IN THE SUPREME COURT OF GUAM

IN RE REQUEST OF GOVERNOR CARL T.C. GUTIERREZ, RELATIVE TO THE ORGANICITY AND CONSTITUTIONALITY OF PUBLIC LAW 26-35

Petitioner.

Supreme Court Case No. CRQ01-001

OPINION

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Argued and submitted on November 13, 2001
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice, JOHN A. MANGLONA, Designated Justice, and RICHARD H. BENSON, Justice *Pro Tempore*.

MANGLONA, J.:

[1] Petitioner Governor Carl. T.C. Gutierrez (hereinafter "Governor") filed a request for declaratory judgment pursuant to Title 7 GCA § 4104 asking this court to declare specific provisions of Public Laws 26-35, 26-36, 26-47, 26-49, and Bill No. 205 void under both the Organic Act of Guam and the Constitution of the United States. In response, *I Mina'Bente Sais Na Liheslaturan Guåhan* (hereinafter "Legislature") asked this court to dismiss the Governor's petition, or alternatively, find the challenged provisions organic and constitutional in all respects. We deny the Legislature's motion to dismiss, finding that we are properly vested with the authority under section 4104 to render declaratory judgments. However, we find that the Governor's request to declare section 7 of Public Law 26-35 unconstitutional does not fall within our grant of jurisdiction under section 4104, and therefore we decline to render judgment on that issue. We grant review of the remaining issues presented by the Governor and find certain challenged provisions to be in violation of the separation of powers doctrine.

I.

[2] The Legislature enacted Public Law 26-35 and appendices thereto by legislative override. Public Law 26-35 is the government of Guam's budget for the fiscal year 2002. Subsequent to passing P.L. 26-35, the Legislature passed and the Governor signed into law Public Laws 26-36, 26-47, 26-49, and Bill

No. 205[1], the provisions of which supplement and amend certain portions of the original budget law, P.L. 26-35. In its entirety, these laws (hereinafter collectively referred to as the "Budget Bill") contain extensive and detailed provisions outlining the amount of money appropriated to each division of the government and how the appropriated funds shall be spent.

[3] On October 4, 2001, the Governor filed the instant action, requesting that a declaratory judgment be issued determining the constitutionality of certain provisions of the Budget Bill. The Governor is requesting that this court invoke its jurisdiction to issue declaratory judgments under 7 GCA § 4104. Section 4104 provides in pertinent part:

> The Governor, in writing, or the Guam Legislature, by resolution, may request declaratory judgments from the Supreme Court as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of the Governor and the operation of the Executive Branch, or the Guam Legislature, respectively. The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay.

Title 7 GCA § 4104 (1998).

II.

A. Motion to Dismiss

[4] The Legislature claims that 7 GCA § 4104 is ultra vires and therefore invalid. Specifically, the Legislature argues that the Organic Act amendment, 48 U.S.C. § 1424-1(a), that authorizes the legislature of Guam to create a Supreme Court, did not authorize the legislature to vest that court with original

[1] Bill Number 205 was passed as Public Law 26-55 by signature of the Governor.

jurisdiction to consider requests for declaratory judgment. We reject the Legislature's challenge to the organicity of section 4104 and hold that this court has jurisdiction to issue declaratory judgments pursuant to that section.[2]

[5] The Organic Act provides for the creation of the Supreme Court in general terms:

> Local Courts; Appellate Court Authorized.
> (a) Composition; establishment of local appellate court.
> The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after the effective date of this Act [January 5, 1985], *the legislature of Guam may in its discretion establish an appellate court.*

48 U.S.C. § 1424-1(a) (1987) (emphasis added). The Legislature argues the Supreme Court's jurisdiction is limited by the language of the above-referenced section to that of an "appellate" court. However, section 1424-1(a) merely states that "the legislature of Guam in its discretion may establish an appellate court." It does not define appellate court. The Legislature refers to the generic definition of appellate court in Black's Law Dictionary to support its position that an appellate court does not review matters of first instance and is not a trial court. However, reliance on the dictionary definition is unsound in light of the provision of the Organic Act which provides:

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[2] The Legislature's instant challenge to its power to enact section 4104 undermines the presumption that the legislature believed it was acting specifically within its power both at the time of enactment and subsequent amendment. The legislature has previously brought cases before this court under section 4104, and we note that the instant attempt to frustrate review on *ultra vires* grounds is at odds with positions it previously made before this court. *Compare In Re Request of the Twenty-Fourth Guam Legislature*, CRQ97-001 (Memorandum of Points and Authorities in Support of Motion to Withdraw, Sept. 12, 1997) (seeking to withdraw the request for declaratory judgment transmitted to this court on the ground that implicit in the legislature's grant of jurisdiction in section 4104 was the ability of the legislature to withdraw the request), *with* IN *RE* REQUEST OF *I MINA' BENTE SING'KO NA LIHESLATURAN GUÅÅ*HAN , 2001 Guam 3, ¶ 1 (submitting to this court a request for a declaratory judgment pursuant to 7 GCA § 4104).

> Local Court Jurisdiction. The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 1424(b) of this title.

48 U.S.C. § 1424-1(b) (1987). This section of the Organic Act gives the Legislature broad authority to define the jurisdiction of local courts. The Legislature attempts to distinguish "local court" as used in section 1424-1(b) from "appellate court" as used in section 1424-1(a). However, section 1424-1(a) defines "local courts" as "such trial court or courts as may have been or may hereafter be established by the laws of Guam." Thus, the Supreme Court of Guam, as a court established by the laws of Guam, is included within the definition of "local court." The language of section 1424-1 is not ambiguous. Because section 1424-1 gives the Legislature the authority to grant jurisdiction to local courts, the Legislature may grant jurisdiction to the Supreme Court as it deems fit.[3] Moreover, unlike other state constitutions which define the respective jurisdiction of each court in that state, the Organic Act does not define or limit the jurisdiction of the Supreme Court of Guam. *Cf. State ex rel. Neer v. Indus. Comm'n*, 371 N.E.2d 842, 843 (Ohio 1978) (holding that because the Ohio constitution limited the court of appeals' original jurisdiction to certain matters not including declaratory judgments, the court of appeals lacked jurisdiction to render that type of judgment). The only limitation placed on the Legislature's power to grant jurisdiction is in regards to causes within the exclusive jurisdiction of the federal courts. 48 U.S.C. § 1424-1(b). A declaratory judgment

[3] The grant of original jurisdiction to issue declaratory judgments to the highest court is not unique to Guam. *See State ex rel. Conrad v. Managhan*, 485 P.2d 948, 950 (Mont. 1971) (Supreme Court accepting original jurisdiction to issue a declaratory judgment "because of the urgency of the situation and the need for speedy determination of the controversy"); *see also Tucker v. S.C. Dept. of Highways & Pub. Trans.*, 424 S.E.2d 468, 469 (S.C. 1992) (Supreme Court determining the constitutionality of a statute pursuant to its original jurisdiction).

under section 4104 is not a cause within the exclusive jurisdiction of the federal courts. Therefore, it is within the Legislature's Organic Act powers to grant this court such original jurisdiction. Accordingly, we deny the Legislature's motion to dismiss and hold that this court has jurisdiction to consider a request for declaratory judgment pursuant to section 4104.

B. Declaratory Judgments are Binding

[6] Declaratory judgments issued by this court pursuant to section 4104 are binding. Although in substance section 4104 most closely resembles the advisory opinion statutes in other jurisdictions, the language of section 4104 grants this court the authority to issue "declaratory judgments," and not advisory opinions. *See* 7 GCA § 4104 cmt. (referring to the advisory opinion clauses in both Florida and Massachusetts as providing the basis of section 4104); *see also* Mel A. Topf, *The Jurisprudence of the Advisory Opinion Process in Rhode Island*, 2 ROGER WILLIAMS U. L. REV. 207, 213, app. (1997) (providing text of all eleven advisory opinion clauses). While recognizing the non-binding and extra-judicial nature of other advisory opinion clauses, we are restricted by the plain language of our statute. *See Pangelinan v. Gutierrez*, 2000 Guam 11, ¶ 23 ("In cases involving statutory construction, the plain language of a statute must be the starting point."). Declaratory judgments are uniformly considered binding. *See Petition of Kariher*, 131 A. 265, 269, 271 (Pa. 1925). Therefore, judgments issued by this court under section 4104 are likewise binding.

