IN THE SUPREME COURT OF GUAM

A.B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY,
by and through its Board of Directors,
Petitioner-Appellee,

vs.

DOUGLAS B. MOYLAN,
Attorney General of Guam
Respondent-Appellant,

Supreme Court Case No.: CVA04-008
Superior Court Case No.: SP0055-03

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on October 28, 2004
Hagåtña, Guam

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BEFORE: FRANCES M. TYDINGCO-GATEWOOD, Chief Justice (Acting)[1]; JOHN A. MANGLONA and ALEXANDRO C. CASTRO, *Justices Pro Tempore*.

PER CURIAM:

[1] This is an appeal from the trial court's final judgment granting mandamus relief to the Guam International Airport Authority (GIAA), directing the Attorney General of Guam, Douglas B. Moylan, to approve as to form and legality a legal services contract between GIAA and a private law firm. The Attorney General asserts that when the United States Congress designated his office as the "Chief Legal Officer" of the Government of Guam through the 1998 Amendments to the Organic Act of Guam("1998 Amendments"), common law powers attached to his office which cannot be modified, restricted, or removed by local legislation. As such, the Attorney General contends that Title 12 GCA § 1108, which authorizes GIAA to retain outside counsel, and Title 5 GCA § 30109, which authorizes GIAA to use its own legal counsel instead of the Attorney General to conduct civil actions in which it is an interested party, are unconstitutional.

[2] We hold that the 1998 Amendments bestowed common law powers and duties upon the Attorney General of Guam. We further hold that those common law powers and duties may be subject to increase, alteration or abridgement by the Guam Legislature. Because we hold that Title 12 GCA § 1108(a) and (c) and Title 5 GCA § 30109 are valid exercises of the Guam Legislature's constitutional powers granted by the Organic Act, the trial court judgment is **AFFIRMED**.

I.

[3] In 1998, Congress amended the Organic Act to provide, among other things, that "[t]he Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam." 48 U.S.C. § 1421g(d)(1) (West, WESTLAW through Dec. 23, 2004). Prior to the 1998 Amendments, the Guam Legislature enacted legislation which authorized GIAA to retain private counsel. Title 12

[1] Chief Justice F. Philip Carbullido recused himself from deciding this matter. Associate Justice Tydingco-Gatewood, as the senior member of the panel, was designated as the Acting Chief Justice.

GCA § 1108(a) and (c) (2002). Also, prior to the 1998 Amendments, the Guam Legislature had enacted legislation prohibiting the execution of contracts for the services of legal counsel in the executive branch without the approval of the Attorney General as to form and legality. Title 5 GCA §§ 5121 and 5150 (2004).

[4] In a letter dated January 28, 2003, the Attorney General advised GIAA's Executive Manager that he had been informed of efforts to retain private counsel by government agencies such as GIAA. Appellant's Excerpts of Record ("ER"), pp. 68-70 (Letter from Moylan to Thompson of 1/28/03). The Attorney General noted that his approval was required "*prior* to any private attorney being retained to represent the government of Guam." *Id.* (alteration in original). The Attorney General further requested that GIAA execute a memorandum of understanding ("MOU") "to begin our relationship." *Id.*

[5] On February 11, 2003, the MOU was sent by the Attorney General to GIAA, the thrust of which required that the Attorney General would hire the attorney to work for GIAA at GIAA's expense, and further, that GIAA would provide such attorney with supplies and equipment and one staff person at its expense. Appellee's Supplemental Excerpts of Record ("SER"), Tab 3 (Memorandum from Guthrie to Thompson of 2/11/03).

[6] A few days after completing the procurement process, on March 3, 2003, GIAA sent the executed legal services contract with the private law firm of Mair Mair Spade & Thompson to the Attorney General for his approval. Appellee's SER, Tab 6, Ex. 4 (Mair Decl.). That same day, the Attorney General filed suit in the District Court of Guam against the Executive Manager of GIAA. Appellee's SER, Tab 6, Ex. 5 (Mair Decl., ¶ 8). The federal action was dismissed on April 1, 2003. Appellee's SER, Tab 11 (Order).

[7] GIAA filed a Petition for Writ of Mandamus against the Attorney General in the Superior Court of Guam on March 7, 2003. Appellant's ER, p. 1 (Petition for Writ of Mandamus). The Petition was granted by the trial court on May 12, 2003, Appellant's ER, p. 120 (Decision and Order on Writ of Mandate), and final judgment granting mandamus relief was filed on January 30, 2004.

Appellant's ER, pp. 138-39 (Final Judgment Granting Peremptory Writ of Mandamus). This appeal followed.

II.

[8] This court has jurisdiction to "hear appeals over any cause in Guam decided by the Superior Court of Guam . . ." 48 U.S.C. 1424-1(a)(2) (West, WESTLAW through Dec. 23, 2004).[2]

[9] An appeal from trial court judgment granting mandamus relief, where there are no issues of fact in dispute, is reviewed *de novo*. *Holmes v. Territorial Land Use Comm'n*, 1998 Guam 8, ¶ 6.

[10] "Mandamus relief is an extraordinary remedy employed in extreme situations." *Guam Publ'ns, Inc. v. Superior Court*, 1996 Guam 6, ¶ 10. A writ of mandate may be used to compel the performance of a legal duty. Title 7 GCA § 31202 (1994); *People v. Superior Court of Guam (Laxamana)*, 2001 Guam 26, ¶ 12; *see also Envtl. Prot. Info. Ctr., Inc. v. Maxxam Corp.*, 6 Cal. Rptr. 2d 665, 670 (Dist. Ct. App. 1992) ("The [writ of mandate] lies to compel the performance of a legal duty imposed on a government official."). A writ may be issued where a beneficially interested party establishes that he has no plain, speedy and adequate remedy available at law. Title 7 GCA § 31203 (1994); *Laxamana*, 2001 Guam 26 at ¶ 12.

III.

[11] In this case, a writ of mandate was issued to compel the Attorney General to approve as to form and legality the legal services contract between GIAA and the Mair law firm. The issue of whether the Attorney General has a legal duty to act and GIAA has a clear, present and beneficial right to performance of that duty, turns on a resolution of the constitutionality of Title 12 GCA § 1108(a) and (c) and Title 5 GCA § 30109. In other words, we must first address whether Title 12 GCA § 1108(a) and (c) and Title 5 GCA § 30109 are in conflict with the Attorney General's role as

[2] At the time of the filing of this appeal from a judgment granting mandamus relief, this court's jurisdiction was based on Title 7 GCA § 3107 (2004).

