



Office of the Speaker

BENJAMIN J.F. CRUZ

I Mina'trentai Kuåtiro na Liheslaturan Guåhan

Committee on Appropriations and Adjudication

June 22, 2018

Transmitted via Hand Delivery and Electronic Mail

mike.o'rielly@fcc.gov

Mr. Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: A Necessary Clarification

Dear Mr. O'Rielly:

I write to you in the hope of clarifying certain misstatements conveyed to you in a June 21st letter from Eddie Baza Calvo, the Governor of Guam. As a retired Chief Justice of the Supreme Court of Guam, the sitting Speaker of the 34th Guam Legislature, and the present Chairman of its Committee on Appropriations and Adjudication – I can say that Governor Calvo's statements are false on their face.

First, I made clear that transfers from the Enhanced 911 Emergency Reporting System Fund (E911 Fund) Fund to the General Fund are a violation of Guam law. On October 25, 2017, I wrote to then-Director of Administration Christine W. Baletto **insisting that these transfers stop**, as they are expressly prohibited pursuant to § 12304(f), Chapter 12, Title 12 of the Guam Code Annotated (*a copy of my letter is appended to this correspondence in addition to Director Baletto's response*).

I noted that between Fiscal Years 2014 through 2016, the sum of \$3,041,143 was permanently transferred out of the E911 Fund into the General Fund. The Administration later authorized additional permanent transfers out of \$839,583 from the E911 Fund in Fiscal Year 2017 – again for purposes not in accordance with Guam law.

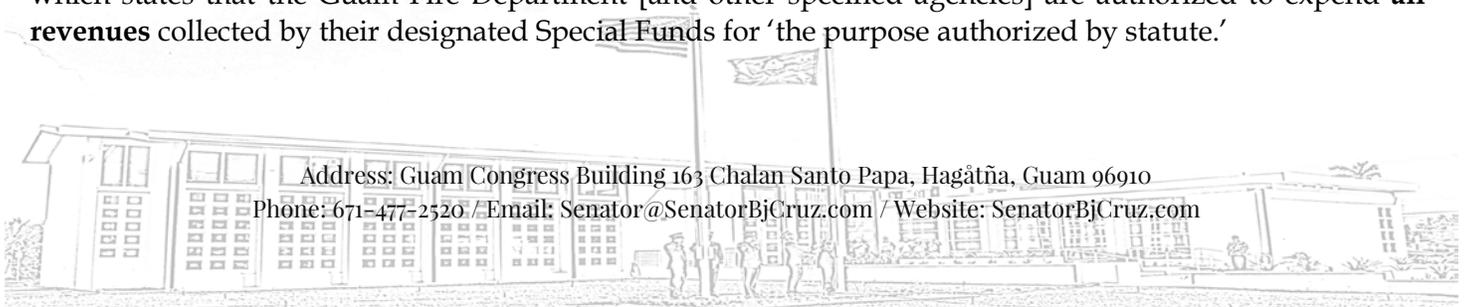
Secondly, Governor Calvo's response seems to represent that Section 22, Chapter XIII of Guam Public Law 34-42 provides language that authorizes the use of Special Revenue Funds for purposes outside the scope of the stated statutory purposes of these funds. **This is wrong.**

Governor Calvo states:

"By enacting this provision of law, it was the intent of the Guam Legislature to permit for the release of funds determined to be unspent or excess (i.e. "lapsed funds") so that those monies could be used for other appropriations prior to impending end of FY2018 on September 30, 2018."

However, the **same chapter of the same public law** referenced by Governor Calvo also includes Section 13 which states that the Guam Fire Department [and other specified agencies] are authorized to expend **all revenues** collected by their designated Special Funds for 'the purpose authorized by statute.'

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This specifically included E911 Funds for Fiscal Year 2018, and unexpended carryovers authorized by law. This fact alone negates the Governor's assertion that excess or lapsed funds were authorized to be expended, notwithstanding the expressed uses authorized in the establishment and enactment of the E911 Fund itself. Assuming *arguendo* that the Governor's logically-added reading is plausible – **it is a settled principle of law that the more specific provision governs the more general one:**

“As always, ‘[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.’” [Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437 (1987)].

Third, I note that the Governor's argument fails, in a more obvious way, because **the specific section of the law Governor Calvo cites is only applicable for FY 2018 and is not applied retroactively.**

As such, even if the Governor's convenient “Never-Never Land” reading of the law applied, the permanent transfer of approximately \$3.8 million between Fiscal Years 2014 and 2017 would not be subject to a section of law that is effective **only** in 2018.

Additionally, the permanent transfers from the E911 Fund were also confirmed by the Guam Fire Department on Friday, June 15, 2018 during the department's FY 2019 budget hearing. During this hearing, the GFD's leadership were asked if transfers out of the E911 Fund to the General Fund were permitted by federal law. Their response follows:

“This was instructed to us. (DOA) convinced us this was part of their accounting principles...And I believe it was the public auditor who came out and stated it's a situation where funds needed to be used or a larger negative impact could have happened. **I did not agree with it.**”

The week prior, when confronted with the illegality of DOA's actions regarding Special Fund transfers, the agency's financial manager Kathy Kakigi, replied:

“The bottom line is, **‘Which law do you want me to break?’** Do you want (me) to break the federal law with payroll, or do you want (me) to break these special revenues?”