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III.

A. The Governor's Arguments

[7] The Governor argues that, through certain portions of the Budget Bill, the Legislature has violated the separation of powers doctrine by either reserving for itself powers specifically given to the Governor in the Organic Act or interfering with the Governor's ability to perform his constitutional functions. The Governor points to four specific portions of the Budget Bill as being in violation of the separation of powers doctrine, *to wit*:

1. Appendix C of Public Law 26-35 and the amendments made thereto, which attempt to set the staffing pattern of the executive branch;

2. Section 11 of Legislative Bill 205, which mandates that the Child Support Division of the Department of Law terminate its current lease and dictates certain terms of a new lease;

3. Public Law 26-35, chapter IV, section 3(a), which imposes a reporting requirement for staffing patterns, and Public Law 26-47, section 2(d), which imposes a reporting requirement for holiday pay; and

4. Public Law 26-47, section 7(b), which sets a specific date for filling the positions of Chief Procurement Officer and Controller.

The Governor also argues that chapter IV, section 7 of Public Law 26-35, which imposes liability on accountable officers, is unconstitutionally vague and fails to provide government employees with adequate notice and a hearing in violation of due process.

[8] Because this case is brought pursuant to our original rather than appellate jurisdiction, all issues are decided *de novo*. Issues of statutory interpretation and the determination of whether legislation is unconstitutional are questions of law. *Ada v. Gutierrez*, 2000 Guam 22, ¶ 10 (analyzing an issue of statutory interpretation); *People v. Perez*, 1999 Guam 2, ¶ 6 (analyzing the constitutionality of a statute).

[9] Under section 4104, this court has the power to issue declaratory judgments only at the request of the Legislature or the Governor. 7 GCA § 4104. Furthermore, to pass jurisdictional muster, a party seeking a declaratory judgment must satisfy three requirements: (1) the issue raised must be a matter of great public importance; (2) the issue must be such that its resolution through the normal process of law is inappropriate as it would cause undue delay; and (3) the subject matter of the inquiry is appropriate for section 4104 review. *Id.* There are only two subjects appropriate for section 4104 review: questions that require an interpretation of a federal or local law lying within the jurisdiction of Guam courts to decide, and questions that affect the powers and duties of the Governor and the operation of the executive branch, or of the Legislature. *Id.* Unless a petitioner can satisfy each of the above requirements, a request for a declaratory judgment must be denied. *See In re Request of Governor Carl T.C. Gutierrez*, CRQ96-001, 1996 WL 870740, at * 4 (Guam Oct. 24, 1996) (refusing to issue a declaratory judgment because the petitioner failed to meet one of the requirements under section 4104); *In re Opinions of the Justices*, 49 N.E.2d 252, 255 (Mass. 1943) (citations omitted) (limiting the issuance of advisory opinions to the strict confines defined in the state's Constitution).

B. Liability of Accountable Officers

[10] The Governor requests that this court issue a judgment declaring section 7 of Public Law 26-35, which holds accountable officers strictly liable for any loss that occurs in their handling of public funds, to be in violation of due process and thereby unconstitutional. More specifically, the Governor alleges that section 7 is too vague and indefinite to provide adequate notice of the proscribed conduct and to be appropriately administered. Additionally, the Governor argues that the automatic set-off provision of

section 7 does not provide employees with sufficient notice and hearing to satisfy procedural due process standards.

[11] The threshold inquiry for any declaratory judgment request is whether the petitioner's request qualifies for review under section 4104. The Governor's request must satisfy the three jurisdictional requirements set forth above. We will turn first to the question of whether the Governor has presented this court with a request whose subject matter falls within the purview of section 4104. As previously noted, section 4104 only permits the Governor to ask the Supreme Court for: (1) an interpretation of an existing law that is within its jurisdiction to decide; or (2) an answer to any question affecting his powers and duties as governor and the operation of the executive branch.

1. Interpretation

[12] This court must initially determine whether a request seeking to declare a statute *unconstitutional* falls within the meaning of section 4104 as a request for an *interpretation* of that statute. We find that it does not. While the line separating constitutionality from interpretation may be fine, it is a desirable line to draw. This court is primarily a court of appeals, with limited original jurisdiction. *See Sorenson v. Swanson*, 147 N.W.2d 620, 624-25 (Neb. 1967) ("This is a court the primary object of which is to review cases . . . . It is an appellate tribunal, and it is given original jurisdiction in a few limited cases, most of which are extraordinary remedies . . . ."). Thus, grants of original jurisdiction, as over declaratory judgments in section 4104, should be read literally and construed narrowly. *See State ex rel. Wieland v. Moore*, 561 N.W.2d 230, 236 (Neb. 1997) ("if the drafters of [the article] had intended to convey original jurisdiction upon this court for actions involving the constitutionality of a statute, the drafters surely would

have included such actions in [the article].").

[13] As noted, the substance of section 4104 resembles the advisory opinion laws of other jurisdictions, particularly in that the questions presented pursuant to section 4104 may only be brought by the Governor or Legislature. 7 GCA § 4104. The few appellate courts that are permitted to render advisory opinions express a reluctance to do so by strictly construing their advisory opinion clauses and refusing requests that do not fall squarely within their clauses' terms. *See In re Opinion of the Justices*, 49 N.E.2d at 255; *see also In re Advisory Opinion to the Governor*, 113 So. 2d 703, 705 (Fla. 1959) ("The corridor of organic authority for rendering advisory opinions is indeed a narrow one . . . ."); *see also Opinion of the Justices*, 413 A.2d 1245,1247-48 (Del. 1980); *Opinion of the Justices*, 105 A.2d 454, 456 (Me. 1952); *Opinion to the Governor*, 284 A.2d 295, 296 (R.I. 1971). *But see In re Advisory Opinion (Chief Justice)*, 507 A.2d 1316, 1319-20 (R.I. 1986) (issuing an advisory opinion despite the procedural deficiencies of the petition). The fear is that by involving the courts in a political struggle between the other two branches, justices may find themselves "participating in a realignment of governmental power by being compelled by the executive branch to review the work of the legislative branch." Topf, *supra*, at 222 (citation omitted). Involvement by the courts also calls into question judicial independence and invites the legislature and executive to pass on the responsibility of independently assessing the constitutionality of their acts. *Id.* at 223.

[14] Strict construction should be particularly applied with regard to section 4104 because the statute is a means for parties to bypass the normal processes of law. Issues regarding the constitutionality of a statue, whenever possible, ought be left to the normal processes of law. As recognized by the Supreme

Court of Florida:

> This court has many times declined to pass upon the constitutionality of a statute in rendering advisory opinions, particularly where such a test can best be accomplished in adversary proceedings appropriately briefed and buttressed by argument of counsel. This policy is the product of the historical recognition of the presumed constitutionality of an act of the Legislature until such presumption is set at rest by a court of competent jurisdiction in a proper adversarial proceeding.

In re Advisory Opinion to the Governor, 509 So. 2d at 301 (Fla. 1987); *see also Opinion to the House of Representatives*, 264 A.2d 920, 921 (R.I. 1970) ("every reasonable intendment is made in favor of the constitutionality of a duly enacted statute and that such a statute is presumed to be constitutional until the contrary is established in appropriate litigation").

[15] Furthermore, determining matters through a proceeding that bypasses the normal litigation process fails to represent interests and protect rights as would an interested party in a fully litigated case. *See Topf*, *supra*, at 227 (citations omitted) ("A briefing from an interested party in an advisory opinion proceeding 'sometimes is not so effective or so well-focused as that which follows thorough examination of the issues through the trial process.'"); *see also Advisory Opinion*, 113 So. 2d at 705 ("This court has many times declined to pass upon the constitutionality of a statute in rendering advisory opinions, particularly where such a test can best be accomplished in adversary proceedings appropriately briefed and buttressed by argument of counsel."). The benefits of leaving matters to be fully litigated by interested parties is demonstrated by the well established "case or controversy" requirement. Given the above-mentioned policies and in light of the fact that our statute, unlike the advisory opinion laws of other jurisdictions, permits binding judgments to be issued, section 4104 should be construed as strictly and narrowly as possible.

