

OFFICE OF SENATOR FERNANDO BARCINAS ESTEVES

I Mina'Trentai Kuáttro Na Liheslaturan Guåhan
34th GUAM LEGISLATURE



Honorable Elizabeth Barrett-Anderson

December 27, 2018

Office of the Attorney General of Guam
Administration Division
590 S. Marine Corps Drive, Suite 901
Tamuning, Guam 96913

Håfa Adai Attorney General Elizabeth Barrett-Anderson,

I apologize that I must write you regarding my disappointment on matters related to your organization. On 25 June 2018 my office transmitted an official Request for Legal Opinion pursuant to my privileges as a duly elected Member of I Liheslaturan Guåhan outlined in 5 GCA §30107 (see enclosed Letter).

In my letter I asked two questions:

1. How does the ruling in *South Dakota v. Wayfair* apply to Guam?
2. Is the 11 GCA Ch. 28 Use Tax Law, in its current form, enforceable relative to *South Dakota v. Wayfair*?

As you know *South Dakota v. Wayfair* was a landmark case decided by the Supreme Court. This rendered the previously held nexus requirement void allowing States to apply their local taxes to online purchases regardless of physical presence. At the time and to this day our island faces financial hardship. It was and is my intent that review of the applicability of this case could provide a direct benefit to the people of Guam. As it stands our people pay potentially millions in applicable taxes to other States for their online purchases. Application of our local tax laws on online purchases could ensure that those monies are paid to the Government of Guam rather than to other States. Furthermore, that our taxable rate of 4% under the Use Tax Law could save our consumers from much higher Sales Tax Rates in other states.

I requested this opinion days after the decision had been rendered on *South Dakota v. Wayfair*. It was my intent that information furnished by your organization would provide additional options to my colleagues as we would soon begin deliberations on the FY19 Budget. I believe that the lack of collaboration or responsiveness on this matter by your organization left the Legislature with fewer options ultimately resulting in undesirable tax increases.

To date it has been six (6) months since the request was made pursuant to the law. After repeated follow-ups out of professional courtesy my office has not received any actionable feedback or any updates on the case review. I would be remised if I failed to point out that is has been observed by not only myself that your office is selective in its responsiveness to requests. I must advise that 5

GCA §30107 is very clear that opinions *shall* be rendered regarding enacted laws and case law when duly requested and is not left as a discretionary matter. Furthermore, the law also specifies that opinions not rendered within seven (7) days are the personal liability of the Attorney-General and subject to fine of One-Hundred (\$100) Dollars.

As elected public servants we understand that our time is finite. However, it is my belief that despite our expiratory date, we have a duty to ensure that any work products or time put in by public officials should be carried to completion. Moreover, should be established in any transition in the spirit of continuity and fiscal stewardship. I request, out of professional courtesy the following information; unless you will require an Official FOIA request.

1. Please provide all work products, if any, related to the official Request for Legal Opinion by me (the undersigned) dated 25 June 2018.
2. Please provide copies of all Standard Operating Procedure, if any, relative to actions/intake by the Office of the Attorney General when receiving a Request for Legal Opinion pursuant to 5 GCA §30107. [Pursuant to P.L. 34-05, Standard Operating Procedures *shall* be posted on your website for public review]
3. Please provide a timeline of events and processes, if any, relative to the letter in question.

In conclusion, I implore you Honorable Attorney General Elizabeth Barrett-Anderson to take this matter to heart. Our government has raised taxes on our people, meanwhile we are potentially paying millions to the benefit of other States. Based on what has transpired I cannot remain silent or meek as it relates to our people and once again apologize for being left with this approach. If responsibilities pursuant to 5 GCA §30107 are beyond the capability of your organization to perform efficiently and fairly I will implore legislators of the 35th Legislature to relieve your agency of this burden and subsequent funding be redirected to our Legal Bureau. It is critical that the functions and integrity of I Liheslaturan Guåhan be facilitated. We should not forget that the Legislative branch of government is at the very core of American democracy. It is essential that all elements of the government perform their functions. Collaboration and collegiality are essential to performing good work for our people. With that in mind I accept full responsibility for not pressing the issue sooner, but I still expect results pursuant to the law.

Senseramente,

FERNANDO B. ESTEVES



SENATOR
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Distribution: **All Senators**