Chief Legal Officer. The answer to such inquiry requires this court to determine the broader issue of whether the Attorney General, as Chief Legal Officer of the Government of Guam, is vested with common law powers, and if so, the scope of such powers.

[12] The Attorney General argues that the Guam Legislature is without authority to diminish the powers and duties of the Attorney General, who, by virtue of the express language found in the Organic Act, is the Chief Legal Officer of the Government of Guam. In particular, the Attorney General argues that: (1) congressional history reflects that the legislative intent behind the 1998 Amendments was not merely to change the method of selecting the Attorney General, rather, the legislative intent was to incorporate the common law powers of the Attorney General, which would not be subject to prescription by the Guam Legislature; (2) as Chief Legal Officer, the Attorney General is endowed with inherent common law powers, which include ensuring that a unified and consistent legal policy of the government of Guam is set, and being accountable for the conduct of all suits and other judicial proceedings involving the government of Guam; (3) because the Attorney General is the Chief Legal Officer of the Government of Guam, and because GIAA is an instrumentality of the government of Guam, it logically follows that, under the plain meaning rule, the Attorney General is the attorney for GIAA; and (4) the approval of private counsel for GIAA involves a discretionary act, and therefore, mandamus will not lie to dictate the exercise of a such discretionary act in a particular manner. In support of his arguments, the Attorney General relies on case law from Illinois, Mississippi, Alabama, Washington, Indiana, Florida and California.

[13] GIAA opposes each of the Attorney General's contentions, and asserts that: (1) congressional history does not support the Attorney General's arguments, but rather, the legislative history is void of any indication that Congress intended to preempt, or restrict, the Legislature's powers to allow government agencies such as GIAA to retain independent counsel; (2) the Organic Act does not prohibit the Guam Legislature from limiting the powers of the Attorney General, and further, may permit government of Guam agencies to retain independent counsel; (3) local law has not been preempted by federal law; (4) mandamus relief is appropriate because the approval of

contracts is purely a ministerial act; (5) the Attorney General is statutorily required to represent line agencies; and (6) the Guam Legislature, and not the Attorney General, is responsible for determining public policy. GIAA distinguishes the cases cited by the Attorney General and maintains that they are inapplicable to the facts before us, and therefore urges this court to follow case law from the jurisdictions of Arizona, Kentucky, Missouri, North Dakota, Oklahoma and Utah.

[14] We begin our analysis with a discussion of the relevant statutory provisions.

A. Relevant Statutory Provisions

[15] The Attorney General contends that the local statutes which authorize the GIAA to retain outside counsel are inconsistent with the Attorney General provision found in section 1421g(d)(1) of the Organic Act, which provides that "[t]he Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam." 48 U.S.C. § 1421g(d)(1).

[16] Specifically, Title 12 GCA § 1108 authorizes GIAA to appoint an attorney, and further defines the attorney's role as counsel to GIAA. It provides in part:

> (a) The [GIAA] Board may also appoint . . . an attorney, all of whom shall serve at the pleasure of the Board. . . . (c) The Attorney, who must have been admitted to the practice of law in Guam, shall advise the Board and the Executive Director on all legal matters to which the Authority is a party or in which the Authority is legally interested, and may represent the Authority in connection with legal matters before the Legislature, boards and other agencies of the Territory or of the United States. The Attorney for the Authority shall represent the Authority in litigation concerning the affairs of the Authority.

Title 12 GCA § 1108 (2002).

[17] Guam's procurement laws requires that all legal services contracts for the executive branch be approved by the Attorney General. Specifically, Title 5 GCA § 5121(b) states:

> No contract for the services of legal counsel in the Executive Branch shall be executed without the approval of the Attorney General. Nothing in this Section or Chapter shall preclude the Attorney General or his designee from participating in negotiations for any contract upon the request of the government officer or agency primarily responsible for such negotiations.

Title 5 GCA § 5121(b) (2004).

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[18] However, Title 5 GCA § 5150 states that the Attorney General's role with respect to the approval of procurement contracts is to determine correctness as to form and legality. Section 5150 states:

> The Attorney General, the Deputy Attorney General or such Assistant Attorneys General as the Attorney General may designate, shall serve as legal counsel and provide necessary legal services to the Policy Officer and the General Services Agency. *The Attorney General shall, in addition, when he approves contracts, determine not only the correctness of their form, but their legality.* In making such a determination of legality, he may require any or all agencies involved in the contract to supply him with evidence that the required procedures precedent to executing the contract were carried out. He may prescribe the forms and format required to be followed by the agencies in aiding him in his determination of legality.

Title 5 GCA § 5150 (2004) (emphasis added).

[19] Moreover, although the Attorney General is authorized to institute civil actions on behalf of the Government of Guam, an individual agency such as GIAA may instead utilize its outside counsel for such purposes. Specifically, Title 5 GCA § 30109(c) states that the Attorney General may "[c]onduct on behalf of the government of Guam all civil actions in which the government is an interested party; provided that those branches, departments or agencies which are authorized to employ their own legal counsel may use them instead of the Attorney General." Title 5 GCA § 30109(c) (2003).

[20] Accordingly, the issue for this court's determination is whether the above statutory provisions are in conflict with the Attorney General's role as Chief Legal Officer and thus unconstitutional. As previously stated, the answer to such issue requires this court to determine, in the first instance, whether the Attorney General, as Chief Legal Officer of the Government of Guam by virtue of the Organic Act, is vested with all powers at common law, and if so, whether such powers may be altered by the Legislature.

B. The Legislature's Organic Act Powers and Constitutional Challenges to Local Law

[21] "The Organic Act serves the function of a constitution for Guam." *Haeuser v. Dep't of Law*, 97 F.3d 1152, 1156 (9th Cir. 1996); *see also People v. Perez,* 1999 Guam 2, ¶ 15 ("Until Guam creates its own Constitution, the Organic Act of Guam is the equivalent of Guam's Constitution.").

Section 1423a of the Organic Act, as amended by Congress in 1998, states that "[t]he legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam." 48 U.S.C. § 1423a (West, WESTLAW through Dec. 23, 2004). Congress' intent in amending section 1423a was to "clarif[y] the legislature's power[s] 'to provide Guam with a greater measure of self-government.'" *In re Request of Gov. Felix P. Camacho Relative to the Interpretation and Application of Section 6 and 9 of the Organic Act of Guam*, 2004 Guam 10, ¶ 33 (quoting H.R. REP. NO. 105-742 (1998), 1998 WL 658802 at *3). While we recognize the broad authority granted the Legislature in the Organic Act, we are equally cognizant of the "well-established principle in this jurisdiction that the Guam Legislature cannot enact laws which are in derogation of the provisions of the Organic Act." *In re Request of Gov. Felix P. Camacho Relative to the Interpretation and Application of Section 11 of the Organic Act of Guam*, 2003 Guam 16, ¶ 15 n.5; *see also Haeuser*, 97 F.3d at 1156 (observing that "Guam's self-government is constrained by the Organic Act, and [thus] the courts must invalidate Guam statutes in derogation of the Organic Act."). Whether a law or statute violates the Organic Act is a question of law. *See Perez,* 1999 Guam 2 at ¶ 6.