[16] We recognize that there are evils which the issuance of a declaratory judgment pursuant to section 4104 can avoid. *See* 7 GCA § 4104 cmt. Specifically, hearing a matter before it has ripened into a true case or controversy "avoid[s] the necessity of creating harm to some party in order to have a decision." *Id*.; *see also* Note, *Advisory Opinions on the Constitutionality of Statutes*, 69 HARV. L. REV. 1302, 1304-05 (1956) (discussing how an advisory opinion can prevent the enactment of an unconstitutional statute, avoiding both the time and expense of challenging litigation and reliance by the general public). However, we also recognize the dangers inherent in turning the courtroom into a forum for political debate. This court is not the arena within which the executive and legislative branches should seek to wage their political battles. Therefore, we approach section 4104 as most courts have approached their respective advisory opinion laws in the past, cautiously and conservatively. While we will not turn away from reviewing those issues properly before us, neither will we permit matters that fall outside the plain language of section 4104 to be brought in on the shoulders of broad interpretation.

[17] Here, the Governor is asking the court, not to draw meaning from the language of section 7, but to declare the provision unconstitutional and thereby void in its entirety. "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *In re Opinion of the Justices*, 168 N.E. 536, 538 (Mass. 1929) (quoting *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S. Ct. 1121, 1125 (1886)). By contrast, interpretation, in its plain meaning, is "[t]he process of determining what something, esp. the law or a legal document, means; the ascertainment of meaning." BLACK'S LAW DICTIONARY 824 (7th ed. 1999). When interpreting a statute, the court's task is to determine the intent

of the legislature and give the statute meaning without altering or amending the statute's scope. *See In re Advisory Opinion to the Governor*, 504 A.2d 456, 459 (R.I. 1986) ("Our task in construing any statute is to effectuate and establish the intent of the Legislature."). We find that a request challenging the constitutionality of a statute does not present the same inquiry as a request seeking the interpretation of a statute. Thus, the Governor's request for a judgment declaring section 7 unconstitutional does not qualify as a request for an interpretation of law under section 4104.

2. Powers and Duties

[18] Alternatively, the Governor may obtain review of an issue under section 4104 if his request affects his powers and duties as Governor and the operation of the Executive Branch. *See* 7 GCA § 4104. Here, the Governor is challenging the constitutionality of section 7 of Public Law 26-35 in its entirety. The scope of section 7 includes "all government of Guam agencies including the Legislative, Executive and Judicial Branches and all autonomous and semi-autonomous agencies which are authorized Certifying Officers and Accountable Officers in General." Petitioner's Exhibit A, vol. 1, p. 44 (Public Law 26-35). The question that emerges from the Governor's request is whether the Governor has standing to present to this court questions involving other branches of government or questions on behalf of subordinate agencies within his own branch.

[19] Section 4104 explicitly requires that the request from the Governor affect his powers and duties as Governor *and* his operation of the Executive branch. *See* 7 GCA § 4104; *see also Gutierrez*, 1996 WL 870740, at * 1 (analogizing to the Massachusetts requirement that issues presented "relate to a presently existing governmental duty borne by the branch of the government that requests the opinion.").

Other courts authorized to issue advisory opinions uniformly impose a similar requirement, requiring that the question posed directly relate to the duties of the requesting authority presently awaiting performance, and that the action of the requesting authority depend on the advice rendered by the court. *See Opinion of the Justices*, 105 A.2d at 456 (finding that a "solemn occasion" does not exist unless the body making the inquiry has occasion to consider and act upon the question submitted in its exercise of powers); *see also Opinion of the Justices*, 238 So. 2d 326, 328 (Ala. 1970) (holding that the advisory provision does not authorize Justices to give an opinion where no action of the requesting party is dependent on it); *Advisory Opinion (Chief Justice)*, 507 A.2d at 1319 (requiring that the question posed for an advisory opinion have some relationship to the official duties of the requesting branch and bear upon a present constitutional duty awaiting performance).

[20] The significance of this requirement is that it precludes the Governor from requesting a declaratory judgment on a question that only concerns another branch of the government or that solely impacts subordinate executive officers and agencies. *See* 7 GCA § 4104 cmt. (noting that one branch may not request opinions as to the operation of another branch where that operation does not impinge on the requesting branch's operations); *see also Opinion of the Justices*, 105 A.2d at 456-57 (stating that the Governor does not have authority to seek an advisory opinions solely on behalf of "subordinate executive officers, agencies, boards, or instrumentalities of the state . . . ."); *Opinion to the Governor*, 284 A.2d at 297 (finding that city officials have no standing under the advisory opinion clause to seek an opinion of the court and cannot circumvent that limitation by seeking an opinion through the Governor). Moreover, the Governor is precluded from obtaining review of questions under section 4104 if those questions involve

the operation of another branch of government and that operation does not impinge on the Governor's powers and duties as set forth in the Organic Act.

[21] In the matter before us, the scope of section 7 is limited on its face to government agencies. Thus, the Governor's powers and duties, as enumerated in the Organic Act, are not affected nor dependent on the judgment of this court. *See* 48 U.S.C. 1422 (1987) (vesting in the Governor general supervisory powers over executive branch agencies and instrumentalities and the responsibility for the faithful execution of laws); *see also Opinion of the Justices*, 105 A.2d at 456-57 (finding that the power of the governor as "supreme executive" or his duty to faithfully execute the laws does not make questions as to the decisions and actions of subordinate agencies questions to be acted upon by the governor). In short, section 7 is too narrow for the Governor to claim standing to challenge the section under 7 GCA § 4104. The Governor's challenge to section 7 simply does not amount to a question that affects his powers and duties and the operation of the executive branch.

[22] Accordingly, the Governor's challenge to the constitutionality of section 7 is not a matter appropriate for section 4104 review. The Governor is neither asking this court for an interpretation of a law nor does his request affect his powers and duties as Governor and his operation of the executive branch. Therefore, we decline to address the merits of the Governor's challenge to section 7 as the issue presented is not within this court's jurisdiction under section 4104.

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C. Separation of Powers

1. Jurisdiction

[23] The Governor raises four separation of powers challenges to the Budget Bill, each of which allege that the Legislature has either reserved for itself powers specifically given to the Governor in the Organic Act or interfered with the Governor's ability to perform his constitutional functions. A preliminary issue is whether the issues raised by the Governor qualify for review under section 4104. As stated previously, this court's original jurisdiction under section 4104 may only be invoked if the three requirements of section 4104 are met.

[24] One requirement under section 4104 concerns the subject matter before the court. In the instant case, the question is whether the challenges asserted by the Governor are the type of challenges that are cognizable under section 4104. We find that they are, as questions that "affect[] the powers and duties of the Governor and the operation of the Executive Branch . . . ." 7 GCA § 4104. The Governor alleges that provisions of the Budget Bill violate the separation of powers doctrine. This issue is undoubtedly the type of matter that can be addressed in a request for declaratory judgment under section 4104. The comment to 7 GCA § 4104 provides:

> [T]he language [of section 4104] permits the Governor to request opinions as the operation of the Executive Branch, including questions involving separation of powers, and the Legislature to request opinions on the operation of that Branch, but does not permit one Branch to request opinions as to the operation of the other where that operation does not impinge on the requesting branch's operations. The purpose of this limitation is to avoid one branch trying to regulate the other through the courts.

7 GCA § 4104 cmt.

[25] As recognized in the comment, section 4104 contains limiting language, and the court is only permitted to address questions that involve allegations that one branch's actions "impinge" on the other branch's operations. Because the Governor alleges that provisions of the Budget Bill impinge upon the Governor's powers of appointment, removal, and general management of executive branch, the separation of powers issues fall within the purview of section 4104. *Cf. Opinion of the Justices*, 266 A.2d 823, 825 (N.H. 1970) (determining that the Governor's request for an opinion on whether the legislature has usurped executive functions was a proper subject for an advisory opinion in that "[t]he questions concern the executive duties of the Governor . . . and . . . an opinion will assist in the performance thereof"); *In re Opinion of the Justices*, 532 A.2d 195, 196 (N.H. 1987) (giving an advisory opinion on whether provisions of the appropriations bill, which require prior legislative approval of executive contracts as a condition to appropriation, constitute an unconstitutional delegation of executive powers to the legislative branch).

