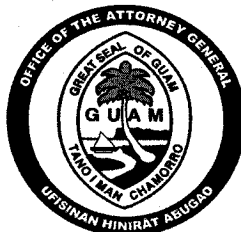


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October 20, 2008

### OPINION (AG 08-0891)

The Honorable Felix P. Camacho  
Governor of Guam  
Governor's Complex  
Adelup, Guam

Re: Impact of Pledge of Section 30 Assets on Debt Ceiling

Dear Governor Camacho:

This opinion is issued to answer the question of whether a pledge of Section 30 assets to construct the new landfill will have an impact on the government's debt ceiling. As established by the Organic Act of Guam the government's indebtedness is limited to 10% of the "aggregate tax valuation of the property in Guam." 48 U.S.C. §1423a. Resolution of the issue requires an examination of which of the government's obligations are included in the debt ceiling, as not all are.

Section 30 funds have never been the topic of discussion by any court in a meaningful way that affects this opinion. Section 30 funds are those funds which the U.S. Treasury pays over to the government of Guam every year in accordance with 48 U.S.C. §1421h, and are derived from custom duties, federal income taxes and a variety of fees collected in Guam by the federal government or paid directly to the federal government. However, they largely consist of federal income taxes paid by military personnel stationed on Guam and immigration fees. Specifically, Section 30 funds are described as:

All customs duties and Federal income taxes derived from Guam, the proceeds of all taxes collected under the internal-revenue laws of the United States on articles produced in Guam and transported to the United States, its Territories, or possessions, or consumed in Guam, and the proceeds of any other taxes which may be levied by the Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians and military employees of the United States, or their survivors, who are residents of, or who are domiciled in, Guam), and all quarantine, passport, immigration, and naturalization fees collected in Guam . . . .

48 U.S.C. §1421h.

On the question of whether a pledge of Section 30 funds might be included in the debt ceiling, 48 U.S.C. §1423a contains the provision which is the starting point for this discussion. Section 1423a

states that certain obligations which are to be paid from a special revenue stream shall not be considered "public indebtedness of Guam within the meaning of this section" and are therefore excepted from the debt ceiling. This principle is commonly known as the special fund exception to a statutory debt limitation. For Guam, the excepted obligations are described in §1423a as "bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking."

Hence, all government of Guam obligations which are *not* "bonds or other obligations of the government payable solely from revenues derived from any public improvement or undertaking" are public indebtedness and must be included within the government's debt ceiling. *In Re Request of Camacho*, 2003 Guam 16, 2003 WL 21697180 at 14 (Guam Jul. 23, 2003); *reversed on other grounds in Limtiaco v. Camacho*, 549 U.S. 483, 127 S.Ct. 1413, 167 L.Ed.2d 212 (2007).

However, the Guam Supreme Court in *Camacho, infra*, did not believe that the special fund exclusion prevented them from interpreting "indebtedness" and went on to take a look at each of the government's listed obligations in existence at that time. *Camacho* at 15. In making a decision on each obligation, the court focused on both the nature of the obligation and the source of its repayment. *Id.*

One of the obligations reviewed was a \$10 million loan secured first by Section 30 funds and second by the full faith and credit of the government. The court did not separately review what effect, if any, the pledge of Section 30 funds had. The court instead considered the secondary source, the full faith and credit of the government, to be of sole significance and applied the rule that whenever the full faith and credit of the government may be resorted to for deficiencies in repayment from any other source, then the obligation must be included in the government's debt ceiling. *Id.* at 17. *Also, see, generally, Guam Telephone Authority v. Rivera*, 416 F. Supp. 283 (1976).

