee' shall mean any person in the employ of the Government, in all occupational classifications, including a person whose work is classified as casual or temporary.

(d)

"Section 8105. Fund: Members.

The following employees shall be members of the Fund and subject to the provisions hereof:

(a) All employees regardless of age or length of service, in the service of the Government on operative date, shall become members of the Fund by virtue of their employment.

Any person who shall be on an approved leave of absence on the operative date, on account of disability or military service, shall be subject to membership as of such date, as though he were in active service. If such

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Cite as 610 F.Supp. 1133 (D.C.Guam 1984)

It is readily ascertainable from a reading of Section 8105 that there is a distinction between employees of the Government of Guam and employees of public corporations.

"Employee," as used in Section 8105, is defined under subsection (c) of Section 8104 to mean any person in the employ of the Government.

Under subsection (b) of Section 8105, all employees of the Government of Guam shall become members of the Fund as a condition of employment.

An employee of a public corporation, such as GVB, has the option of accepting or rejecting membership and shall become a member only upon submission of a written request to the Board for membership. Subsection (d), Section 8105.

Other public corporations, such as the Guam Airport Authority, Guam Telephone Authority, Guam Power Authority, Port Authority of Guam, Public-Defender Service Corporation, have all provided that their employees become members of the Government of Guam Retirement Fund.

The Guam Power Authority so provided as follows under Section 8118 of Chapter 8, 12 GCA:

"Section 8118. Employment.

(a) ...

(b) Employees of the Authority excluding the Directors, shall be members of the Government of Guam Retirement Fund, subject to the provisions of 4 GCA Section 8105, except that for the purposes of Subsection (a) of said Section, the employees of the Authority shall not be considered employees of a 'public corporation' whereby their membership in the Fund is optional and membership

leave of absence was for any other cause, such person shall be subject to membership as of the operative date only if the leave of absence shall have extended, in the aggregate for less than one (1) year at the operative date.

(b) All persons becoming employees after the effective date, shall become members as a condition of their employment, provided they are under the age of sixty (60) years on the date of entry into service.

therein must be specifically requested...."

Similar provisions are contained in the membership sections for the Guam Telephone Authority, Port Authority of Guam, and the Public Defender Service Corporation. May it be noted that the entitlement to membership of GVB employees in the Government of Guam Retirement Fund is optional under Section 8105(d), unlike employees of the other Authorities.

[3] The contention of the Governor that by virtue of Public Law 17-32 making GVB employees members of the Government of Guam Retirement Fund GVB, thus, automatically became an instrumentality of the Executive Branch of the Government of Guam is untenable and must fail. Contrariwise, the retirement law clearly indicates that employees of public corporations are not employees of the Government of Guam.

In its totality, the Governor has failed to prove that, by virtue of the applicability of the Administrative Adjudication Act, the Personnel Rules provisions of 4 GCA, Chapter 4, Section 4105, as amended by Section 3 of Public Law 17-32, and the laws relating to Retirement of Public Employees under 4 GCA, Chapter 8, GVB is an instrumentality of the Executive Branch of the Government of Guam.

Under Public Law 17-32, GVB is chartered by the Seventeenth Guam Legislature as a public corporation.

Aside from the discussions of whether GVB is an instrumentality of the Executive Branch of the Government of Guam because of its being intertwined with other Guam statutory provisions, *supra*, could GVB still be designated as an instrumental-

(c) ...

(d) An employee of a public corporation of the Government or of the University of Guam shall have the option of accepting or rejecting membership and shall become a member only upon submission of a written request to the Board for membership.

(e) ...

[Source: Section 4204 GC; Subsection (d) amended by P.L. 13-194;]

ity of the Government of Guam and, more specifically, an instrumentality of the Executive Branch of the Government of Guam within the coverage of 48 U.S.C. Section 1422, merely by virtue of its status as a public corporation?