[26] A second jurisdictional requirement under section 4104 is that the matter before the court be one of great public interest. 7 GCA § 4104. "[P]ublic interest . . . signifies an importance of the issue to the body politic, the community, in the sense that the operations of the government may be substantially affected one way or the other by the issue's resolution." *Gutierrez*, 1996 WL 870740, at * 1. In *In re Request of Governor Gutierrez*, this court analogized the section 4104 "great public interest" requirement to the requirement in the Massachusetts advisory opinion law that the advisory opinions be limited to "important questions of law, and upon solemn occasion." *Id*. (citations omitted). Massachusetts courts have construed this requirement to mean that "the issue presented must be significant in substance and relate to

a presently existing governmental duty borne by the branch of government that requests the opinion." *Id*.

[27] In *In re Request of Governor Gutierrez*, the Governor requested that the court render a declaratory judgment regarding the constitutionality of a law which established an elected board of education. *Id*. The Governor argued that the law usurped the authority of the Governor over education because it would vest the management of the Department of Education in the hands of an elected board. *Id*. The court determined that the issue presented, that is, the organicity of the elected school board law, was a matter of great public interest because it was "of consequence in terms of governmental functions and resources." *Id*. at * 2. This conclusion was based on the court's finding that Department of Education was one of the largest departments in the government and its mission directly impacted nearly all of the families of Guam. *Id.*

[28] In the instant case, the separation of powers issues that the Governor presents involve allegations that the Legislature has either exceeded its power to appropriate and has usurped the Governor's power to administer appropriated funds or impermissibly interfered with the operation of the executive branch. The executive branch of the government employs thousands of employees who are assigned wide-ranging tasks for the ultimate purpose of executing the laws of Guam. Similar to the challenge in *In re Request of Governor*, the instant challenges to the organicity and constitutionality of provisions of the Budget Bill, as they relate to the Governor's ability to manage the executive branch, are matters of "great public importance" as they are "of consequence in terms of governmental function and resources." *Id*.[4]

[4] Massachusetts courts have found this type of separation of powers challenge to be an "important questions of law" and the issue has therefore been accepted for consideration by the Massachusetts courts pursuant to their advisory opinion law. *Cf. Opinion of the Justices to the Governor*, 341 N.E.2d 254 (Mass. 1976) (agreeing to render an advisory opinion on whether the legislature's action was an improper usurpation of the executive's power of

Furthermore, the issues relate to a "presently existing governmental duty borne by the branch of Government requesting the opinion." *Id*. at * 1. Specifically, the Governor has standing to assert the issues presented because they directly relate to his authority to administer appropriated funds for the effective running of the executive branch. *Id.* at * 2.

[29] The final jurisdictional requirement under section 4104 is that the "normal process of law would cause undue delay." 7 GCA § 4104. An analysis of this requirement requires the court to "estimate as a practical matter, the relative difference in speed for an issue depending on whether it travels the 'normal processes of law' route, or that provided by . . . [section] 4104." *Gutierrez*, 1996 WL 870740, at * 2. Specifically, the anticipated delay through the normal processes of law must be "excessive or inappropriate." *Id*. We find that the undue delay requirement is met with regard to the separation of powers issues presently before us. Because the budget for the government of Guam is enacted annually, issues regarding the constitutionality of a particular aspect of a budget bill uniquely require speedy resolution; therefore, it would be inappropriate for such issues to be resolved through the protracted litigation process. *See id*. ("7 GCA § 4104 was intended to provide a fast track for the initiation of cases before the Supreme Court of Guam so that rulings could be obtained on important issues of law without time consuming litigation in the inferior court.").

[30] In accordance with the foregoing, we find that all three jurisdictional requirements under section 4104 are met with regard to the separation of powers issues raised by the Governor. Therefore, we may properly reach the merits of each issue.

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expenditure).

2. Separation of Powers Doctrine

[31] As previously discussed, the Governor presents four separation of powers challenges to the Budget Bill: (1) that Appendix "C" of P.L. 26-35 and Amendments thereto violate the doctrine of separation of powers in that the legislature has attempted to set the staffing pattern of the executive branch; (2) that section 11 of Bill 205, which dictates the terms of a lease of office space for Family Division of the Department of Law, violates the separation of powers doctrine; (3) that the staffing pattern reporting requirements of P.L. 26-35, chapter IV, section 3(a), and holiday pay reporting requirements of P.L. 26-47, section 2(d), violate the separation of powers doctrine; and (4) that P.L. 26-47, section 7(b), which sets a specific date for filling the positions of Chief Procurement Officer and Controller, violates the separation of powers doctrine.

[32] Each issue enumerated above requires a separate analysis, but turns on the basic principle that, under the Organic Act, the government of Guam is comprised of three separate but co-equal branches of government. *See* 48 U.S.C. § 1421a (1992) ("The government of Guam shall consist of three branches, executive, legislative and judicial . . . ."). Thus, implicit in the language of the Organic Act is the traditional concept of separation of powers. *See Pangelinan*, 2000 Guam 11 at ¶ 31; *see also Hamlet v. Charfauros*, 1999 Guam 18, ¶ 9 ("By its very language, therefore, the Organic Act requires application of the constitutional doctrine of separation of powers to government of Guam functions.") (citation omitted).

[33] The separation of powers doctrine exists to "prevent[ ] the abuses that can flow from centralization of power." *Mo. Coalition for Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 132 (Mo. 1997) (en banc) (citation omitted); *see also Book v. State Office Bldg. Comm'n*, 149 N.E.2d 273, 293

(Ind. 1958) (recognizing that the purpose of separating the powers of each branch is "to preclude a commingling of these essentially different powers of the government in the same hands") (citation omitted). The concentration of the separately delineated powers in the hands of one branch "may justly be pronounced the very definition of tyranny." *Beckert v. Warren*, 439 A.2d 638, 642 (Sup. Ct. Pa. 1981).

[34] In *People v. Perez*, 1999 Guam 2, this court adopted the U.S. Supreme Court's standard for determining whether a separation of powers violation exists. The court provided:

> In determining whether the Act disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions. Only where the potential for disruption is present must we then determine whether the impact is justified by an overriding need to promote objectives within the constitutional authority of Congress.

Perez, 1999 Guam 2 at ¶ 17 (citations omitted). Based on this standard, the court established a two-part test: "(1) whether the statutory provision prevents the accomplishment of constitutional functions and (2) if so, whether the disruptive impact is justified by any overriding constitutional need." *Id.*

[35] We recognize that, under the separation of powers doctrine, one branch of government is prohibited from either delegating its enumerated powers to another branch of the government or aggrandizing its powers by reserving for itself the powers given to another branch. *See Santos v. Calvo*, Civ. No. 80-0223A, 1982 WL 30790, at * 3 (D. Guam App. Div. Aug. 11, 1982); *Territorial Prosecutor v. Superior Court*, Civ. No. 82-0215, 1983 WL 30224, at * 5 (D. Guam App. Div. May 26, 1983); *Communications Workers of Am. v. Florio*, 617 A.2d 223, 232 (N.J. 1992).[5] At least one

[5] "If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. *But let there be no change by usurpation*; for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed." *Book*, 149 N.E.2d at 295 (citing George Washington's Farewell Address)

court has noted that "the *taking* of power is more prone to abuse and therefore warrants an especially careful scrutiny." *Communication Workers*, 617 A.2d at 232 (emphasis added). Even absent a finding that one branch has usurped a power exclusively reserved for another branch, a separation of powers violation may be found if "one branch *unduly* interferes with another branch so that the other branch cannot *effectively* exercise its constitutionally assigned powers." *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239 (Tex. Crim. App. 1990) (citations omitted); *see Perez*, 1999 Guam 2 at ¶ 17.