How then can the Calvo Administration admit to a violation of local law, regarding special fund transfers, before the Guam Legislature, and then represent that neither federal or local law was violated to the FCC?

Based on the facts before me, and presently on the public record, transfers from the E911 Fund were executed in contravention of Guam law and applicable federal provisions.

Si Yu'os Ma'ase.


Benjamin J.F. Cruz

CC:

The Honorable Eddie B. Calvo, Governor of Guam



Office of the Speaker
BENJAMIN J.F. CRUZ
I Mina'trentai Kuâtro na Liheslaturan Guåhan
Committee on Appropriations and Adjudication

October 25, 2017

Transmitted via Electronic Mail

christine.baleto@doa.guam.gov

Ms. Christine W.P. Baleto
Director
Department of Administration
Suite 224, ITC Building
590 South Marine Corps Drive
Tamuning, Guam 96913

Re: Halt Special Revenue Fund Permanent Transfers to the General Fund

Dear Director Baleto:

As the Fiscal Year 2017 closing process is conducted by the Department of Administration (DOA), I want to call attention to the permanent transfers from certain Special Revenue Funds to the General Fund that have occurred over the past several fiscal years, and call for such transfers, if planned, to cease immediately.

Recycling Revolving Fund

The Recycling Revolving Fund (RRF) has experienced consistent collections over the past several fiscal years—averaging over \$2.7 million per year between Fiscal Years 2012–2016, with Fiscal Year 2017 unaudited RRF revenues at \$2.8 million. Within that same time frame, the DOA has permanently transferred approximately **\$10,175,718** out of the RRF to the General Fund, thereby artificially increasing the General Fund balance.

Such permanent transfers out of the RRF to the General Fund take away from the government's ability to fulfill the intent of the RRF and is, furthermore, in violation of § 51302, Chapter 51, Title 10 of the Guam Code Annotated. Such section states that "the funds deposited into the Recycling Revolving Fund shall not be subject to the transfer authority of *I Maga'låhen Guåhan*."

Enhanced 911 Emergency Reporting System Fund

The Enhanced 911 Emergency Reporting System Fund (E911 Fund) provides a source of funding for costs associated with Enhanced 911 Emergency Reporting System and equipment and system costs as necessary. Between Fiscal Years 2014–2016, the DOA has permanently transferred approximately **\$3,041,134** out of the E911 Fund to the General Fund, thereby artificially increasing the General Fund balance.



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Such transfers are exempted in § 12304(f), Chapter 12, Title 12 of the Guam Code Annotated, which states, "Notwithstanding any other provision of law, no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of *I Liheslatura*. The Fund is *exempt* from any transfer authority."

Fire, Life and Medical Emergency Fund

The Fire, Life and Medical Emergency Fund (FLAME Fund) provides funding for the purchase, critical maintenance, and repair of essential emergency rescue and firefighting vehicles; emergency life support and medical equipment; and training for Emergency Medical Technician and Paramedic certifications. Between Fiscal Years 2014-2016, the DOA has permanently transferred approximately **\$1,317,838** out of the FLAME Fund to the General Fund, thereby artificially increasing the General Fund balance.

Such transfers are prohibited pursuant to § 72016(c), Chapter 72, Title 10 of the Guam Code Annotated, which states, "No Transfer Authority by *I Maga'låhen Guåhan*. *I Maga'låhen Guåhan* may *not* use his transfer authority to utilize any monies deposited in the Fund."

Prior Transfers from Special Funds and Accounts

As you are aware, transfers from the Child Support Enforcement Account were being performed by the DOA until such time I had called attention to it. Additionally, I introduced what is now Public Law 34-04, in order to protect the Guam Cancer Trust Fund from any unauthorized or prohibited withdrawal and use.

Furthermore, Supreme Court Case No. CRQ14-001, *In Re Request of I Mina'trentai Dos na Liheslaturan Guåhan*, relative to the use of funds from the Tax Refund Efficient Payment Trust Fund, found that transfers, withdrawals, or expenditure of funds from the Income Tax Refund Efficient Payment Trust Fund (Refund Trust Fund) were prohibited. This was ruled upon subsequent to Governor Calvo's withdrawal of nearly **\$50 million** from the Refund Trust Fund. The Supreme Court upheld that the Refund Trust Fund law did "not permit the Governor to withdraw monies from the Trust Fund for purposes other than those prescribed..."

Since that landmark Declaratory Judgment against the Calvo Administration, the DOA has complied with the specific provision of law in question. Yet, despite the presence of similar transfer prohibitions cited in the above-referenced Special Revenue Fund statutes, the DOA has transferred funds out of these accounts in clear contravention to these expressed prohibitions.





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Moving forward, I urge the Department of Administration to cease transfers from Special Revenue Funds to the General Fund—especially where clear statutory prohibitions against such transfers exist.

