



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

July 24, 2017

**Transmitted via Electronic Mail**

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The Honorable Elizabeth Barrett-Anderson  
Attorney General of Guam  
Office of the Attorney General  
590 South Marine Corps Drive  
Suite 706, ITC Building  
Tamuning, Guam 96913

**Re: Regarding Public Law 33-18 and P.L. 33-122**

Dear Madame Attorney General:

At your July 6th Budget Hearing before the Committee on Appropriations, I asked you specific questions regarding your office's implementation of Public Law 33-18, as well as its successor statute P.L. 33-222.

Though the exact nature of your answers and your position as Attorney General make a perjury charge in this matter unlikely, I want you to know that I believe you are guilty of responses which, at best, knowingly withheld relevant information from the Committee on Appropriations or, at worst, were an act of intentional deception.

In simple terms, P.L. 33-18 (Bill No. 46-33) granted a pay incentive to employees of Government of Guam line agencies, the Office of Public Accountability, the University of Guam, and the Guam Department of Education who have obtained Professional Certifications in the fields of Public Accounting, Fraud Examination, and Auditing.

While the measure did become law, I opposed Bill No. 46-33 on the floor for two reasons:

1. If a prospective employee applies for a job requiring a CPA as a basic qualification, why should that same CPA be used as the basis for additional bonus pay? Applying the same premise, if a certified teacher must be a college graduate to teach in a public school, why not give every teacher that graduated from college bonus pay because they earned a degree?
2. I believed this measure could be exploited by those with multiple certifications—allowing a favored few to receive additional certification pay for literally every certification held.

Just months after the enactment of P.L. 33-18, a subsequent law, P.L. 33-222 barred the application of multiple incentive pay credits.



### No One Should Stand as Judge of Themselves

A cornerstone of the law is that no person should stand as judge of themselves, especially in matters involving the public purse. Sadly, you violated this fundamental principle, and in so doing, permitted an employee of your office to receive pay never expressly permitted by law.

Both P.L. 33-18 and P.L. 33-222 specifically outlined the line agencies and government entities permitted to issue this type of bonus pay, yet **no** statute expressly permitted employees of the Office of the Attorney General to do so.

To circumvent this clear statutory reality, you issued a legal opinion worthy of Goldie Locks and the Three Bears. In complete disregard for the ethical conflict inherent in drafting a legal opinion (DOA 16-0388) that specifically benefitted employees of your office, you held that while OAG personnel should be seen as "line agency" employees for pay purposes, they are exempt from that same distinction as it relates to management or operations. Though I have serious concerns about the contorted nature of this premise, I am gravely troubled by the sketchy nature of your judgment. Instead of seeking expressed legislative permission to issue this bonus pay, you simply drafted an opinion that permitted you to do so.

### AG Opinion Used to Exploit the Law

Doubling down on this ethical miscarriage, you also saw fit to apply this bonus pay in a manner directly contradictory to the Department of Administration. Again, based solely on your "opinion," you determined that multiple certifications credits may be considered cumulatively, allowing certain individuals to grossly inflate base pay.

Of particular note is the fact that while P.L. 33-18 could be exploited by those opportunistic enough to do so, DOA did not agree that multiple certification credits could be applied cumulatively – a decision your opinion conveniently obviated for AG employees.

Personnel Actions obtained from your office under my Freedom of Information Act request indicate that as of March 7th, 2016, your General Accounting Supervisor, Thomas Q. Paulino, received two separate certification bonuses increasing his Base Salary in the following manner:

**Base Salary:** (\$59,773), plus 10% for CGFM (\$5,977), plus 15% for CPA (\$8,966)  
**= TOTAL ANNUAL SALARY: \$74,716**

In this specific example, you had a choice: conservatively interpret the law in favor of the taxpayer or exploit that law to the specific benefit of an employee close to you. Based on the documents before me, your choice is a failure unworthy of the office you now hold.

This is the context in which my July 6th queries to you were posed. The following is the relevant transcript of our discussion on the matter:

**Chairman Cruz:** "Did you implement 4 GCA, \$6235 as it relates to the certification pay?"



**AG Barrett-Anderson:** “Yes we did, as it was enacted at that time. There is a revision to the Certification Pay Statute. We did have a disagreement with DOA’s interpretation. We followed my interpretation of that. **The statue has been revised and we are following the current statute now...** If you’re asking has it been adjusted in the in the staffing pattern? No, it has yet to be adjusted.”

**Chairman Cruz:** “Is that person receiving the adjustment?”

**AG Barrett-Anderson:** “Not yet. It is still an active... It’s ongoing and active with DOA.”

**Chairman Cruz:** “And when you do, how do you figure you can do a double?”

**AG Barrett-Anderson:** “Not under the current statute, Senator.”

**Chairman Cruz:** “Okay.”

**AG Barrett-Anderson:** “The current statute is clear. There’s no ambiguity in the current statute. There was an ambiguity prior to the current statute.”

### **OAG Waited 6 Months to Follow the Law**

Contrary to the statements you made above, the same personnel actions also indicate that while you clearly understand that current law prohibits the application of multiple certification credits to base pay, you **waited a full 6 months to comply with the law.**

In fact, personnel actions vacating the illegal certification pay you provided Mr. Paulino were not submitted until July 11th – a full **5 days after your July 6th Hearing.**

How then could you plainly assert under oath that you were “following the current law?” How could you further assert that the individual in question was not receiving “an adjustment” when no document removing this illegal pay would be submitted for another **5** days?

### **A Record of Failure, Silence, & Exploitation**

Madame General, I have lived my life by the principle that the unvarnished truth is more valuable than the political convenience of a polite lie. For this reason alone, let me be absolutely clear: I believed that your tenure as Attorney General would be marked by a dispassionate defense of the law. I know now that I was wrong.

To borrow an old refrain: perhaps you are so busy trying to keep your job, you have forgotten to do your job.

First, after acknowledging the Governor’s illegal issuance of retroactive pay to Adelup employees in 2014 and the need for a Special Prosecutor to investigate this Act, your office conveniently **failed** to select that



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Special Prosecutor within the Statute of Limitations.

Second, when government officials raided or permitted the raiding of the Child Support Enforcement Fund you stayed conveniently **silent** – only acknowledging this conduct when questioned by the Legislature.

And third, in recent months, you willfully **exploited** your office to benefit OAG personnel, and then **deceived** a legislative committee to do so.

I know that this letter will prompt you to launch a vigorous defense of your actions – alleging simply that I have misunderstood, that your choices were well intentioned and within the scope of the law.

This is what politics demands. But you are supposed to be more than a politician. You are supposed to be an instrument of Justice – a person who chooses to protect both the spirit and the letter of the law rather than exploiting it for the benefit of those around them.

Though many things can be forgiven, trust once broken can never be fully repaired.

Sincerely,



Benjamin J.F. Cruz

CC:

All Senators,

34<sup>th</sup> Guam Legislature