[36] As articulated in *Territorial Prosecutor v. Superior Court*, "the legislature may not enact a law encroaching upon the Governor's authority and powers which are mandated by the Organic Act." *Territorial Prosecutor*, 1983 WL 30224, at * 5, 6 (invalidating section 7100(b) of the Territorial Prosecutor's Act because it "impermissibly encroaches upon the Governor's removal powers . . . ."). This limitation on the Legislature's power is specifically set forth in the Organic Act, which prohibits the Legislature from enacting laws that are "inconsistent with the provisions of this *chapter* and the laws of the United States applicable to Guam." 48 U.S.C. § 1423a (1992) (emphasis added). The "chapter" referred to is the Organic Act; therefore, the Legislature is prohibited from enacting laws that are inconsistent with the Organic Act, including the Organic Act's grant of power to the other branches of the government. *See id.*; *see also Territorial Prosecutor*, 1983 WL 30224, at * 5 (discussing a Ninth Circuit case that held that section 1423a limits the legislative power to enact legislation to subjects not inconsistent with the Organic Act). The problems inherent in allowing the Legislature to enact laws which encroach upon the executive's or Governor's powers are evident:

(emphasis added).

> If . . . [the courts] were to permit the legislature to do so, not only would it render the concept of the separation of powers meaningless and be inconsistent with mandate of the Organic Act, but it could possibly result in the Governor being divested of his executive authority and power at the whim of the legislature.

Territorial Prosecutor, 1983 WL 30224, at * 5.

[37] Thus, in determining whether the challenged provisions of the Budget Bill violate the separation of powers doctrine, it is necessary to determine the nature of each branch's respective powers as set forth in the Organic Act.

[38] Under the Organic Act, the legislative power is vested in the "Legislature of Guam." 48 U.S.C. § 1423a. As stated earlier, the Legislature's power to legislate extends "to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam." Furthermore, the power to appropriate money is expressly reserved to the Legislature. 48 U.S.C. § 1423j(a) (1992) ("Appropriations, except as otherwise provided in this chapter, and except such appropriations as shall be made from time to time by the Congress of the United States, shall be made by the legislature."). Thus, pursuant to the Organic Act, "the Legislature has plenary or absolute power over appropriations . . . ." *Santos*, 1982 WL 30790, at * 3. The legislative power of appropriation is defined as "the authority to set apart from the public revenue a certain sum of money for a specified object . . . ." *Opinion of the Justices to the Senate*, 376 N.E.2d 1217, 1220-21 (Mass. 1978) (citations and internal quotations omitted). The power of appropriation encompasses the "principle . . . that it is for the Legislature, and not the executive branch, to determine finally which social objectives or programs are worthy of pursuit." *Id*. at 1221.

[39] The Organic Act provides that the executive power of Guam is vested in the "Governor of Guam." 48 U.S.C. § 1422 (1992). The Governor's powers and duties, as specifically enumerated in the Organic Act include:

> [The] general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. . . . He shall appoint, and may remove, all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam.

Id. Thus, under the Organic Act, it is the duty of the Governor to enforce the laws as enacted by the Legislature and Congress, and, in pursuit of the fulfillment of that duty, the Governor has the power to appoint executive employees and supervise the departments of the executive branch. *Id*.; *see also Santos*, 1982 WL 30790, at * 3. The Governor's duties to supervise and control the executive branch for the purpose of the proper execution of the laws includes the power of expenditure. *See Anderson v. Lamm*, 579 P.2d 620, 623 (Colo. 1978) (en banc). "In order to fulfil this duty to faithfully execute the laws, the executive has the authority to administer the funds appropriated by the legislature for programs enacted by the legislature." *Id*. "[T]he activity of spending is essentially an executive task," *Opinion of the Justices to the Senate*, 376 N.E.2d at 1222, and "[t]he nature of . . . [the executive] office requires that the Governor have authority to use discretion in applying the energies of the executive branch and the resources of the . . . [state], as such resources are made available by the Legislature, to achieve the purposes or objectives of the laws." *Id*. at 1221.

[40] Having identified the respective powers of the Governor and Legislature as set forth in the Organic Act, we nevertheless acknowledge that the powers of each respective branch inevitably overlap to a certain extent. *See Opinion of Justices*, 266 A.2d at 826; *see also In re Opinion of the Justices*, 341 N.E.2d 254, 256 (Mass. 1976) ("Flexibility in the allocation of functions may sometimes be permissible, but only if it creates no interference by one department with the power of another."). Courts have found it difficult to characterize the exact relationship of each branch's powers and have resorted to doing so on a case-by-case basis. *See Anderson*, 579 P.2d at 623; *see also Opinion of Justices*, 266 A.2d at 825-26; *Commonwealth v. Sutley*, 378 A.2d 780, 783 (Pa. 1977) ("[T]here may be some areas where the dividing lines between the respective responsibilities of the three branches may be difficult to define."). When a statute is challenged as violating the separation of powers doctrine, "the court must search for a usurpation by one department of the powers of another department . . . [from] the specific facts and circumstances presented." *State ex rel. Schneider v. Bennet*, 547 P.2d 786, 792 (Kan. 1976). Therefore, each issue the Governor raises in the instant case requires a separate analysis with reference to the nature of the powers of each respective branch as described above.

[41] An analysis of each issue raised by the Governor must begin with the general rule that legislative enactments are presumed to be constitutional. *Bd. of Regents of Higher Educ. v. Judge*, 543 P.2d 1323, 1330 (Mont. 1975); *Communications Workers*, 617 A.2d at 232; *Mo. Coalition*, 948 S.W.2d at 132; *State ex rel. Shepherd v. Neb. Equal Opp. Comm'n*, 557 N.W.2d 684, 688 (Neb. 1997). Courts should try to harmonize the legislature's powers with the powers given to the executive. *See Bd. of Regents*, 543 P.2d at 1330. Moreover, "he who alleges the unconstitutionality of an act bears the burden

of proof. . . . [and] the validity of acts is to be upheld if at all possible with all doubt resolved in favor of legality and unconstitutionality will be decreed only when no other reasonable alternative presents itself . . . ." *State ex rel. Assistant Dist. Attorneys Assoc. v. Theriot*, 242 So. 2d 49, 51 (La. App. 1971) (citations omitted); *see also Shepherd*, 557 N.W.2d at 688. However, it is the court's duty to interpret the laws. Therefore, the court must declare a legislative enactment unconstitutional if an analysis of the constitutional claim compels such a result. *Mo. Coalition*, 948 S.W.2d at 132; *Common Cause of Penn. v. Commonwealth*, 668 A.2d 190, 202-03 (Pa. 1995)[6]; *Alexander v. State ex rel. Allain*, 441 So. 2d 1329, 1333 (Miss. 1983), *declined to be followed on other grounds by Dye v. State ex rel. Hale*, 507 So. 2d 332 (Miss. 1987). "[T]he fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *I.N.S. v. Chadha*, 462 U.S. 919, 944, 103 S. Ct. 2764, 2781 (1983).

a. Whether Appendix "C" of P.L. 26-35 and amendments thereto violate the doctrine of separation of powers in that the legislature has attempted to set the staffing pattern of the executive branch.

[42] Chapter V, section 1(a) of P.L. 26-35 (original law) and Bill 405 provides: "Personnel Services (Regular Salaries/Other Pay and Benefits) appropriations shall be expended *only* for positions contained in **APPENDIX C**, corresponding with each Division/Section/Program breakdown contained in **APPENDIX B**." Petitioner's Brief, Exhibit A, vol. 1, p. 106 (bold and italics in original). Appendix C lists

[6] "[C]ourts [a]re always loathe to put a construction on legislation which shows it to be invalid . . . but, if constitutions are to command general respect and obedience, the people must know that their courts will constantly endeavor to interpret them according to the commonly accepted understanding of the words used therein . . . ." *Common Cause*, 668 A.2d at 202 (citation omitted).

each government position and the corresponding salary and benefits for each position. *Id.*, Exhibit E, pp. 28-99.