Additionally, pursuant to the authority granted by the *Sunshine Reform Act of 1999* (§ 10103, 5 GUAM CODE ANN.), I hereby request for the Department of Administration to provide:

- 1. Any and all written and/or electronic correspondence or documentation (including attachments) within the Department of Administration, authorizing the transfer of funds out of the Recycling Revolving Fund, the Enhanced 911 Emergency Reporting System Fund, and/or the Fire, Life and Medical Emergency Fund between October 1, 2012 to the date of this letter.**

Under § 10103(d) of 5 GCA, you shall comply within four (4) working days from the date or receipt of this request, pursuant to law. These items may be submitted electronically to senator@senatorbjcruz.com or delivered to my office. Please call my office at 477-2520/1 should you require assistance or additional information.

Thank you for your attention to this important matter, and I look forward to your prompt response.

Si Yu'os ma'åse',



Benjamin J.F. Cruz





Eddie Baza Calvo
Governor
Ray Tenorio
Lieutenant Governor

November 19, 2017

DEPARTMENT OF ADMINISTRATION
(DIPATTAMENTON ATMENESTRASION)
DIRECTOR'S OFFICE

(Ufisinan Direktot)

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Christine W. P. Baletto
Director
Vincent P. Arriola
Deputy Director

Speaker Benjamin J.F. Cruz

The Honorable Benjamin J.F. Cruz, Speaker
Chairman, Committee on Appropriations and Adjudication
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NOV 20 2017
Time: 4:10 PM
Received By: [Signature]
File No: 34-1204

RE: Freedom of Information Act Request – Halt Special Revenue Fund Permanent Transfers to the General Fund

Buenas yan Håfa Adai Speaker Cruz,

In response to your Freedom of Information Act Request (FOIA) received October 25, 2017 regarding the above referenced information, please find attached copies of documentation within the Department of Administration.

Please note that that permanent transfer of funds at the end of a fiscal year is the result of compliance with Government Accounting Standards Board (GASB) Statement No. 34, 112. a. (1) which states: If repayment is not expected within a reasonable time, the interfund balances should be reduced and the amount that is expected to be repaid should be reported as a transfer from the fund that made the loan to the fund that received the loan" (GASB 34 copy attached). In essence, the General Fund has not been able to actually pay or transfer these special revenue funds to the respective fund account due to the perpetual cash shortage that has been experienced for decades. Permanent transfers have been a regular part of the Government of Guam's compliance with Generally Accepted Accounting Principles (GAAP) since 2002. A copy of page 42 of the 2002 audit report is attached for your reference. Further, the notes to the financial statements for Fiscal Year 2002 and FY2003 which identify interfund transfer that are not expected to be paid is listed. As noted above in the GASB 34 standard, if repayment is not expected within a reasonable time, the receivable for the fund should be reduced. This was first done in Fiscal Year 2006 in which \$17 million dollars of receivables in other governmental funds was reduced due to it not being expected to be repaid out of General Fund. In Fiscal year 2009, this was also done to comply with GASB 34 standards. This was a source of great contention between the Legislative and Administrative Branch which was addressed by the late Speaker Ben Pangelinan during session. During this session, he read verbatim the requirements of GASB 34 and explained to the Legislative body why this requirement was necessary to comply with. We are still trying to locate documentation which transcribes the actual statement made. We hope that you will recollect this as you were part of the Legislative Body at the time.

5 G.C.A., Article 2, § 22204. Rules & Regulations, requires that the Director of the Department of Administration provide that the principles of governmental accounting and reporting; classification of funds and accounts; and accounting terminology shall conform to those recommended by the National Committee on Governmental Accounting. For government entities, the Government Accounting Standards Board is the authority for Government Accounting Standards. In addition, 5 G.C.A., Article VI, § 6.06, requires that financial statements be prepared in accordance with Generally Accepted Accounting Principles (GAPP). Further, in § 11.11, requires that accounting records shall be maintained in accordance with GAPP.

When preparing the financial statements for the Government of Guam's annual audit, we would be in non-compliance with GASB 34 if we failed to record permanent transfers. All unexpended/unappropriated amounts that are not expected to be collected within a reasonable time become subject to permanent transfer. If we did not do so, our financial statements would not be in compliance with GAPP or GASB. This would result in a modified opinion which would place the Government of Guam in Jeopardy. Our Credit Rating, Investors, Bond Holders, Federal partners and all stakeholders who rely on financial statements to be prepared in accordance with these requirements would be very concerned with our failure to do so.

The only other course of action would be to require the transfer out of the General Fund. As reported during several hearings and via correspondence, we have been leanly managing the government's annual receipts and disbursements. Such a transfer would cause payless paydays, bond payments to be compromised, allotments to be further hampered; and could potentially cause the shutdown of Government of Guam services.

We sincerely hope that our Government will one day be in a cash situation that would not necessitate these transfers. However, it is unlikely that this will be possible in closing Fiscal year 2017.

Should you have any questions, or wish to discuss the matter further, please feel free to contact me at 475-1250.

Senseramente,



Christine W. Baletto
Director, DOA