[22] In assessing whether a law enacted by the Guam Legislature comports with the Organic Act, we "must begin with the general rule that legislative enactments are presumed to be constitutional." *In re Request of Gov. Carl T.C. Gutierrez Relative to the Organicity and Constitutionality of Public Law 26-35*, 2002 Guam 1, ¶ 41. Here, the Attorney General raises the issue of whether Title 12 GCA §1108(a) and (c), which authorize GIAA to retain private counsel to represent its interests in legal matters, is unconstitutional because it is in derogation of 1421g of the Organic Act, which creates the office of the Attorney General, and designates such officer as the Chief Legal Officer of the Government of Guam. Accordingly, the Attorney General bears the burden of proving the unconstitutionality of Title 12 GCA sections 1108(a) and (c). *Id.* ("[H]e who alleges the unconstitutionality of an act bears the burden of proof . . . ."). [T]he validity of sections 1108(a) and (c) "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." *Id.*

C. Chief Legal Officer of the Government of Guam

1. Legislative and Other History

[23] The Attorney General argues that the congressional record with respect to section 1421g(d) of the Organic reflects that the "Attorney General is endowed with an entirely different character because it was 'organically' created by Congress, not created or defined in local law. And until Congress says otherwise, the Office is immune from local control, be that executive or legislative interference or prescription." Appellant's Opening Brief, p. 15 (June 14, 2004).

[24] The strongest piece of legislative history in support of the Attorney General's interpretation of the 1998 Amendments is the testimony and correspondence of the former Compiler of Laws Charles Troutman, in response to the amendments proposed by former Congressman Robert Underwood, Guam's congressional delegate. More specifically, in a letter dated July 16, 1997 to Congressman Underwood, the Compiler stated, *inter alia*, that "if there is any substantive meaning to your amendment, the Attorney General needs to have some basic constitutional powers that are not subject to the Legislature's total will." Appellant's ER, p. 37 (Letter from Compiler to Congressman Underwood of 7/17/97). Thus, the Compiler recommended the following language, which he claims "is the same idea as expressed in the 1970 Illinois Constitution:

> [The legislature shall] set forth the duties and compensation of the Attorney General, *who, in addition,* shall be the chief legal officer of the Government of Guam having cognizance over all legal matters in which the government is anywise interested.

Id. at p. 37. Explaining the above language, the Compiler further stated, "I do not see this language as eliminating the use of outside counsel for various agencies, but would keep a check on having many and diverse legal "empires" within the government of Guam." *Id.* at p. 37. It is important to note, however, that the bill apparently was not amended to reflect the Compiler's changes.

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[25] Furthermore, in his testimony before the Committee on Resources, on October 29, 1997, the Compiler opined that "the present proposal is seriously deficient."[3] Appellant's ER, p. 42 (Acting Attorney General Charles H. Troutman, Witness Testimony before the Comm. on Resources (Oct. 29, 1997)). The Compiler expressed no preference for either an appointed or elected Attorney General, as long as the position was created in the Organic Act, and "the overall duties and functions [are] provided [for] in the Organic Act, much as is found in the Constitution of the State of Illinois." *Id.* The Compiler suggested the following language: "The Attorney General shall be the chief legal officer of the territory of Guam and shall have such other duties and such compensation as the Legislature may provide by law." *Id.* Significantly, Congress did not add the language suggested by the Compiler.

[26] While the Compiler clarified his stance on the constitutional role of the Attorney General, his proposed amendments were not wholly adopted by Congress. Thus, his comments are not relevant to the issue of whether the Legislature may authorize agencies to hire outside counsel. Rather, because Congress apparently decided not to insert *any* language regarding the Legislature's authority in relation to the powers and duties of the Attorney General, it appears that Congress preferred not to tie the hands of the Legislature in this regard.

[27] Based on our review of the legislative and other history surrounding section 1421g of the Organic Act, which we discuss in detail below, we reject the Attorney General's assertion that Congress intended that his office be immune from all legislative control.

[28] The office of the Attorney General as it exists today was constitutionally created by virtue of the Guam Organic Act Amendments of 1998. H.R. 2370, 105th Cong. (1998). Codified at 48 U.S.C. § 1421g, the provision relative to the Attorney General states in its entirety:

[3] Note that the Compiler enumerated three reasons for the deficiency: first, he recommended repeal of the language regarding the public prosecutor; second, he recommended clarification of the duties of the Attorney General; third, he recommended strengthening the tenure of the office so that the Attorney General could only be removed for cause if appointed, and by recall, if elected. Only the issue regarding the duties of the position are relevant for our purposes and thus, it is not necessary to discuss the Compiler's other concerns.

(d) Attorney General

> (1) The Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam. At such time as the Office of the Attorney General of Guam shall next become vacant, the Attorney General of Guam shall be appointed by the Governor of Guam with the advice and consent of the legislature, and shall serve at the pleasure of the Governor of Guam.
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> (2) Instead of an appointed Attorney General, the legislature may, by law, provide for the election of the Attorney General of Guam by the qualified voters of Guam in general elections after 1998 in which the Governor of Guam is elected. The term of an elected Attorney General shall be 4 years. The Attorney General may be removed by the people of Guam according to the procedures specified in section 1422d of this title or may be removed for cause in accordance with procedures established by the legislature in law. A vacancy in the office of an elected Attorney General shall be filled–
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> > (A) by appointment by the Governor of Guam if such vacancy occurs less than 6 months before a general election for the Office of Attorney General of Guam; or
> >
> > (B) by a special election held no sooner than 3 months after such vacancy occurs and no later than 6 months before a general election for Attorney General of Guam, and by appointment by the Governor of Guam pending a special election under this subparagraph.

48 U.S.C. § 1421g.

[29] "As reported from the Committee on Resources, the purpose of H.R. 2370 [was] to amend the Organic Act of Guam to clarify local executive and legislative provisions in such Act." H.R. REP. NO. 105-742, 105th Cong. (1998), available at 1998 WL 658802, at *2. It is worth noting that while H.R. 2370 amended the Organic Act to create the office of the Attorney General and give such office the title of Chief Legal Officer of the Government of Guam, it also expanded the local legislative power to include "*all rightful subjects of legislation* not inconsistent with [the Organic Act]," in order to achieve "a greater measure of self-government equal to that of the U.S. Virgin Islands." *Id.* at *3 (emphasis added).