It could not be ascertained from the statutes of Guam what a public corporation really is. Nowhere within the context of said statutes is "public corporation" defined, despite the creation of a dozen or so public corporations by the various Guam Legislatures since the inception of the Government of Guam under the Organic Act of Guam. Neither is the term "instrumentality" or "instrumentality of government" anywhere defined within local statutory context, though the term "instrumentality" was mentioned in connection with some of the public corporations created under local laws. Instrumentality, as the term is used in 48 U.S.C. Section 1422, is also devoid of definition.

Illustrative of the establishment or creation of public corporations, pursuant to 12 GCA, Chapters 1 to 8, 10 and 11, is the following:

A. The Guam Airport Authority (GAA) (Chapter 1, Section 1102)

"There is within, and a public corporation an autonomous instrumentality of, the government of Guam called the Guam Airport Authority."

B. The Guam Economic Development Authority (GEDA) (Chapter 2, Section 2101)

"There is hereby created a public corporation to be known as 'Guam Economic Development Authority'...."

C. The Guam Educational Telecommunications Corporation (GETC) (Chapter 3, Section 3102)

"There is hereby created a public corporation to be known as the 'Guam Educational Telecommunications Corporation'...."

D. Guam Housing Corporation (GHC) (Chapter 4, Section 4101)

"In order to promote the general welfare of the inhabitants of the territory of Guam through the improvement of hous-

ing standards in Guam, there is created a body corporate to be known as the Guam Housing Corporation ... The Housing Corporation shall be subject to the general direction of the Governor of Guam."

E. Guam Housing and Urban Renewal Authority (GHURA) (Chapter 5, Section 5, Section 5103)

"(a) There is hereby created a public body corporate and politic to be known as the 'Guam Housing and Urban Renewal Authority.'"

F. The Guam Mass Transit Authority (GMTA) (Chapter 6, Section 6201)

"There is hereby created the Guam Mass Transit Authority, a public corporation...."

G. Guam Telephone Authority (GTA) (Chapter 7, Section 7103)

"There is within, and a public corporation and autonomous instrumentality of the government of Guam, a Guam Telephone Authority."

H. Guam Power Authority (GPA) (Chapter 8, Section 8103)

"There is within, and a public corporation and autonomous instrumentality of, the government of Guam, a Guam Power Authority."

I. Port Authority of Guam (PAG) (Chapter 10, Section 10102)

"There is hereby established the Port Authority of Guam as a public corporation and autonomous instrumentality of the government of Guam."

J. Public Defender Service Corporation (PDSC) (Chapter 11, Section 11103)

"In order to provide effective legal aid and assistance to those persons in Guam who are unable to afford counsel, there is created a public corporation to be known as Public Defender Service Corporation."

Other corporations created by the Legislature are:

A.A. The Guam Territorial Law Library (GTLL) (Title XXIX, Chapter 2, Section 23500(a), Government Code of Guam)

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Cite as 610 F.Supp. 1135 (D.C.Guam 1984)

1135

"(a) A non-profit public corporation 'The Guam Territorial Law Library' is hereby chartered."

B.B. The University of Guam (UOG) (17 GCA, Chapter 16, Section 16101)

"There is established in the territory of Guam a non-membership, non-profit corporation, which shall be known as the 'University of Guam.'"

Public corporations such as GAA, GTA, GPA, and PAG, *supra*, are the only public corporations wherein each one is specifically designated as an instrumentality of the government of Guam. It is construed that the legislature, in expressly designating each one of the four public corporations as an instrumentality of the government, had determined that the other public corporations not so designated are not instrumentalities of the government. Ergo, GVB is not an instrumentality of the Executive Branch of the government.

Absent definitions of "public corporation" and "instrumentality of government" in our local statutes, a determination of what a public corporation and instrumentality of government has to be made.

Generally, a public corporation is organized for certain governmental purposes, such as counties, townships, school districts, cities, and incorporated towns, the so-called municipal or political corporations. Guam's public corporations cannot be categorized as public corporations in the true sense of municipal corporations.