[43] The Governor argues that Appendix C of both P.L. 26-35 (original law) and Bill 405 (fourth amendment) violate the separation of powers doctrine because it infringes on the Governor's duties to "supervise the government agencies, including the responsibility to manage the manpower needs of the various departments." Petitioner's Brief, p. 9. The Governor maintains that "staffing patterns are management tools . . . [and] the Legislature has attempted to manage the personnel of the Executive Branch by enacting the staffing patterns into law . . . [thereby] . . . unduly disrupt[ing] and interfer[ing] with the Governor's duty to supervise and control the operation of the Executive Branch." *Id.* at 10. "Through Appendix C, the Legislature has exceeded its Organic Act authority and usurped the authority of the Governor. *The problem with Appendix C is the separate listing and funding of each individual position in every agency*. *The position listings in Appendix C and the specific appropriations for each position* violate the doctrine of separation of powers." *Id.* at 16 (emphasis added). We treat this argument as the gist of the Governor's first challenge to the Budget Bill, and therefore analyze whether the "position listings" and "specific appropriations" have the effect of usurping the executive's powers derived from the Organic Act.

[44] The Legislature's plenary power of appropriation includes the power to impose "conditions upon the expenditure of appropriated funds." *Santos*, 1982 WL 30790, at * 3; *Schneider*, 547 P.2d at 799 ("[T]he appropriation of money and the setting of limitations on expenditures by state executive agencies constitutes an exercise of legislative power."). One such condition to an appropriation is the designation

of positions within the government. *Communications Workers*, 617 A.2d at 235 (The legislature may "appropriate and dictate, if it desires, the services and positions designated for such appropriation.") (citation omitted). The legislature may also designate salaries for various positions. *Opinion of the Justices*, 266 A.2d at 826 ("[I]n the absence of express legislative authority the Governor and [executive committee] . . . may not fix salaries even of personnel which the Governor is empowered to appoint."); *State ex rel. Meyer v. State Bd. of Equalization & Assessment*, 176 N.W.2d 920, 926 (Neb. 1970) ("It is within the power of the Legislature to fix the amount it will appropriate for personal services in any state department or agency.").

[45] However, the Legislature may not set limitations or conditions which "purport to reserve to the legislature powers of close supervision that are essentially executive in character." *See Anderson*, 579 P.2d at 624 (Colo. 1978). "Staffing decision are at the core of the Governor's day-to-day administration of government." *Communications Workers*, 617 A.2d at 234. Accordingly, the legislature may not set conditions to an appropriation which impinge on the executive's power to "allocate staff and resources" for the proper fulfilment of its duty to execute the laws. *See Anderson*, 579 P.2d at 623-24.

[46] Appendix C of the Budget Bill has two components: first, it lists all positions in the executive branch, and second, it sets the salaries for each respective position. While the Legislature may set salaries and positions to a certain extent, the manner in which it has done so in Appendix C can only be viewed as an impermissible interference with the Governor's ultimate authority to "make[ ] staffing and resource allocation decisions." *Id.* While the Legislature may limit the amounts of the total appropriation that can be expended on salaries of a given agency, as was done in Appendix B, by dictating the staffing structure

of each agency as done in Appendix C, the Legislature crossed the line between attaching a proper and improper condition to a general appropriation. Several cases support this conclusion.

[47] For example, in *In re Opinion of the Justices to the Governor*, 341 N.E.2d 254 (Mass. 1976), the court was asked to determine whether the legislature's "powers to approve certain schedules and salary expenditures . . . constitute exercise of executive powers; and, if so, then is it constitutionally permissible for the . . . [legislature] to grant to . . . [itself] such executive powers." *In re Opinion of the Justices*, 341 N.E.2d at 256. The bill at issue made advance approval by a legislative committee a condition to the availability of federal funds received by the state for "the payment of the salary for any position . . . ." *Id*. at 257 n.3. Furthermore, the bill provided that such money could not be appropriated unless they were "based upon a schedule of positions and salary rates approved by said committees . . . ." *Id*. The court held that the powers given the legislature in this provision of the bill was more properly characterized as the executive power of expenditure, and not the legislative power of appropriation. *Id*. at 257 (referring to the analysis of the previously discussed issue in coming to its finding). Therefore, the court opined that it was not constitutionally permissible for the legislature to reserve this power to approve the salaries and schedules for itself. *Id*.

[48] In *Anderson v. Lamm*, 579 P.2d 620 (Colo. 1978), the court was confronted with the issue of the constitutionality of provisions of the appropriations bill which allocated "funds based on the number of full-time employees ("FTEs") which the legislature believed each county should have," and made "certain specifications as to the number of full-time employees that can be assigned to specific job categories." *Anderson*, 579 P.2d at 626. The *Anderson* court determined that the executive's power to administer

appropriated funds includes "the making of specific staffing and resource allocation decisions." *Id*. at 623-24; *see also Communications Workers*, 617 A.2d at 232. The *Anderson* court further ruled that "the legislature may not attach conditions to a general appropriation bill which purport to reserve to the legislature powers of close supervision that are essentially executive in character." *Anderson*, 579 P.2d at 624. Based on these principles, the court held that the conditions regarding the number of full time employees impermissibly "interfere with the executive authority to allocate staff and resources" and were therefore a violation of the separation of powers doctrine. *Id*. at 626.

[49] An analogous case is *State ex rel. Schneider v. Bennet*, 547 P.2d 786 (Kan. 1976). In *Schneider*, the plaintiff challenged the constitutional validity of the law establishing the powers and duties of the state finance council ("SFC"). *See Schneider*, 547 P.2d at 790. The SFC was composed of the governor and eight members of the legislature. *Id*. at 794. In accordance with statute, the SFC had various powers, including the powers to: (1) "fix or approve the compensation paid to state officers and employees," and (2) "approv[e] of assignment of positions in the civil service to classes . . . assignment of classes to salary ranges, approv[e] of the pay plan containing a schedule of salary and wage ranges and steps, approv[e] of terms upon which state agencies may furnish housing, food service and other employee maintenance to state officers and employees in the civil service, and . . . determin[e] . . . the cost and value of such benefits . . . ." *Id*. at 797. The court held that these powers were "essentially executive or administrative in nature" in that they "concern the day-to-day operations of the department of administration and its various divisions." *Id*. Accordingly, the court invalidated the statute granting these powers to the SFC, holding:

> The vesting of such powers in the state finance council in our judgment clearly grants to a legislatively oriented body control over the operation of an executive agency and constitutes a usurpation of executive power by the legislative department.

Id. The court's holding was pronounced in light of the court's agreement that "the appropriation of money and the setting of limitations on expenditures by state executive agencies constitutes an exercise of legislative power." *Id*. at 799.

[50] In the instant case, the Legislature's appropriations to "Division/Section/Program" according to Appendix B are not questioned. The Legislature erred, however, when it then specified that those appropriations be expended only for positions contained in Appendix C. This prevented the Governor from varying his staffing pattern and therefore prevented him from accomplishing his constitutional duty to faithfully execute the laws. *See Perez*, 1999 Guam 2 at ¶ 17. Furthermore, the Legislature has not articulated any "overriding constitutional need" to usurp the Governor's powers to make required resource allocations within the executive branch. *Id*. Accordingly, Appendix C of the Budget Bill violates the separation of powers doctrine and is therefore inorganic and unconstitutional.

b. Whether section 11 of Bill 205, which dictates the terms of a lease of office space for Family Division of the Department of Law, violates the separation of powers doctrine.

[51] Section 11(c) of Bill 205 dictates that the Attorney General (hereinafter "AG") shall, by December 31, 2001, terminate the current lease of the office space being rented out for the Department of Law's Family Division. Petitioner's Brief, Exhibit E, pp. 17-18 (Oct. 24, 2001). The section further dictates that a new lease shall be procured and sets terms of the new lease, including specifications for the leased premises (e.g., square footage). *Id*. Finally, when deciding upon on a bid, the AG is required to request

a specific appropriation to fund the new lease for the remainder of the fiscal year 2002. *Id.* The Governor argues that section 11(c) of the Budget Bill encroaches on the executive's authority in that it improperly gives the Legislature the authority to manage the details of and approve the lease entered into by the AG for the Child Support Division. *Id.*, pp. 17-18. We agree.