[30] Specifically in relation to the Attorney General provisions in H.R. 2370, the House Report states, *in its entirety*:

> *Guam's Attorney General is currently appointed* by the Governor of Guam

> with the advice and consent of the Guam Legislature. The appointment of the Attorney General is to a four year term or until the end of the term of the appointing Governor, whichever is sooner. The Governor may remove the Attorney General for cause.
>
> *Controversies have arisen in the past because of the appointment nature of the position of Attorney General.* Public concerns revolve around political interference with investigations, inefficiency of case work and dismissal of the Attorney General without cause.
>
> In response to the growing number of complaints, a survey was conducted to determine an acceptable resolution. It was clear that respondents (69%) favored an elected position. The survey also asked whether the position should be mandated by Congress, or left to the Guam Legislature to create. A slight majority of citizens favored local legislation. An amendment to Guam's Organic Act is needed to allow for an elected Attorney General. *This legislation provides a mechanism for elected legislators to act on this issue.*

Id. at *2-3 (emphases added).

[31] Thus, it appears that the provisions with respect to the Attorney General were in direct response to controversies resulting from the "appointment nature" of the Attorney General. The House Report also alludes to a survey conducted on Guam which sought feedback from residents as to whether they desired an elected Attorney General, and if so, whether Congress should mandate the elected office, or whether the creation of the elected office should be left to local legislators. According to the survey, 69% of respondents desired an elected Attorney General. Of the 69% desiring an elected Attorney General, a slight majority wished to leave the creation of the elected office to the local legislature. It can be argued that H.R. 2370 was thus a direct response by Congress to the desires of the people of Guam as reflected by the survey results – through the 1998 Amendments, Congress authorized the Legislature, if it so desired, to change the appointed nature of the Attorney General to an elected one.

[32] Moreover, with respect to committee action, the House Report states that an amendment by way of a substitute bill was offered and adopted by the committee. This substitute bill H.R. 2370 thus focused on changes regarding the *elective* nature of the Attorney General, and quorum size and powers of the Legislature. Specifically, the House Report provides:

> On July 29, 1998, the Committee met to mark up H.R. 2370. An amendment in the nature of a substitute to focus the changes to the Organic Act of Guam to provisions about *the election* of the Attorney General of Guam, quorum size, and clarification of legislative powers was offered by Mr. Underwood and adopted by voice. The bill

was then ordered favorably reported to the House of Representatives by voice vote.

Id. at *3-4 (emphasis added).

[33] Similarly, in a subsequent report of the legislative and oversight activities of the Committee on Resources during the 105th Congress, the committee reported that it "passed the 'Guam Organic Act Amendments' (H.R. 2370) authorizing changes to the Federal law authorizing the government structure in Guam by allowing the people of Guam to determine if the Attorney General should be an elected office, adjust the size of the legislative quorum to a simple majority to correspond with the size of the legislature, and to clarify the authority of the legislature over local matters." *Id.* at *6.

[34] Upon review of the house reports, it is clear that Congress intended to respond to the controversies of the "appointment nature" of the Attorney General, and by virtue of the 1998 Amendments, "provide[d] a mechanism for elected legislators to act on this issue." H.R. REP. NO. 105-742, 1998 WL 658802 at *3. For this reason, the provisions of H.R. 2370 focused on "the election of the Attorney General of Guam." *Id.* Equally clear is that nothing in the House Report expresses or implies that Congress intended to grant all common law powers and duties to the Attorney General which could never be altered by the Legislature. In other words, the legislative history of section 1421g of the Organic Act provides no support for the Attorney General's assertion that Congress intended, by designating the Attorney General as the Chief Legal Officer, to prohibit the local legislature from altering powers that the office might otherwise possess at common law.

[35] Testimonies provided by former Senators Elizabeth Barrett-Anderson and Ben Pangelinan of the 24th Guam Legislature also fail to support the Attorney General's position that Congress intended to vest the Attorney General with common law powers which cannot otherwise be proscribed by the Legislature.

[36] Through testimony provided to the Subcommittee on Native American and Insular Affairs on July 24, 1996, Senator Barrett-Anderson discussed at length the importance of the creation of an *elected* Attorney General. *See* Cong. Testimony of Sen. Barrett-Anderson, July 24, 1996, 1996 WL 10830029. She stated, in relevant part:

> Why an elected Attorney General? Empowering the people of the Territory to elect their Attorney General is a statement of greater self-government on the part of the people of Guam. . . . Electing an Attorney General is not an unrealistic concept which seeks to create new legal theories of self- government . . . . Today 46 states elect their Attorney General under constitutional guidelines. . . . The people of Guam expect their Attorney General to protect their interest above all else. An appointed Attorney General, unfortunately, must respond to a great extent to the concerns of the Governor. The Attorney General of Guam has historically suffered from this dilemma. The people of Guam are frankly tired of the constant criticisms focused on the very position which the people demand the highest degree of legal integrity.

Id. Senator Barrett-Anderson's testimony focused solely on the *means* of selecting the Attorney General. She asserted that the people of Guam expect the Attorney General to protect their interest above all else, and for that reason, proposed that the only solution was to allow the citizens of Guam to elect the Attorney General. Moreover, focusing on the elective versus appointive nature of the Attorney General, Senator Barrett-Anderson also provided a prime, personal example of the conflict of interest that arises through the appointment nature of the Attorney General.[4]

[37] At the July 24, 1996 oversight hearing in which Senator Barrett-Anderson testified, Chairman Elton Gallegly of the Subcommittee on Native American and Insular Affairs similarly expressed that the purpose of the 1998 Amendments was to create an elected office of the Attorney General. *See* Statement of Chairman Gallegly, July 24, 1996, 1996 WL 10830027 ("The Legislature of Guam . . . requests that the Congress give Guam the authority to determine the method of selecting their attorney general. No doubt there is a compelling reason the Legislature identified *the selection of the attorney general* as a matter warranting a change in current law.") (emphasis added). Likewise, in a statement provided at the oversight hearing, Allen P. Stayman, Director of the Office of Insular Affairs, stated:

> The Legislature of Guam . . . requests that the Organic Act of Guam be *amended to require election of the Attorney General* of Guam. At present, the Attorney General is appointed by and serves at the pleasure of the Governor of Guam. I believe that the *issue of appointment or election* of the Attorney General is a local self-government issue, which should be decided in Guam.