Guam's legislatively-created public corporations are not public in the sense of being organized for governmental purposes; nevertheless, their operations contribute to the comfort, convenience, or welfare of the general public. They perform functions ordinarily undertaken by private enterprises such as electric, telephone, and water companies. In essence, these private enterprises are said to be "affected with a public interest" and, for that reason, they are subject to legislative regulation and control to a greater extent than corporations not of this character. These are usually designated as "public service corporations" or "quasi-public corporations."

Because of the non-availability of such private enterprises to perform the functions of public service corporations, it became necessary to create public corporations to perform the functions of public service corporations. In a real sense, such public corporations—GTA and GPA, *supra*—perform the functions of public service corporations. The same is true of the Public Utility Agency of Guam (PUAG) as to water supplies and distribution, although PUAG is not a public corporation.

On matters of public transportation, ordinarily such matter is handled by a private company on an exclusive franchise basis; but in the absence of a private company undertaking the responsibility, the GMTA, *supra*, is created to cover the alleged basic public necessity.

On matters of financing and housing, there is GEDA, *supra*, which ventures into financing in certain aspects, despite the availability of financial institutions. Justification of the existence of such is based on a basic need to lure private enterprises to come to Guam which in the end will inure to the benefit of the people of Guam. The operation of such, however, is not to compete with private financing institutions, but to supplement a need where private institutions will not readily venture. The GHC, *supra*, is duly established to cater to the needs of a certain segment of the public in matters of housing where such needs could not be served by private institutions. Though it could be concluded that Guam's public corporations do not primarily perform governmental function; nevertheless, they cater to certain needs and convenience of the public. GVB as a public corporation fits within one of these categories. It does not perform any governmental function. To maintain that it is an instrumentality of the Executive Branch of the government, though devoid of governmental functions, defies the basic concept of government.

IS GVB AN "INSTRUMENTALITY" OF THE GOVERNMENT?

In a North Carolina case where "instrumentality of government" was determined

on the issue of immunity from taxation, the court held that important factors to be considered in determining whether an agency is an instrumentality of government were the following: Was the agency created by the government, wholly owned thereby, is not operated for profit, and is primarily engaged in performing essential governmental function? *Unemployment Compensation Commission of North Carolina v. Wachovia Bank and Trust Co.*, 2 S.E.2d 592, 595, 596, 215 N.C. 491.

If the *Wachovia* factors are to be applied, obviously GVB is not an instrumentality of the Government of Guam.

(4) As chartered by the Seventeenth Guam Legislature, GVB is a public corporation. It is a non-stock, non-profit membership corporation governed according to applicable general corporation laws of Guam. Section 9102, *supra*.

The membership of this public corporation (GVB) is contained in Section 9112, which states as follows:

"Section 9112. Members. (a) Any person including natural persons, partnerships, and corporations shall be entitled to be a member of the Bureau.

(b) There shall be two (2) classes of membership: (i) 'Contributing Members' who shall be those members contributing the sum of One Hundred Dollars (\$100.00) or more annually; and (ii) 'Honorary Members' being those members contributing less than One Hundred Dollars (\$100.00) annually. Only contributing Members shall be entitled to vote, however, membership meetings shall be open to all members.

(c) Contributing members may acquire multiple voting rights on the basis of one (1) vote for each annual contribution of One Hundred Dollars (\$100.00), payable in lump sum or installments, provided, no single membership shall be entitled to more than ten (10) votes. All contributions of contributing members herein mentioned shall be cash and must be paid in full ninety (90) days prior to having any voting rights.

(d) a quorum of the membership shall require attendance of at least fifty percent (50%) of the total voting power of the members. Except as otherwise provided by law, any act of the members shall require a vote of a majority of the voting power of the members present at any meeting duly held. Contributing members may be present and may vote by proxy, provided written authorization of proxy is delivered to the Secretary or General Manager, or the Chairperson of the meeting at least twenty-four (24) hours prior to the commencement of the meeting which is the subject of the proxy."

