

Douglas B. Moylan
Attorney General



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Deputy
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Office of the Attorney General

April 12, 2005

Memorandum (Opinion)

Ref: DPW 05-0253

To: Acting Director, Department of Public Works
From: Attorney General
Subject: **Sucgang Matter**

We are in receipt of your Memorandum of March 17, 2005 seeking our advice on your potential actions as a result of the Civil Service Commission's Decision and Judgment *In the Matter of Ethics Investigation of Ms. Perlita L. Sucgang, Engineer Supervisor*. That Decision and Judgment orders you, as Director of Public Works and Ms. Sucgang's current employer, to "terminate Ms. Sucgang's employment with DPW pursuant to the Final Notice of Adverse Action procedures." We have reviewed the attached Decision and Judgment and the Post Audit Staff Report, and this review shows that, if you were to follow the Decision and Judgment, you would be in violation of Guam law relative to the removal of Ms. Sucgang.

Although the Civil Service Commission has jurisdiction to hear matters involving ethical violations, 4 GCA §5650 qualifies the powers of the Commission to remove employees after finding an ethics violation. Subsection (d) of §5650 clear states that:

§5650. Civil and Administrative Remedies Against Employees Who Breach Ethical Standards.

(d) Due Process. All procedures under this section shall be in accordance with existing law and regulations regarding adverse actions and employee discipline promulgated pursuant to Title 4 Guam Code Annotated. [Emphasis added.]



The procedures provided by law include a Notice of Proposed Adverse Action in which the employee is given a statement of the actual charges against her, and an opportunity to present her reply in writing after receiving the Notice. Only if this procedure is followed may the government give the employee a Final Notice of Adverse Action. Nowhere in the Decision and Judgment is it recited that Ms. Sucgang was given a notice of the proposed action against her, nor that she was given the opportunity to reply. The recitals only noted that neither the DPW nor the GIAA appeared at the "hearing."

If Ms. Sucgang was notified of the charges made by the Commission, and not just those findings made by the Commission staff, then the Civil Service Commission should reissue its Decision and Judgment reciting these critical facts. If these due process opportunities were not afforded Ms. Sucgang, then the Commission violated its own clear law.

Title 4 GCA §4406 which authorizes the dismissal, demotion or suspension of classified employees only after certain procedures are followed, also provides that "[a]ny action brought by management in violation of this Section is barred and any decision based on such action is void."

In making your decision, you may also be interested in knowing that the Ninth Circuit Court of Appeals in *Roberto v. Bordallo*, a case where that court determined that Ms. Roberto's civil service due process rights were violated, said:

There is no basis for holding that the question of plaintiff's classified status at the time of her forced resignation was even a close one. Her firing violated her clearly established rights. Qualified immunity does not shield government officials from liability for damages arising from discretionary actions when the officials' conduct "violate[s] clearly established statutory or constitutional rights of which a reasonable person would have known."

Based upon the Decision and Judgment from the Civil Service Commission and the fact that there is nothing in that document reciting that Ms. Sucgang was served with a Notice of Proposed Adverse Action and given the appropriate time to reply to the actual charges against her, we believe that not only were her rights violated in this case, but that the violation was so clear that, should you go forward with the Notice of Final Adverse Action, you would lose, quite probably, any qualified immunity you may have in this matter.

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We suggest that you not go forward with the Notice of Final Adverse Action unless all procedural requirements have been met, and that you notify the Civil Service Commission of your decision now with the reasons why.

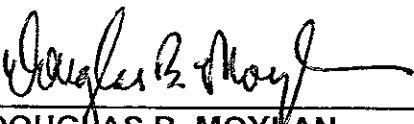
The Attorney General takes conflicts of interest charges seriously and does not believe in ignoring them, but at the same time our office must insist that the proper procedural laws be followed so as not to violate an employee's due process rights.

OFFICE OF THE ATTORNEY GENERAL
DOUGLAS B. MOYLAN, ATTORNEY GENERAL OF GUAM

By:


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APPROVED:



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