[4] Senator Barrett-Anderson testified that during her term as Attorney General, she advised the Governor of the unconstitutionality of a local law. However, because she was appointed by and answerable to the Governor, she hesitated to file a suit to enjoin him from executing the law, and further, she could not represent his interests when the law was challenged on appeal.

Statement of Director Stayman, July 24, 1996, 1996 WL 10830030 (emphasis added).

[38] Senator Barrett-Anderson again testified before the subcommittee on October 29, 1997. *See* Cong. Testimony of Sen. Elizabeth Barrett-Anderson, Oct. 29, 1997, 1997 WL 14153025. At this time, the senator was particularly concerned with the language of H.R. 2370, which did not firmly establish the Attorney General as a co-equal executive branch position which fell outside of the Governor's general supervision and control powers. *Id.* She also took issue with the language of H.R. 2370 which granted the Legislature the power to decide whether to create an elected office. *Id.* Rather, she urged Congress to mandate, through the Organic Act, that the position be elected. *Id.* On behalf of the 24th Guam Legislature, she transmitted her testimony, along with the Legislature's Resolution No. 186, which delineated the proposed changes to the Organic Act as she described. Seemingly, her primary and arguably sole concern, again, was the interference by the Governor inherent in an appointed position and the continued interference should Congress decide not to expressly except the Attorney General from the Governor's general supervision and control powers.

[39] Senator Ben Pangelinan's testimony before the committee similarly focused on the importance of insulating the Attorney General from the control of the Governor, by mandating the election of the office of the Attorney General. *See* Cong. Testimony of Sen. Ben Pangelinan, Oct. 29, 1997, 1997 WL 16138742. Senator Pangelinan testified, in relevant part:

> I further wish to convey the unequivocal desire of the people of Guam to elect their Attorney General. This expression of their desire has been reiterated and embodied in the resolutions overwhelmingly passed by both the Twenty-Third and the Twenty-Fourth Guam Legislature. The direct selection by the will of the people of Guam of the Attorney General is right, just, and prudent for the people of Guam to have an independent Attorney General, unfettered by incessant political intervention from a single individual.
>
> . . . .
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> Thus I seek a clear language that grants the people of Guam the right to elect our attorney general, so that we will have removed another obstacle to our self-governance and once again reaffirm our high level of political maturity.

Id.

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[40] From the testimonies of both senators, it appears that the intent of the 1998 Amendments was to create in the Organic Act the *elected* office of the Attorney General and insulate such officer from the control of the Governor, and no more. Significantly, any and all concern regarding "political interference" was in reference to the Governor, and not the Legislature through its power to enact laws which arguably affect the powers and duties of the Attorney General, such as authorizing the retention of private counsel by government agencies.

[41] It is important to note that although neither senator discussed the powers or duties of the Attorney General, Resolution 186, passed by the 24th Guam Legislature and submitted to Congress, suggested the following amendment to the language of H.R. 2370:

> The Attorney General shall be the chief legal officer of the government of Guam, shall be vested with common law powers and such additional powers and duties as may be prescribed under the laws of Guam, not inconsistent with this chapter. The Attorney General shall prosecute all criminal violations of Guam law, provide legal advice to the government, and represent the government in all civil cases in which the government of Guam may be interested. . . .

Res. 186, 24th Guam Leg. First Reg. Sess. (1997).[5] Even more important is that Congress *did not adopt such language*.

[42] Accordingly, contrary to the Attorney General's assertion that Congress clearly intended that his office be immune from all local control, the legislative and other history reflects that Congress in fact did not incorporate proposed amendments which would have clearly delineated the Attorney General's powers in relation to the Governor and the Legislature. For this reason, we find that the legislative and other history of section 1421g provide no guidance in our determination of whether the Attorney General, as Chief Legal Officer of the Government of Guam, is vested with all powers at common law, and if so, whether such powers may be altered by the Legislature.

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[5] We note that the recital clauses do not discuss the powers or duties of the Attorney General. Rather, the recital clauses express the Legislature's desire to amend the proposed H.R. 2370 to create the elected office of the Attorney General and to insulate the officer from the general supervision of the Governor. Res. 186, 24th Guam Leg. First Reg. Sess. (1997). (stating the desire "to provide for an elected Attorney General of Guam, independent from the general supervision of the Governor . . ."); *see* Cong. Testimony of Sen. Elizabeth Barrett-Anderson, Oct. 29, 1997, 1997 WL 14153025 ("The 24th Guam Legislature by Resolution #186 strongly advises that Congress enact an amendment that clearly, and unequivocally establishes the attorney general as a co-equal executive branch position."). Accordingly, the Legislature, through Resolution 186, included a proposed amendment to the Organic Act which would vest the executive power in "the Governor, the Lieutenant Governor, and the Attorney General."

2. Common Law Powers

a. Jurisdictions Relied upon by the Attorney General

[43] The Attorney General relies primarily on Illinois cases which hold that the Attorney General possesses all common law powers which cannot be regulated by the state legislature. The Illinois Supreme Court has observed: "[T]his court has consistently held, under both the 1870 and 1970 constitutions, that the Attorney General is the chief legal officer of the State; that is, he or she is 'the law officer of the people, as represented in the State government, and its only legal representative in the courts.'" *Envtl. Prot. Agency (EPA) v. Pollution Control Bd.*, 372 N.E.2d 50, 51 (Ill. 1977) (quoting *Fergus v. Russel*, 110 N.E. 130, 143 (Ill. 1915)). Thus, the Illinois Attorney General, as chief legal officer of the State, "has the constitutional duty of acting as legal adviser to and legal representative of State agencies. He or she has the prerogative of conducting legal affairs for the State." *EPA*, 372 N.E.2d at 51.

[44] While the Attorney General's representation of the Illinois cases is accurate, his reliance on these cases is misplaced. A thorough review of the Illinois constitutional and case law history establishes that the Illinois Attorney General's powers stem from the Illinois Supreme Court's interpretation of the phrase "prescribed by law" as it appears in the Illinois constitution, and not from his designation as "Legal Officer."

[45] To begin with, the 1870 Illinois constitution created the office of Attorney General and provides that the Attorney General shall "perform such duties as may be prescribed by law." ILL. CONST. of 1870, art. V, § 1 ("The executive department shall consist of a Governor, Lieutenant Governor, Secretary of State . . . and Attorney General. . . . [who] shall perform such duties as may be prescribed by law"); *see People ex rel. Scott v. Briceland*, 359 N.E.2d 149, 153 (Ill. 1976) (recognizing the absence of the term "Legal Officer" in the 1870 constitution).