Under subsection (a), it is permissible to have within the membership of GVB private corporations (businesses, etc.), religious corporations, industrial development corporations, non-profit cooperative associations, and colleges, and institutions of learning, as well as natural persons. Such membership in GVB could be substantial.

GVB is to be governed in accordance with the applicable general corporation laws of Guam.

Corporations, as a rule, give the shareholders the right to elect their board of directors. The contributing members of GVB, though not shareholders, should be accorded such right by virtue of their membership in GVB.

The contributions to be made by the contributing and honorary members in the form of dues may be minimal compared to what may be appropriated by the Government of Guam to the "Tourist Attraction Fund" in the form of *grants-in-aid*; and the membership dues supplemented by whatever revenues may be raised by GVB pursuant to Section 9105(1) may still not achieve parity with appropriated funds.

Nevertheless, the contributing members of GVB should not be deprived of their rights to have representation in the Board of Directors of GVB merely because the Government of Guam contributes the "lion's share" in the "pot" (Tourist Attraction Fund).

UNITED STATES v. CASTELLANO

Cite: 610 F.Supp. 1137 (D.C.N.Y. 1985)

1137

It is the express intent of the Legislature pursuant to Section 9106 that members of GVB should have such representation in the Board.

In the thrust of his oral argument, counsel for the Governor emphatically enunciated that the Organic Act provided for the traditional three branches in the Government of Guam, and nothing more, and that GVB comes within the jurisdiction of the Executive Branch. Could it be possible that the Seventeenth Guam Legislature in its wisdom in enacting Section 9115 of 12 GCA, Chapter 9, Article 1, has expressly determined that GVB should be within the purview of the Legislature?

"Section 9115. Reservation of Powers.

The Legislature hereby reserves the power to alter, amend or repeal any or all the sections of this Article."

It is the opinion of the Court that the Guam Visitors Bureau, a public corporation created by the Seventeenth Guam Legislature, is not an instrumentality of the Executive Branch of the Government.

Public Law 17-32 is constitutionally valid. It is not in contravention of 48 U.S.C., Section 1422.

Let Judgment issue.



UNITED STATES of America

v.

Paul CASTELLANO, et al., Defendants.

No. 888 84 Cr. 63 (ADS).

United States District Court,
S.D. New York.

March 5, 1985.

On Government's motion to disqualify defense counsel, the District Court, Sofaer, J., held that: (1) Government's argument

610 F.Supp. 1137

that defense counsel might not provide defendant with impartial advice if, by doing so, counsel could be implicating himself in unknown criminal offenses or exposing himself to perjury prosecution could not justify depriving defendant of his right to counsel of his choice; (2) hearing was required before counsel would be disqualified on ground that he could be ineffective in assisting defendant because he might fear future prosecution for perjury stemming from his grand jury testimony and possibly for obstruction of justice; (3) facts presented in Government's affidavits and memorandum were insufficient to justify counsel's disqualification on ground of his prior representation of other persons involved in the case; and (4) complete record as to matters on which defense counsel "ought" to be a witness, need for his testimony and, to extent relevant, willingness of his client or others to do without his testimony, was necessary before ruling on motion.

Order accordingly.

See also 610 F.Supp. 1151.

1. Attorney and Client ¶19

Before defense counsel is disqualified, government must show convincingly that no less intrusive measure can adequately protect interests it has invoked.

2. Witnesses ¶297(6)

Assertion of privilege is justifiable even though testimony to be given before grand jury could not as a matter of law support criminal conviction; proper test is whether answers might furnish link in chain of evidence needed in a prosecution.

3. Witnesses ¶308

While claimant of privilege is not immunized from answering question upon his mere declaration that it would tend to incriminate him, his say-so does not of itself establish hazard of incrimination; judge evaluating claim of privilege may rely upon his personal perceptions of peculiarities of case as well as upon the evidence.