[52] The Governor relies on cases which hold that the legislature may not constitutionally require prior approval of a lease once an appropriation is made. *See Alexander*, 441 So. 2d at 1342; *see also In re Opinion of the Justices*, 532 A.2d at 197. However, in the instant case, the Legislature did not make an appropriation of the funds for the lease of office space. Section 11(c) of the Budget Bill merely requires that the AG request funds once the lease is procured. The Legislature may request information from the executive branch for the purpose of facilitating how much money should be appropriated in the future. *See Mo. Coalition*, 948 S.W.2d at 134. Therefore, requiring that the AG request funds after the lease is procured is not, as the Governor suggests, tantamount to an attempt to require prior legislative approval of the lease. Rather, it is more properly viewed as an attempt by the Legislature to acquire information for the purpose of enabling the Legislature to make an appropriation adequate to meet the AG's needs.

[53] The provisions of Budget Bill that dictate terms of the lease are more problematic. In *Chaffin v. Ark. Game & Fish Comm'n*, 757 S.W.2d 950 (Ark. 1988), the court was presented with a constitutional challenge to an appropriations bill. Specifically, the challenged legislation prohibited the Fish and Game Commission from entering into contracts for professional and consultant services which either extend more than 20 working days, or exceed $5,000.00, without first seeking the advice of the legislature. *Chaffin*, 757 S.W.2d at 956. After receiving a contract, a committee of the Legislative Council reviews the contract

and stamps it favorable or unfavorable. *Id*. Although the stamp of approval or disapproval was not binding on the agency, the court found that "the 'advice' offered by the [legislative] committee to an agency is tantamount to a legislative order on how to execute a contract." *Id.* The court held the requirement that the agency submit its contracts for legislative advice to be in violation of the separation of powers doctrine, and therefore unconstitutional. *Id*.

[54] The instant case is analogous to *Chaffin*, and supports a finding of a more egregious violation of the separation of powers doctrine. In the instant case, the Legislature has not merely reserved for itself the power to give "advice" on the specifics of the contract; rather, the Legislature has dictated the exact terms of the contract. As *Chaffin* instructs, it is the executive's function to determine how to execute a contract. *See id*. at 956-57. The execution of a contract necessarily includes determining the terms of the contract. By determining the terms of the lease, the Legislature has engaged in a clear executive function.

[55] Section 11 (c) of Bill 405 would be constitutionally proper if the "legislative action . . . [was] necessary to further a statutory scheme requiring cooperation between the two branches, and such action offers no substantial potential to interfere with exclusive executive functions or alter the statute's purposes . . . ." *Communications Workers*, 617 A.2d at 232-33. In the instant case, section 11(c) provides that the current lease shall terminate for "lack of funds." *Id.*, Exhibit E, p. 17. The section further provides the maximum amount that can be charged per square foot leased and the maximum amount of square footage that may be leased. *Id.*, Exhibit E, p. 18. The section clearly attempts to place a cap on the total amount of money that can be spent by the AG in leasing office space. Thus, the purpose of section 11(c) is to

further fiscal policy.[7] This purpose can be achieved by a direct appropriation; therefore there is no need, in an effort to effectuate the purpose of the statute, for the Legislature to dictate specifications for the rental space. Even assuming that the lease specifications were included in the legislation to serve some non-fiscal purpose that necessitated cooperation with the executive branch, the Legislature's attempt to specify the terms of the lease substantially encroaches on the executive's power to determine the terms of its contracts. Accordingly, we hold that Section 11(c) violates the separation of powers doctrine, and is thus inorganic and unconstitutional. *See Communications Workers*, 617 A.2d at 232-33; *see also Chaffin*, 757 S.W.2d at 956-97.

c. Whether the staffing pattern reporting requirements of P.L. 26-35, chapter IV, section 3(a), and holiday pay reporting requirements of P.L. 26-47, section 2(d), violate the separation of powers doctrine.

[56] Chapter IV, section 3(a) of P.L. 26-35 requires the Governor to submit to the Legislature a monthly report stating the "current staffing pattern . . . including the name, position, salary and benefits of each employee." Petitioner's Brief, Exhibit A, vol. 1, pp. 37-38 (Oct. 24, 2001). Section 2(d) of P.L. 26-47 requires that certain departments of the executive branch submit a "labor cost distribution report . . . within five (5) days of each disbursement detailing the payment of '*Holiday Pay*' for each person receiving additional compensation." *Id.*, Exhibit C, p. 3.

[57] The Governor argues that the requested reports "relate to supervision and management of the agencies . . . [and do not] serve a legislative function." Petitioner's Brief, p. 22. We disagree. Compiling reports on the salaries and compensation of employees is not solely within the executive powers as set forth

[7] The Legislature averred this point during oral argument in this case.

in the Organic Act. The legislature may request information which clearly aids in the formulation of legislation. *See Opinion of the Justices*, 102 N.E.2d 79, 85 (Mass. 1951) ("If the legislative department were to be shut off in the manner proposed from access to the papers and records of executive and administrative departments, boards, and commissions, it could not properly perform its legislative functions."). The information requested in the instant case, although relating to the expenditure of funds, is of a type that could aid in the formulation of future appropriations legislation and therefore can be seen as related to a legitimate legislative function.

[58] Moreover, "[t]he Legislature, in the exercise of its functions, may pass laws calling for action by the executive department . . . ." *Opinion of the Justices*, 376 N.E.2d 1217, 1225 (Mass. 1978) (opining that the statute's requirement that the Governor submit to the Legislature revenue raising proposals when a deficiency occurs was appropriate legislative action and consistent with the overall constitutional scheme for a balanced budget). The reporting requirements at issue are only invalid under the separation of powers doctrine if they prevent the Governor from accomplishing his constitutional functions. *Perez*, 1999 Guam 2, ¶ 17. Here, while it may be true, as alleged by the Governor, that the requested information relates to the supervision and management of executive agencies, the Governor simply does not demonstrate that the reporting requirements prevent him from fulfilling his constitutional duties in operating the executive branch. *See Legislative Research Comm'n ex rel. Prather v. Brown*, 664 S.W.2d 907, 926 (Ky. 1984). The agencies are only required to report the salary and benefits information once a month and the holiday pay disbursements after each disbursement, which logically only follows each holiday. Moreover, the information requested is undoubtedly in the possession of the agencies. The Governor fails to show how

reporting that information at the prescribed times imposes a "a substantial interference or undue burden on department operations." *In re interest of J.A.*, 406 N.W.2d 372, 376 (Wis. 1987).[8]

[59] Legislative enactments are presumed to be constitutional. *See Bd. of Regents*, 543 P.2d at 1330. Absent a clear showing of unconstitutionality, i.e., a showing that the statute prevents the exercise of the executive's constitutional functions, we are bound to uphold the challenged provision. We find that the Governor has failed to meet his burden, and therefore hold that the provisions of the Budget Bill which establish reporting requirements do not violate the separation of powers doctrine.

d. Whether P.L. 26-47, section 7(b), which sets a specific date for filling the positions of Chief Procurement Officer and Controller, violates the separation of powers doctrine.

[60] Section 7(b) of P.L. 26-47 provides that if the positions of Chief Procurement Officer and Department of Administration ("DOA") Controller are not filled by January 1, 2002, the money appropriated for these positions reverts to the General Fund. *See* Petitioner's Brief, Exhibit C, p. 9 (Oct. 24, 2001). The Governor argues that section 7(b) violates the separation of powers doctrine because it is an attempt by the Legislature to manage the hiring of employees.

[61] We first point out that the Governor does not challenge the Legislature's appropriation for the two positions under Section 7(a); he only challenges the lapse provision contained in Section 7(b) on the ground that it, in effect, imposes a deadline to fill the positions. We disagree with the Governor's contention that

[8] We emphasize that had the Legislature required that the departments and agencies submit reports on a more frequent basis, we may not be similarly inclined to uphold the statutes. However, separation of powers challenges must be analyzed on a case by case basis, and the facts of this case support our holding that the requirement of monthly reports and reports which will only be required after each holiday do not impose enough of a burden on the departments so as to prevent the departments from properly functioning.

through the lapsing provision, the Legislature has supervised and controlled the Governor's hiring decisions. *To wit*, the condition does not hamper the decisions which are reserved exclusively and specifically for the Governor, such as which individuals should be hired to fill the particular positions; but rather, sets a time limit on the availability of funds. We do agree, though, that the lapsing provision does, to some degree, *affect* the Governor's hiring decisions in that the Legislature is limiting the Governor's ability to fill positions *when* he deems appropriate.