[46] The seminal case interpreting the 1870 constitutional provision with regard to the Attorney General's powers is *Fergus v. Russel*, 110 N.E. 130 (Ill. 1915). The court, construing the phrase "prescribed by law" as it existed in the 1870 constitution, rejected such language as limiting the

Attorney General's powers to those specified by statute, and held that the term "law" includes common law. *Id.* at 143. The court specifically stated that "[t]he common law is as much a part of the law of this state, where it has not been expressly abrogated by statute, as the statutes, and is included within the meaning of this phrase." *Id.* Further, recognizing the common law history of the state, the court stated with respect to the powers of the Attorney General :

> Under our form of government all of the prerogatives which pertain to the crown in England under the common law are here vested in the people, and if the Attorney General is vested by the Constitution with all the common-law powers of that officer, and it devolves upon him to perform all the common-law duties which were imposed upon that officer, then he becomes the law officer of the people, as represented in the state government, and its only legal representative in the courts, unless by the Constitution itself or by some constitutional statute he has been divested of some of these powers and duties.

Id. The court in *Fergus* thus observed:

> By our Constitution we created this office by the common-law designation of Attorney General and thus impressed it with all its common-law powers and duties. As the office of Attorney General is the only office at common law which is thus created by our Constitution the Attorney General is the chief law officer of the state, and the only officer empowered to represent the people in any suit or proceeding in which the state is the real party in interest, except where the Constitution or a constitutional statute may provide otherwise. With this exception, only, he is the sole official adviser of the executive officers, and of all boards, commissions, and departments of the state government, and it is his duty to conduct the law business of the state, both in and out of the courts.

Id. at 145.

[47] The court in *Fergus* unequivocally established the Attorney General as an officer "with expansive powers which the General Assembly lacked the power to diminish." Shawn W. Denny, *History of the Office of the Illinois Attorney General*, http://www.illinoisattorneygeneral.gov/about/history.html, (last visited Feb. 8, 2005). *See Briceland*, 359 N.E.2d at 153 ("The rationale of the *Fergus* decision is that the 1870 Constitution granted the Attorney General all the powers associated with that office at common law, and that, while the legislature could add to these powers, the legislature could not reduce the Attorney General's common law authority.")

[48] For many years following, every Illinois case which addressed the Attorney General's authority and held that the General Assembly could not diminish the powers of the Attorney General, relied on the *Fergus* decision and its interpretation of the 1870 constitution. The 1970 Illinois constitution "continued the Office of the Attorney General as it had been established under the 1870 Constitution." Denny, *supra*. In the 1970 constitution, the office was thus described: "The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law." ILL. CONST. of 1970, art. V, § 15 West, WESTLAW through Sept. 15, 2004). Significantly, the term "chief legal officer" does not even appear in the 1970 Illinois constitution. In fact, in designating the Attorney General as "legal officer," the delegates had no intention to either enlarge or diminish the powers of the Attorney General as it existed in the 1870 constitution. Rather, the delegates acknowledged the *Fergus* decision, and desired the law to remain status quo. *See Briceland,* 359 N.E.2d at 156 (recognizing, after a lengthy review of the constitutional debate, that it is clear "the delegates intended to retain the holding of *Fergus* that the Attorney General is 'the only officer empowered to represent the people in any suit or proceeding in which the State is the real party in interest, except where the constitution or a constitutional statute may provide otherwise.'") (quoting *Fergus*, 110 N.E. at 145)).

[49] We decline to adopt the Illinois court's interpretation of its constitution. First, only two relevant words in the language in our Organic Act can be found in the 1970 Illinois constitution: legal officer. It is therefore unreasonable to assume, as the Attorney General asserts, that "the model for Guam's Attorney General was based upon the Illinois Attorney General Constitution," and even more unreasonable that this court should feel compelled to follow the Illinois court's interpretation. *See* Appellant's Opening Brief, p. 15 (June 14, 2004).

[50] Second, the Illinois line of cases was based on the 1870 constitution's language that the Attorney General had duties as "prescribed by law." Because that specific phrase, in the context of the Illinois constitution, was presented to Congress through the testimony provided by the former Compiler of Laws, and obviously rejected, the *Fergus* case and all other cases which follow it, are completely inapplicable to the case before us.

[51] Third, the term "legal officer" as used in the 1970 Illinois constitution was not meant to "clarify" the powers of the Attorney General. In other words, the Illinois Attorney General's common law powers derive from the phrase "prescribed by law" and not "legal officer." In determining whether the Attorney General of Guam, as Chief Legal Officer, is vested with common law powers which cannot be diminished by the Legislature, Illinois cases are inapplicable as the use of the term "legal officer" had no effect on the state of the Illinois law with regard to the source of the Attorney General's common law powers.

[52] Finally, the Illinois court's interpretation has been regarded as one which does not follow the general rule, but rather gives "the Attorney General of Illinois . . . perhaps the broadest power of all the Attorneys General within the United States." David Edward Dahlquist, *Comment, Inherent Conflict: A Case Against the Use of Contingency Fees by Special Assistants in Quasi-Governmental Prosecutorial Roles*, 50 DEPAUL L. REV. 743, 765 (2000). Not surprisingly, the Illinois interpretation has received criticism. *See EPA*, 372 N.E.2d at 51 (where the Illinois Supreme Court noted that the court has not wavered since the *Fergus* decision despite criticism regarding the power granted to the to the Attorney General).

[53] The Attorney General also relies on cases from courts in Mississippi, Alabama, Washington, Indiana, California and Florida. However, GIAA correctly points out that in the cases cited from the jurisdictions of Mississippi, Alabama, Washington and Indiana, the courts found that the respective state agency or board in question was without express statutory authority to retain independent counsel to represent its interests, and accordingly upheld the Attorney General's authority to represent the state entity. *See Wade v. Miss. Coop. Extension Serv.*, 392 F. Supp 229, 231 (N.D. Miss. 1975) (observing that under a Mississippi statute, the Attorney General has "the sole power to bring or defend a lawsuit on behalf of a state agency") (quoting MISS. CODE ANN. § 7-5-1 (West, WESTLAW through end of 2004 Regular and First Ex. Sess.)); *Ex Parte Weaver*, 570 So. 2d 675, 678-79 (Ala. 1990) (observing Alabama statute which states that "[a]ll litigation concerning the interests of the state, or any department thereof, shall be under the direction and control of the

attorney general . . . .") (quoting ALA. CODE § 36-15-21 (West, WESTLAW through end of 2004 Regular Sess.)); *State v. Gattavara*, 47 P.2d 18, 21 (Wash. 1935) (observing that Washington law "did not give authority to departments to institute actions in their own right, but only in conjunction with the authority of the Attorney General," and further, under statutory law, "the Attorney General shall be the legal adviser to the joint board and represent it in all proceedings") (quoting Rem. Rev. Stat § 7697)); *Banta v. Clark*, 398 N.E. 692, 693 (Ind. Ct. App. 1979) (observing that under Indiana law, "[n]o agency. . . shall have any right to name, appoint, employ or hire any attorney. . . to represent it or perform any legal services on behalf of such agency . . . without the written consent of the attorney general.") (quoting IND. CODE § 4-6-5-3 (West, WESTLAW through end of 2004 Regular Sess.)).