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April 29, 1989

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HAND DELIVER

Mr. Joseph T. Duenas, Chairman
PUBLIC UTILITIES COMMISSION
c/o Room 232, Second Floor
Julale Shopping Center
Agana, Guam 96910

RE: BILL NO. 299

Dear Mr. Duenas:

Date/Time Recd	5/4/89 3:00pm
Received by	Frank
Exec Ass't	
SENATOR	
Chrono File by	
Orig. Filed at	
Orig. Filed by	
Other Action	

You have asked that I review and comment upon Mr. Maanao's April 27, 1989 letter to Senator Parkinson.

While it is true that the Suruhano's jurisdiction under P.L. 14-99 extends to public utility consumer complaints, his authority is grounded more on the power of persuasion and recommendation rather than a mandate (i.e., the power to order that a utility to reverse its action). Section 1418 provides that the provisions of the Suruhano's law "are in addition to and do not in any manner limit or affect the provisions of any other statute under which any remedy or right of appeal is provided.". The Suruhano law seems, therefore, to anticipate that another agency may be empowered to consider and act upon consumer appeals.

In light of the above, I see nothing inconsistent with the Public Utilities Commission's proposed authority under Sections 1, 2 and 3 of Bill No. 299 and the Suruhano's existing jurisdiction.

Cordially,

MOORE, CHING, BOERTZEL & LAWLOR



Harry M. Boertzel

HMB/d1
F#PUC-01
D#HBLTRS A#1

Exhibit "E"

MAJORITY LEADER and CHAIRPERSON, COMMITTEE ON ENERGY, UTILITIES, AND CONSUMER PROTECTION

Exhibit "E"

TWENTIETH GUAM LEGISLATURE
1989 (First) Regular Session

FEB 14 '89

Bill No. 299(Cor)

Introduced by:

Don Parkinson

AN ACT AMENDING SECTIONS 21151 AND 2154 OF THE GOVERNMENT CODE,
AND SECTION 12002 OF CHAPTER 12, TITLE 12 GUAM CODE ANNOTATED,
RELATIVE TO THE PUBLIC UTILITIES COMMISSION.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Subsection (3) of Section 21151 of the
Government Code of Guam is repealed and reenacted to read:

"Commission means the Public Utilities Commission."

Section 2. Section 21153 of the Government Code is amended
to read:

"Section 21553. Appeal From Agency Action.

"(a) If an agency statement is adverse to a customer,
the customer may within thirty (30) days of the
issuance of the Agency statement take appeal to the
Commission which shall have jurisdiction to resolve the
dispute. During the pendency of said appeal, no action
adverse to the customer with respect to the disputed
amount may be under taken. The taking of appeal
pursuant to this section shall operate as a stay. The
deposit shall remain in escrow until resolution of the
appeal.

"(b) If the Agency's determination is reversed by the
Commission, then the Commission shall award reasonable
attorney's fees to the customer and costs."

Section 3. Section 21154 of the Government Code is repealed
and reenacted to read:

"Section 21154. Same.

The Commission shall promulgate rules and regulations
for entertaining the appeals provided by Section
21153."

Section 4. Section 12002 of Chapter 12, Title 12 Guam Code
Annotated is repealed and reenacted to read:

"Section 12202. Operation of Commission.

"(a) The Commission shall retain on an needed bases
those professional services required by the Commission
in the performance of its duties. The Commission may
employ administrative staff personnel for the conduct
of Commission business.

"(b) The Commission may also appoint an attorney, who shall serve at the pleasure of the Commission and whose duties and compensation shall be fixed by the Commission. The attorney, who must have been admitted to practice before the District Court of Guam, shall advise the Commission on all legal matters to which the Commission is legally interested and may represent the commission in connection with legal matters before the Legislature, Boards and other agencies of the Territory. The Attorney General of Guam shall represent the Commission in litigation concerning the affairs of the Commission, provided that he may delegate this duty to the attorney of the Commission with respect to any such litigation. The Commission is authorized to establish by rule or order that each public utility regulated under this Chapter shall be assessed the costs incurred by the Commission for professional services rendered by the attorney.