

October 20, 2017
Elizabeth Barrett-Anderson
Attorney General of Guam
590 S. Marine Corps Drive, Suite 901
Tamuning, GU 96913
Re: GCA 49.90 Official Misconduct

Dear Attorney General,

On September 29, 2017, the legislature voted to pass Bill 122-34 increasing the liquid fuel tax without the consent of the electorate as prescribed in PL 24-222. As you are aware P.L. 24-222 is clear; (a) I Liheslaturan Guåhan must pass, in bill form, a proposed tax increase, the effective date to be thirty (30) days after ratification by the voters of Guam in a referendum, such ratification to be certified by the Guam Election Commission. The bill must detail the amount and nature of the proposed increase and the purpose to which such proposed increase shall be applied. Bill 122-34 was signed into law on October 12, 2017 in violation of P.L. 24-222.

The “notwithstanding” provision was employed to circumvent P.L. 24-222 and in doing so possible official misconduct may have occurred. Under GCA 49.90 section (b) any public official that knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office, shall have committed a misdemeanor crime.

It is known that the “notwithstanding” provision has been invoked by previous legislatures to pass numerous public laws, but can the legislature “notwithstanding” the people? The 9th circuit appeals court found that, “statutes which use the phrase, notwithstanding any other provision of law do not, in fact, supersede certain other statutes”. Does P.L. 24-222 interfere with the new statutory rights or responsibilities the legislature is creating? The direct intent of P.L. 24-222 was to give people the right to “ratify” any tax increase, while the intent of P.L. 122-34 is to fix village roads. There are already statutes in place to fix village roads that don’t impede on the people’s right to participate on issues of taxation.

In this case the “notwithstanding” provision was used to egregiously impede the direct participation of the citizenry in issues related to taxation as prescribe in P.L. 24-222. This action taken by members of the Guam Legislature is counter to the public official’s duty to faithfully support the Constitution of the United States, the Laws of the United States Applicable to Guam, and the Laws of Guam. By invoking the “notwithstanding” provision in this case, they knowingly refrained to perform their duties imposed upon them that is clearly inherent in the nature of his office.

The cornerstone of our democracy is the unimpeded participation of all the citizens in the process as prescribed by law. I am therefore requesting, the Office of the Attorney General of Guam to take action against the senators who violated Public Law 24-222 under 9 GCA 49.90, and take actions to suspend P.L.122-34 from going into effect until it is approved or disapproved in the next General Election as provided for in P.L. 24-222.

Your response to this letter by email will be greatly appreciated.

Respectfully,

Andri S. Baynum
Tax Payer/Voter and Resident of Guam
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CC: Media