[54] In contrast to the above jurisdictions, the Guam Legislature has expressly authorized GIAA to retain outside counsel to provide legal advice and represent its legal interests in any forum. *See* 12 GCA § 1108(a) and (c). In fact, the agency is only required to receive the Attorney General's approval of the legal services contract with respect to form and legality. *See* 5 GCA § 5150.

[55] In California, state agencies "may employ special counsel to protect its rights, unless specifically prohibited from so doing by statutory or charter provisions. . . ." *State Comp. Ins. Fund v. Riley*, 69 P.2d 985, 987 (Cal. 1937). However, in *Riley*, the California Supreme Court found that the civil service laws specifically prohibited the retention of independent counsel, and thus found in favor of the Attorney General. *Id.* at 987. Again, in contrast, Guam statutes expressly allow GIAA to retain outside counsel. *See* 12 GCA § 1108(a) and (c).

[56] Finally, the Florida case relied upon by the Attorney General does not provide support for the Attorney General's position. Rather, it supports GIAA. The case of *State ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 271 (5th Cir. 1976), was correctly cited by the Attorney General for the conclusion that, at common law, the Attorney General's powers included instituting, defending or intervening "in any litigation or quasi-judicial administrative proceeding which he determines in his sound official discretion involves a legal matter of compelling public interest." However, the Fifth

Circuit Court also observed that such powers may be limited by the legislature. *Id.* at 268 (recognizing that "[t]here is and has been no doubt that the legislature may deprive the attorney general of specific powers; but in the absence of such legislative action, he typically may exercise all such authority as the public interest requires."). This was true even where the constitution explicitly designated the Attorney General as Chief State Legal Officer of the state. *See* FLA. CONST., art 4, § 4(a) (West, WESTLAW through Nov. 2, 2004) ("There shall be a cabinet composed of an attorney general . . . they shall exercise such powers and perform such duties as may be prescribed by law.); FLA. CONST., art 4, § 4(b) (West, WESTLAW through Nov. 2, 2004) ("The attorney general shall be the chief state legal officer.").

b. Other Jurisdictions

[57] Contrary to the Illinois line of cases which hold that the term "prescribed by law" means that the Attorney General has all common law powers which cannot be regulated by the legislature, some courts have found that where the constitution provides that the attorney general shall have duties "as provided by law," such language is construed as completely removing all common law powers of the attorney general. *See In re Estate of Sharp*, 217 N.W.2d 258, 262 (Wis. 1974) (recognizing that "Wisconsin, unlike numerous states, has specifically circumscribed the powers and duties of the office of the Attorney General. Art. VI, Sec. 3 of the Wisconsin Constitution limits those powers and duties to those 'prescribed by law.' This constitutional principle has been interpreted by the courts in numerous decisions as removing from the office of the Attorney General any powers and duties which were found in that office under common law."); *Ariz. State Land Dep't v. McFate*, 348 P.2d 912, 914 (Ariz. 1960) (noting that "Article V. Section 1 Arizona Constitution, establishes the office of the Attorney General within the Executive Department of the State. Section 9 thereof provides: 'the powers and duties of Attorney General, shall be as prescribed by law.' This Court has held that the 'law' referred to in Article V, Section 9, is the statutory law of the State and not the common law."). Today, a mere seven states deny the Attorney General *all* common law powers. Dalhlquist, *supra* at 763. They include Arizona, Indiana, Iowa, Louisiana, New Mexico, South

Dakota, and Wisconsin. *Id.* at n.148.

[58] In other states whose constitutions similarly include the phrase "prescribed by law" or a similar phrase, courts have held that while the Attorney General possesses common law powers, such powers may be modified by the Legislature. *See Johnson v. Commonwealth*, 165 S.W.2d 820, 829 (Ky. 1942) (recognizing that the state constitution authorizes the legislature to "prescribe" duties to the Attorney General and holding that "while the Attorney General possesses all the power and authority appertaining to the office under common law and naturally and traditionally belonging to it, nevertheless the General Assembly may withdraw those powers and assign them to others or may authorize the employment of other counsel . . . .); *Shevin*, 526 F.2d at 270 (recognizing that, while the Attorney General possesses common law powers, such powers may be modified by statute); *State ex rel. Derryberry v. Kerr-McGee Corp.*, 516 P.2d 813, 818-19 (Okl. 1973) (holding that "[i]n the absence of express statutory or constitutional restrictions, the common law duties and powers attach themselves to the office as far as they are applicable and in harmony with our system of government.").

[59] Unlike a majority of jurisdictions, section 1421g of the Organic Act provides that the Attorney General shall be the chief legal officer of the government of Guam, however, aside from this, the Organic Act is silent as to the Attorney General's duties, or, for that matter, whether the duties are limited to that prescribed or provided by law. In states where the constitutions do not limit or define the attorney general's powers through the phrase "prescribed by law" or a similar phrase, it has been held that "[t]he absence of a [constitutional] provision for specific powers for the attorney general . . . vests the office with all of the powers of the attorney general at common law." *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 136 (Mo. 2000) (en banc) (interpreting the provision of the constitution which simply provided that "[i]n addition to the governor and lieutenant governor, there shall be [an] attorney general.") (second bracket in original); *Bd. of Pub. Util. Comm'rs v. Lehigh Valley R.R. Co.*, 149 A. 263, 266 (N.J. 1930) (citing with approval a New Jersey case that stated: "[e]xcept as modified by constitutional or statutory regulation, his [the attorney general's]

functions here are similar to those exercised by the representative of the crown. . . ."); *Superintendent of Ins. v. Att'y Gen.*, 558 A.2d 1197, 1200 (Me. 1989) ("The Attorney General, in this State, is a constitutional officer endowed with common law powers. As the chief law officer of the State, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings . . .") (citation omitted); *Watson v. Caldwell*, 27 So. 2d 524, 529 (Fla. 1946) (holding that the Internal Improvement Fund had the statutory authority to retain outside counsel and not use the Attorney General as counsel, despite his designation in the Florida constitution as Chief Legal Officer).[6]

