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Subject: The interpretation of Article XV, §1(e) of the NMI Constitution as to PSS's annual appropriation

Requested by: Herman T. Guerrero, Chairman, State Board of Education and Rita A. Sablan, Ed. D, Commissioner of Education

Opinion of the Attorney General

I. Issue Presented

Whether the term "general revenues" in Article XV, § 1(e) of the Commonwealth Constitution refers to the General Fund only, or whether it includes special funds and accounts which are kept separate from the General Fund.

Short Answer: The term "general revenues" refers to the revenues that are deposited into the General Fund and does not include the revenues of the special funds and accounts that are kept separate from the General Fund.

II. Analysis

The definition of "general revenues" as used in Article XV, § 1(e) should be interpreted to mean only those revenues deposited into the General Fund as defined by Commonwealth law. The relevant constitutional language at issue provides:

The public elementary and secondary education system shall be guaranteed an annual budget of not less than twenty-five percent of *the general revenues* of the Commonwealth through an annual appropriation. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be available for reappropriation.

NMI CONST., ART. XV, § 1(e). (emphasis added).

When interpreting the Commonwealth Constitution, the Commonwealth courts follow principles parallel to those of statutory construction. See *Pangelinan v. Commonwealth*, 2 CR 1148, 1160 (DC App. Div. 1982) (stating that the general principles of statutory construction are equally applicable in cases of constitutional construction). This examination begins with the actual language of the Commonwealth Constitution. Cf. *Islands Aviation Inc. v. Mar. I. Airport Auth.*, 1 CR 633, 654 (DC App. Div. 1983) (referring to the basic rule of statutory construction). The language must be given its plain meaning. *Camacho v. Northern Marinas Retirement fund*, 1 N.M.I. 362, 367 (1990); *N. Mar. Coll. v. Civ. Serv. Comm'n II*, 2007 MP 8 ¶ 9. The Court will apply the plain, commonly understood meaning of the constitutional language unless there is evidence that a contrary meaning was intended. *Id.* If necessary, the Court will consult legislative history in construing constitutional provisions. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122, 143 n. 23 (1991); *rev'd on other grounds*, 31 F.3d 750 (9th Cir. 1994), *cert denied*, 513 U.S. 1136, 115 S. Ct 913, 130 L. Ed. 2d. 294 (1995). The overarching principle is to give effect to the intent of the framers and the people adopting the NMI Constitution. *Nakatsukasa v. Superior Court*, 6 N.M.I. 59, 1999 MP 25 ¶ 13.

The analysis of the NMI Const. Art. XV, § 1(e) begins with the plain, commonly understood meaning of the term “general revenues” of the Commonwealth. The Court has relied on the definitions in *Black's Law Dictionary* as a source of plain and commonly understood meaning of words and terms. See, e.g., *Commonwealth v. Santos*, 2014 MP 3 ¶ 17.

Black's Law Dictionary defines the term “general revenue” as: “[t]he income stream from which a state or municipality pays its obligations unless a law calls for payment from a special fund.” BLACK'S LAW DICTIONARY 1513 (10th ed. 2009). The definition also refers the reader to the definition of “general fund,” which is defined as “a government's primary operating fund... [or] a state's assets furnishing the means for the support of government and for defraying the legislature's discretionary appropriations.” *Id.* at 788. *Black's Law Dictionary* further states that a “general fund is distinguished from assets of a special character, such as trust, escrow, and special-purpose funds.” *Id.* Both definitions share certain common elements: (1) they both involve government money, income, or assets; (2) which are used to support the government by paying its obligations and operations; (3) by legislative appropriation; (4) from a “general” fund as opposed to a special fund reserved for a specific purpose or special, specified revenues. Given the commonalities, the definitions in *Black's Law Dictionary* for “general revenue” and “general fund” are synonymous.

The Commonwealth is not the first jurisdiction to ponder the meaning of “general revenues.” In *State ex rel. State Road Commission v. O'Brien*, 140 W.Va. 114 (1954), the West Virginia Supreme Court held that the “general revenues” of the state did not include a gasoline tax fund, which was earmarked solely for use in repairing and improving highways. *Id.* at 124.