However, the Guam Supreme Court in *Camacho, supra*, excluded the group of revenue bonds from the debt ceiling because the revenue bonds were secured only by revenues generated by public improvements or undertakings. *Id.* at 16. The court also excluded bonds secured by the tobacco settlement money because the settlement money was a special fund, the source of which was not revenue derived from taxation, and which could never be a burden on the General Fund.<sup>1</sup> *Id.* The court also indicated that the pledge of a structure to secure the payment of bonds or other obligation issued to finance its construction is not "debt". *Id.* Finally, the court excluded a note made by the Superior Court of Guam to the Farmers Home Administration because the note was secured by court fees which are revenues from a public undertaking and by the Judicial Center Building itself. *Id.*

On the other hand, the Guam Supreme Court decided that obligations secured by specific taxes are counted towards the government's debt ceiling, even if the government's full faith and credit is not pledged. *Camacho* at 17. The bonds in question were secured by a pledge of hotel occupancy taxes, liquid fuel taxes, vehicle registration and license fees, none of which are revenues derived from public improvements or undertakings and all of which were found by the court to be a part of the General

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<sup>1</sup> See, also, *In re Request of Camacho*, 2006 Guam 5, 2006 WL 695790 (Guam Mar. 21, 2006), wherein the court applied the special fund doctrine to bonds secured by certain targeted federal education grants, noting that "federal grants are designed for a specific purpose and to be used in limited circumstances. Therefore, the Compact Impact Funds are not part of the general fund."

Fund. In doing so, the court agreed with a North Dakota holding that "an obligation to be funded from general tax revenues, whether they be *ad valorem* or excise taxes, is a 'debt' within the meaning of the debt-limitation provision. *State ex rel. Lesmeister v. Olson*, 354 N.W.2d 690, 697 (N.D. 1984)." *Id.*

Similarly, Section 30 funds have traditionally and without exception been deposited directly into the General Fund and used by the Legislature as a part of the government's annual budget. This is in accordance with 48 U.S.C. §1421h which provides that Section 30 funds "shall be expended for the benefit and government of Guam in accordance with the annual budgets."

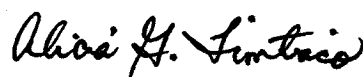
However, the pledging of Section 30 funds to secure government obligations is a fairly recent development, first having occurred about a decade ago. At all times prior, Section 30 funds were treated simply as any other source of money going into the General Fund, and not as a special income stream which might be tapped for a particular reason. Notwithstanding, Section 30 funds were then and still are today deposited into the General Fund upon receipt and commingled with all other sources of the General Fund, thereby losing any distinction as Section 30 funds, except perhaps as might be noted on any bookkeeping journal. *See, e.g.*, P. L. 29-113:I:2 (eff. Sept. 30, 2008) (General Appropriations Act of 2009).

A relatively comparable situation existed in Alabama, where the constitution included a provision that any interest from the Alabama Trust Fund was required to be paid into the general fund as received, and the legislature was bound by the constitution to appropriate those funds only as permitted by express provisions of the constitution. The Alabama court held that bonds secured by interest from the Alabama Trust Fund were subject to the state's debt ceiling. *Opinion of the Justices*, 665 So.2d 1357 at 1359 (Ala. 1995).

It must be concluded that the pledge of Section 30 funds as the sole source of repayment would characterize the obligation as one that must be included within the government's debt ceiling. This conclusion is based upon the court in *Camacho, supra* characterizing the bonds backed by hotel occupancy taxes, liquid fuel taxes, vehicle registration and license fees as a part of the debt ceiling because the court considered the taxes and fees to be a part of the General Fund. Hence, a reliance on a specific revenue source of the General Fund is the same as relying on the General Fund itself. Because Section 30 funds have traditionally been deposited into the General Fund for appropriation by the Legislature in an annual budget as required by §1421h, any reliance on Section 30 funds to pay for an obligation must put the obligation into the government's debt ceiling.

Therefore, it is the opinion of this Office that a pledge of Section 30 assets to construct a new landfill will impact the government of Guam's debt ceiling.

Sincerely,



ALICIA G. LIMTIACO  
Attorney General