[60] However, in these states, it is also held that while the attorney general's powers are broad, they are not without limit, and "[a]s with other common law precepts, the attorney general's authority can be restricted by a statute enacted specifically for the purpose of limiting his power." *Am. Tobacco*, 34 S.W.3d at 136. It is also noted that the statute must actually limit the attorney general's powers, and that "[a] grant by statute of the same or other powers does not operate to deprive him of those belonging to the office under the common law, unless the statute, either expressly or reasonable intendment, forbids the exercise of powers not thus expressly conferred." *Id.* (quoting 6 C.J. 816)

[61] This preceding approach, applied in the absence of constitutional language defining or limiting the Attorney General's powers, is consistent with the line of cases holding that the legislature may add to or reduce the common law powers of the Attorney General. Indeed, it has been recognized that "[i]n many jurisdictions, the attorney general of a state, in addition to the powers conferred and duties imposed by statute, is charged with all the common-law powers and

[6] Florida's constitution, like Guam's Organic Act, designates the Attorney General as the Chief Legal Officer. FLA. CONST., art 4, § 4(b) (West, WESTLAW through Nov. 2, 2004). However, Florida's constitution also states that the Attorney General's duties shall be "prescribed by law." FLA. CONST., art 4, § 4(a) (West, WESTLAW through Nov. 2, 2004). As previously discussed, in states where the constitutions *do not* limit or define the Attorney General's powers, courts have held, *consistent* with the Florida (and many other states similarly defining the term "prescribed by law"), that the Attorney General has common law powers which may be modified by statute.

duties pertaining to the office as well, except insofar as they have been expressly restricted or modified by statute or the state constitution." 7 AM. JUR.2D *Attorney General* § 7 (2004); *see also* Dahlquist, *supra* at 764 (stating that most jurisdictions follow the general rule that "unless a state legislature expressly terminates the common law powers of the Attorney General, it can be assumed that such powers are part of the office.").

[62] We therefore adopt the general rule and hold that the Attorney General, as Chief Legal Officer, in addition to the powers conferred and duties imposed by the Legislature, is charged with all the common-law powers and duties pertaining to the office, except insofar as they have been expressly restricted or modified by statute. Stated another way, "the common-law powers and duties of the attorney general are subject to increase, alteration, or abridgment by the legislature. . ." 7 AM. JUR.2D *Attorney General* § 8 (2004). We note that this result is consistent with Title 5 GCA § 30103, which states that the Attorney General has common law powers except as limited by statute.

c. Title 12 GCA § 1108(a) and (c)

[63] Section 1108(a) and (c) expressly states that GIAA may appoint an attorney, and that such attorney may advise its officers, or the agency, on legal matters and represent the agency in any forum. Title 12 GCA § 1108(a) and (c) ("The [GIAA] Board may also appoint . . . an attorney. . . [who] shall advise the Board and the Executive Director on all legal matters to which the Authority is a party or in which the Authority is legally interested, and may represent the Authority in connection with legal matters before the Legislature, boards and other agencies of the Territory or of the United States. The Attorney for the Authority shall represent the Authority in litigation concerning the affairs of the Authority."). Moreover, Title 5 GCA § 30109(c) states that the Attorney General may "[c]onduct on behalf of the government of Guam all civil actions in which the government is an interested party; *provided that those branches, departments or agencies which are authorized to employ their own legal counsel may use them instead of the Attorney General*." 5 GCA § 30109(c) (emphasis added).

[64] Accordingly, we hold that Title 12 GCA § 1108(a) and (c) and Title 5 GCA § 30109 are valid exercises of the Legislature's power to remove the common law power of the Attorney General to act as legal counsel to represent to the interests of GIAA, and do not violate the Organic Act.[7]

[65] It is clear that the Attorney General has the authority to review contracts with respect to their legality and form pursuant to Title 5 GCA § 5150. However, when determining whether to approve or disapprove contracts, the Attorney General may only consider the legality and form of the proposed contract. *See Citizens Energy Coalition of Indiana v. Sendak*, 594 F.2d 1158, 1162 (7th Cir. 1979); *see also State ex rel. Fahlgren Martin, Inc. v. McGraw*, 438 S.E.2d 338, 344-345 (W. 'Va. 1993) (holding that reviewing a contract for "'form' does not include matters extrinsic to the actual contract"). Thus, the Attorney General has the legal duty to approve a contract which is lawful as to form and content. *See Sendak*, 594 F.2d at 1162 (holding that the Attorney General has no discretion to reject a contract that is lawful and correct in form).[8]

[66] In light of the constitutionality of Title 12 GCA § 1108(a) and (c) and Title 5 GCA § 30109, we hold that the Attorney General has a legal duty to approve the legal services contract between GIAA and the Mair firm as to form and legality, and further, GIAA has a clear, present and beneficial right to the performance of the Attorney General's duty. We therefore affirm the trial court judgment granting mandamus relief to GIAA.[9]

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[7] While we recognize the legislative authority, in this instance, to withdraw common law powers from the Attorney General, we note that at least one court has held that although the legislature "may withdraw those powers and assign them to others . . . the office may not be stripped of *all* duties and rights so as to leave it an empty shell . . . . " *Johnson v. Commonwealth*, 165 S.W.2d 820, 829 (Ky. 1942) (emphasis added).

[8] We hesitate to call the review of a contract for form and legality a mere ministerial act or duty. *See Mother Goose Nursery Schs., Inv. v. Sendak*, 770 F.2d 668, 674 (7th Cir. 1985). However, once the Attorney General reviews a contract and determines that it is lawful as to form and content, a legal duty arises to approve the proposed contract. The Attorney General has not alleged that the contract at issue in this case is not lawful as to form or content.

[9] The trial court's judgment ordered the Attorney General to represent all executive line agencies. GIAA in its opening (opposition) brief agrees with such conclusion and raises several points regarding the Attorney General's duty to represent the line agencies. However, the Attorney General, as appellant, does not appeal from that portion of the trial court's judgment, nor does he address such argument in his Reply Brief. It should be noted that GIAA's petition for writ of mandate requested no such holding from the trial court, nor was it addressed in the trial court's decision and order which formed the basis for the final judgment granting mandamus relief. Moreover, the interests of the various line agencies are not represented by any party in this proceeding. Thus, we do not address such issues in this opinion.

IV.

[67] We hold that the Attorney General, as Chief Legal Officer, is charged with all the powers and duties pertaining to the office at common law, except insofar as they have been expressly restricted or modified by statute. Accordingly, we hold that Title 12 GCA §§ 1108(a) and (c) and Title 5 GCA § 30109 are valid exercises of the Guam Legislature's constitutional powers granted by the Organic Act. The trial court's Judgment granting mandamus relief to GIAA is **AFFIRMED**.