Nothing in the sparse legislative history of Commonwealth Constitution Article XI, § 1(e) counsels against using the plainly understood meanings of the terms “general revenue” and “general fund.” The guaranteed funding clause of Article XI, § 1(e) originates from Amendment 38 of the Second Constitutional Convention. Section 1(e) was later amended by House Legislative Initiative 15-3 and most recently by HLI 18-12, which increased the percentage of the guaranteed funding from 15% to 25%. While acknowledging the increase of PSS's guaranteed funding, the respective committee reports for Amendment 38 and HLI 18-12 did not include a discussion of the term “general revenues.”

Article XI, § 6(d) of the Commonwealth Constitution informs our understanding of the term “general revenue.” Section 6(d), which established the Marianas Public Land Trust, mandates that “[t]he trustees shall transfer to the *general revenues* of the Commonwealth the remaining interest accrued on the trust proceeds...” NMI CONST. ART. XI, § 6(d). (emphasis added). The term also appears in the 1976 Analysis of the original constitution. The Analysis’ discussion of Article XI, § 5(g) dealing with public land states that all public land revenues before the effective date of the constitution are part of the *general revenues* of the Commonwealth and that any public land revenue generated after the effective date of the Constitution would be collected by the Marianas Public Land Corporation. *Id.* at 169. The term “general revenues” also appears in the discussion of § 6(d), in which the framers expressed their intent for MPLT to transfer any interest earned from the trust funds to the *general revenues* of the Commonwealth for appropriation by the legislature. *Id.* at 172–73 (emphasis added). The Analysis further provides that the interest transferred would not be earmarked for a particular purpose and would be allocated by the legislature “as it sees fit.” *Id.* As such, it is clear that the term “general revenues,” in Article XI, § 6(d) refers to those revenues deposited into the General Fund as defined by Commonwealth law.

The plain meaning of “general revenues” and the corresponding parts of the Analysis, demonstrates what the framers of the NMI Constitution understood the term to mean (1) government funds; (2) used to pay the government’s general obligations; (3) subject to legislative appropriation; and (4) not earmarked for a particular purpose. Those four conjunctive elements are virtually identical to the four elements which constitute the legal definitions of “general revenues” and “general fund” in *Black’s Law Dictionary*.

The General Fund was created by Commonwealth law. 4 CMC § 1802. All revenues raised by Commonwealth tax and other revenue generating laws must be deposited into the General Fund “unless otherwise provided by law.” 4 CMC § 1802. Similarly, section 1804(a) requires that all revenues raised under the Revenue and Tax Division of Title 4 be deposited into the General Fund “except as provided by [Division 1 of Title 4].” 4 CMC § 1804(a). Commonwealth law prohibits disbursements from the General Fund unless appropriated, “or by operation of NMI CONST. ART. III, § 9(a).” 1 CMC § 1802. Under § 9(a) of Article III, no money may be drawn from the General Fund unless a balanced budget for the current fiscal year is enacted into law; only government services essential for the health, safety, and welfare of the people may be paid in the absence of a balanced budget approved for the fiscal year.

The statutory construct for the General Fund describes a legal concept closely resembling the concept of “general revenues” described in the NMI Constitution and consistent with the definitions of the two terms in *Black’s Law Dictionary*. First the General Fund contains only Commonwealth government tax revenues. Second, the general fund is used to pay the government’s annual budget. Third, legislative appropriation is required to disburse payment from the General Fund. Fourth, the General Fund can be used to pay any of the government’s expenses; it is not earmarked for any particular purpose.

Accordingly, the definition of “general revenues” as used in Article XV, § 1(e) should be interpreted to mean only those revenues deposited into the General Fund as defined by Commonwealth law. Funds which are deposited into special funds and accounts separate from the General Fund are not “general revenues.” The following funds are separate from the General Fund and are not included in the calculation of general revenues:

- (1) Land Compensation Fund (1 CMC § 1804(c))
- (2) Technical Education Program Fund (1 CMC § 2282)
- (3) Special Surplus Property Fund (1 CMC § 2590)
- (4) CHC Revolving Imprest Fund (1 CMC §§ 2607-2608)
- (5) Commonwealth Parks and Recreation Fund (1 CMC § 2707)
- (6) Special Agriculture Equipment Service Revolving Fund Account (1 CMC §§ 2722-2723)
- (7) DPL Operations Fund (1 CMC § 2803(c))
- (8) Judicial Building Fund (1 CMC § 3405)
- (9) Probation Services Fund (1 CMC § 3406)
- (10) Law Revision Commission Revolving General Fund (1 CMC § 3809)
- (11) Commonwealth Lottery Fund (1 CMC §§ 9317-9318)
- (12) CNMI Veterans Cemetery Revolving Fund (1 CMC § 20129)
- (13) Division of Environmental Quality Special Fund (2 CMC § 3135)
- (14) Homestead Development Home Financing Security Fund (2 CMC § 4489)
- (15) Fish and Game Conservation Fund (2 CMC § 5107)
- (16) Fish and Game Revolving Fund (2 CMC § 5643)
- (17) Nonpublic Elementary and Secondary Education Fund (3 CMC § 1175)
- (18) Tobacco Settlement Expenditure Fund (3 CMC § 2173)
- (19) Health Care Professions Licensing Board (3 CMC § 2209)
- (20) Solid Waste Management Revolving Fund (3 CMC § 3551)
- (21) CNMI Scholarship Fund (3 CMC § 10107)
- (22) Solid Waste Revolving Fund (4 CMC § 1402(g)(1))
- (23) Cancer Fund (4 CMC § 1402(g)(2))
- (24) Group Health Life Insurance Account (4 CMC § 1402(g)(3))
- (25) Retirement Defined Benefit Plan Members Fund (4 CMC § 1511(a))
- (26) Special Account for the 3rd Senatorial District (4 CMC § 1511(b))
- (27) Special Account for the 1st and 2nd Senatorial District (4 CMC § 1511(c))
- (28) Public School System Building Fund (4 CMC § 1803(b))
- (29) Technical Education Program Fund (4 CMC § 1503(f))
- (30) MVA Trust Account (4 CMC § 2157)
- (31) Board of Professional Licensing Revolving Fund (4 CMC § 3111)

- (32) Water Catchment Tank Loan Revolving Fund (4 CMC § 8162)
- (33) Public Utilities Commission Revolving Fund (4 CMC § 8427)
- (34) Special Disability Fund (4 CMC § 9353)
- (35) Tobacco Control Fund (4 CMC § 50171))
- (36) Sex Offender Revolving Fund (6 CMC § 1380)

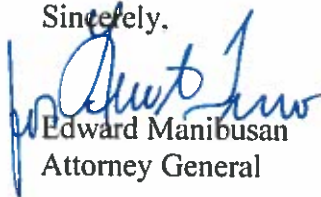
Also excluded from the General Fund are those funds established for each of the three senatorial districts.¹

The term “general revenues” as used in Article XV, § 1(e) refers to the revenues deposited into the General Fund. The term does not encompass the special funds and accounts which are kept separate and apart from the General Fund. Accordingly, the calculation of the Public School System’s annual appropriation should be based only on the revenues deposited into the General Fund.

III. CONCLUSION

Article XV, § 1(e) requires the Public School System to receive an annual appropriation of 25% of the projected revenues to be deposited into the General Fund of the Commonwealth. As discussed, not all of the revenues and resources of the Commonwealth are deposited into the General Fund. A substantial amount of Commonwealth revenues is deposited into multiple funds and accounts that are kept separate and apart from the General Fund. Those special funds and accounts are not included in the computation of the Public School System’s annual budget. Only the revenues deposited into the General Fund will be used to compute PSS’s budget.²

Sincerely,



Edward Manibusan
Attorney General

¹See Rota Scholarship and Education Fund (10 CMC § 11105); Rota Resident Identification Card Fund (10 CMC § 14107); Tinian Tourism and Beautification Fund (10 CMC § 2473); Tinian Resident Identification Card Fund (10 CMC § 20206); Saipan Village and Secondary Road Fund (10 CMC § 3136); and Saipan Higher Education Financial Assistance Fund (10 CMC § 3925).

² Based on the House Concurrent Resolution No. 19-1 which lists the Commonwealth’s resources for FY 2016, including the General Fund and the foregoing special funds/accounts and for the purpose of computing PSS’s FY 2016 appropriation, the general revenues of the Commonwealth for FY 2016 is \$147,860,375. To comply with NMI Const. Art. XV, § 1(e), the Legislature must appropriate the sum of \$36,965,093.75 to PSS for FY 2016.