[62] However, the executive's power to hire is inextricably tied to the legislature's power to appropriate because the executive's ability to hire is dependent upon whether the legislature appropriates the funds. *See Flynn v. Dep't of Admin.*, 576 N.W.2d 245, 257 (Wis. 1998). The legislature's power of appropriation includes the power to impose a condition that funds lapse if not used. *See Meyer*, 176 N.W.2d at 926-27. The limitation to this power is that the condition imposed must not create such an interference with another branch's functions so as to prevent that other branch from fulfilling its constitutionally prescribed duties. *See Flynn*, 576 N.W.2d at 257-58; *see also Perez*, 1999 Guam 2 at ¶ 17 (requiring a showing that a statute prevents the accomplishment of a constitutional function in order for there to be a separation of powers violation).

[63] In *Flynn*, a continuing appropriation was made by the legislature to the judiciary to fund a program that involved the automation of court's information system. *Id.* at 248. Any unused funds were carried over into the following year and combined with any additional appropriation. *Id.* at 249. The legislature subsequently passed a statute that lapsed a portion of the judiciary's excess appropriation back into the general fund. *Id.* The court upheld the statute, finding that "the legislature may lapse . . . funds to the

general purpose revenue fund only if such lapse does not unduly burden or substantially interfere with the judiciary." *Id.* at 257. The burden rests with the challenger to prove that the lapsing creates an undue burden or substantial interference in the functioning of another branch. *Id.* at 257-58.

[64] Thus, the issue here is whether the lapsing of funds for the two positions unduly burdens or substantially interferes with the operation of the executive branch. *See Id.* In the instant case, section 7(b) went into effect in October 2001 and required the positions to be filled by January 2002. We agree with the Governor's assertion that special expertise is necessary for these positions. The Chief Procurement Officer "must have the qualifications in the specialized area of public procurement." Title 5 GCA § 5111 cmt. (1996); *see* Title 5 GCA § 5110 (1996) (creating the position of Chief Procurement Officer). Similarly, the position of controller within a government agency requires special expertise in the area of finance and accounting. Therefore, we agree that three months is an insufficient time period within which to fill positions which require such highly specialized knowledge. Moreover, the positions at issue are vested with significant responsibilities in key areas of executive operations. For example, the Chief Procurement Officer is statutorily charged with the duties to:

> (i) procure or supervise the procurement of all supplies and services needed by the Territory;
> (ii) exercise general supervision and control over all inventories of supplies belonging to the Territory; and
> (iii) establish and maintain programs for the inspection, testing and acceptance of supplies and services.

Title 5 GCA § 5113 (c)(1) (1996). The Chief Procurement Officer plays a central role with regard to government procurement. *See* Title 5 GCA §§ 5001-5710 (1996) (delineating the Chief Procurement Officer's specific duties). Similarly, the Controller occupies a top financial position within the Department

of Administration, an agency vested with wide-ranging duties in the executive branch, including employee relations, *see* Title 4 GCA § 10115 (1993), government procurement, *see* Title 5 GCA §§ 5001, 5110, 5113 (1996), records management, and data processing, *see* 5 GCA § 20103 (1996). Therefore, both the Chief Procurement Officer and the DOA Controller are essential positions in the overall functioning of the executive branch.

[65] "[T]he legislature . . . has clear constitutional authority to appropriate scarce resources." *Flynn*, 576 N.W.2d at 257. However, because section 7(b) imposes an unreasonable time restriction in hiring individuals to fill specialized positions integral to the executive department's functions, the condition placed an undue burden and created a substantial interference in the operation of the executive branch. Accordingly, the section violates the separation of powers doctrine and is therefore inorganic and unconstitutional.

VI.

[66] In accordance with the foregoing discussion, we decline to address the merits of the Governor's challenge to the constitutionality of chapter IV, section 7 of Public Law 26-35 on the ground that it does not fall within our grant of jurisdiction under section 4104. Further, we find that the reporting requirements set forth in chapter IV, section 3(a) of P.L. 26-35 and in section 2(d) of P.L. 26-47, do not violate the separation of powers doctrine and are therefore constitutional. However, we find that the staffing pattern set forth in Appendix C of the Budget Bill and the lease terms set forth in section 11 of Bill 205 amount to an improper usurpation by the Legislature of the Governor's Organic Act powers, thereby violating the

separation of powers doctrine. Furthermore, we find that section 7(b) of P.L. 26-47, which sets a specific date for filling the positions of Chief Procurement Officer and Controller, amounts to an improper legislative interference with executive functions. Therefore, these provisions of the Budget Bill are inorganic and unconstitutional.

[67] In accordance with the severability clauses contained in chapter V, section 24, of P.L. 26-35; section 18 of Bill 205; and section 10 of P.L. 26-47, the invalid provisions of the Budget Bill are hereby severed and the remaining provisions continue to remain in effect. Turning specifically to severance of Appendix C, we note that Legislature is still bound to make the appropriations as provided for in Appendix B, which is valid and remains in effect.

JOHN A. MANGLONA
Designated Justice

PETER C. SIGUENZA, JR.
Chief Justice

RICHARD H. BENSON, CONCURRING AND DISSENTING:

[68] I concur and join in the court's disposition of the Legislature's Motion to Dismiss, and all issues presented by the Governor's request for declaratory judgment except one.

[69] I respectfully dissent from the court's conclusion that the provision is inorganic which sets a date by which funds appropriated for the Chief Procurement Officer and the Controller will lapse if the positions are not filled.

[70] As the court correctly notes, the Governor had the burden of proof in his allegation that the provision was inorganic and unconstitutional. The burden is a heavy one since "the validity of acts is to be upheld if at all possible with all doubt resolved in favor of legality and unconstitutionality will be decreed only when no other reasonable alternative presents itself. . . ." *Theriot*, 242 So. 2d at 51. The Governor seeks to meet that burden in less than one page of his Opening Brief. Without repeating his summary of the lapse provision or his legal objection to it, he states,

> Technical expertise is required for the positions of Chief Procurement Officer and Controller. It is unknown how long it might take to recruit and hire a Chief Procurement Officer and a Controller. Regardless of how long it might take to fill these positions, it is not a legislative function to dictate a deadline for hiring Executive Branch employees.

Petitioner's Brief, p. 22. On its face, it is clear that the Governor has not carried his burden of demonstrating the unconstitutionality of a provision that provides that the salary appropriation lapses if the positions are not filled within three months of the Budget Bill becoming law. The Governor acknowledges that no one knows how long it will take to fill the positions.

[71] The Legislature did not address this issue at all in its brief, so only the Governor's words are before us.

[72] The court however finds that three months is an "unreasonable time restriction" that "placed an undue burden and created a substantial interference in the operation of the executive branch." Majority Opinion ¶ 65. Since it is not the court's place to make findings of fact, the court must be saying that as a matter of law three months is per se unreasonable. This is surprising considering the only reference we have to the matter by either party is the Governor's statement that the time required is unknown.

[73] All doubt should be resolved in favor of legality. The Chief Procurement Officer position has been in Guam's statutes since 1982. Public Law 16-124 added Government Code § 6954 which created the General Services Agency headed by the Chief Procurement Officer. Public Law 25-164, the Budget Bill for Fiscal Year 2001, included a lump sum appropriation for personnel services for the Department of Administration in which the positions of Chief Procurement Officer and Controller belong. Perhaps they were not filled during that year and the Legislature desired to have an end to carrying unfilled positions, even though the Chief Procurement Officer is an element in the legislative scheme it enacted.

[74] The legislature's power of appropriation includes the power to impose a condition that funds lapse if not used. *See Meyer*, 176 N.W.2d at 926-27. The limitation to this power is that the condition imposed must not create such an interference with another branch's functions so as to prevent that other branch from fulfilling its constitutionally prescribed duties. *See Flynn*, 576 N.W.2d at 257-58.

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[75] The Governor fails to demonstrate such interference. He only says, "Thus, the Legislature is attempting to manage the hiring of employees by giving a deadline to fill specific positions." Petitioner's Brief, p. 22.

RICHARD H. BENSON
Justice *Pro Tempore*