

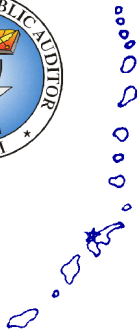


Office of the Public Auditor
Commonwealth of the Northern Mariana Islands

**Tinian Casino Gaming Control Commission
Audit of Consultant's Contract
Fiscal Year 1997**



Audit Report
AR-99-03



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

World Wide Web Site: <http://opacnmi.com>
2nd Floor J. E. Tenorio Building, Chalan Pale Arnold
Gualo Rai, Saipan, MP 96950

Mailing Address:
P.O. Box 1399
Saipan, MP 96950

E-mail Address:
mail@opacnmi.com

Phone: (670) 234-6481
Fax: (670) 234-7812

April 7, 1999

The Honorable Francisco M. Borja
Mayor of Tinian and Aguiguan
P.O. Box 59, San Jose Village
Tinian, MP 96952

Dear Mayor Borja:

Subject: Cover Letter - Final Audit Report on the Audit of TCGCC Consultant's Contract, Fiscal Year 1997 (Report No. AR-99-03)

The enclosed final audit report presents the results of our "Audit of TCGCC Consultant's Contract, Fiscal Year 1997." The objective of our audit was to determine whether the Consulting Service Agreement awarded by TCGCC to Oscar Rasa was in accordance with CNMI and local laws, TCGCC Procurement Regulations, and other applicable requirements. We also sought to determine the propriety of all payments made to Mr. Rasa by TCGCC.

Our audit showed that the Consulting Service Agreement executed between the TCGCC commissioners and Oscar C. Rasa on October 22, 1996 violated CNMI and local budget laws and the TCGCC Procurement Regulations. The TCGCC commissioners executed the Agreement with Mr. Rasa although they did not have funding authority, as no appropriation was passed in fiscal year 1997. Additionally, TCGCC officials failed to comply with regulations for the procurement of professional services. Consequently, the Consulting Service Agreement should be declared null and void and all payments made to Oscar Rasa by TCGCC should be recovered immediately.

We recommended that the Mayor of Tinian and Aguiguan:

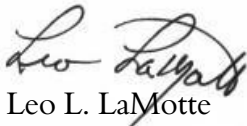
1. Consider the removal of the commissioners on grounds of gross neglect and dereliction of duty.
2. Request the Attorney General to institute an action to declare the Consulting Service Agreement between TCGCC and Oscar Rasa null and void, and to recover all amounts paid by TCGCC to Oscar Rasa and his son Diego Rasa.

In his letter response (**Appendix G**) submitted to OPA on March 25, 1999, the Mayor of Tinian and Aguiguan concurred with the findings discussed in the audit report. He said that from almost the beginning of his administration, he has taken the position that the Rasa contract was *void ab initio*, and has urged TCGCC to take the appropriate steps to terminate its relationship

with Mr. Rasa. The Mayor stated that he stopped all payments to Mr. Rasa when he was given expenditure authority over TCGCC funds.

In response to recommendation 1, the Mayor stated that he does not intend to follow OPA's recommendation at this time. He stated that he will give the present commissioners additional time to demonstrate their commitment to the laws, rules, and regulations. He stated also his belief that the resolution of issues concerning Mr. Rasa and other issues that may come to light will clarify his duty with regard to the removal of the commissioners. In response to recommendation 2, the Mayor stated that he agrees to institute a legal action. Based on the Mayor's response, we consider recommendation 1 closed and recommendation 2 resolved. The additional information or action required to close recommendation 2 is presented in **Appendix H**.

Sincerely,



Leo L. LaMotte
Public Auditor, CNMI

cc: Governor
Lt. Governor
Eleventh CNMI Legislature (27 copies)
Chairman of TCGCC
Secretary of Finance
Attorney General
Special Assistant for Management and Budget
Public Information Officer
Press

Contents

Executive Summary	i
Introduction	1
Background	1
Objectives, Scope, and Methodology	3
Prior Audit Coverage	4
Findings and Recommendations	5
Invalid Consulting Service Agreement	5
Violation of CNMI and Local Budget Laws	5
Violation of Procurement Regulations	6
Other Irregularities Related to TCGCC’s Consultancy Agreement and Other Transactions with Oscar Rasa	8
1. \$2.6 Million Loan of TCGCC from the CNMI General Fund	8
2. Illegal Payments to Oscar Rasa	9
Unexplained Payments from the \$2.6 MOA Funds	9
Advanced Payment of Professional Fees	10
Relocation and Insurance Costs	11
Housing Allowance	12
Charges Billed by Oscar Rasa’s Son	12
Travel Advances	13
3. Excessive Compensation Given to Consultant	14
4. Illegal Use of Government Vehicle	15
5. Absence of Review of Consultancy Contract by Legal Counsel	15
Appendices	18
A - Summary of Payments Made to Oscar Rasa	18
B - Charges Billed to TCGCC by Diego Rasa	20
C - Consulting Service Agreement	25
D - OPA’s Letter to the Senate Committee on Executive Appointments and Governmental Investigation Giving Opinion that the Consulting Service Agreement is Null and Void	33

E - OPA's Inquiry Letter Related to Audit of TCGCC	37
F - TCGCC Letters Assigning Oscar Rasa to Conduct Investigations ..	40
G - Letter Response from the Mayor of Tinian and Aguiguan	45
H - Status of Recommendations	48

**E
X
E
C
U
T
I
V
E

S
U
M
M
A
R
Y**

Since the start of the Tinian Casino Gaming Control Commission (TCGCC) operations in April 1990, adequate funding has been a constant concern due to unsteady revenue collections and high operating costs. During its first eight years of operation (1990-1997), TCGCC operated without assured funding since tax revenues to be generated from the casino industry did not materialize as anticipated. Collections consisted mostly of nonrecurring license application fees. During the period, there was no major hotel-casino complex in operation on which to levy casino-related taxes on a regular basis. Therefore, without a reliable source of income, it was vital for TCGCC to spend and to manage its limited resources wisely in order to continuously operate.

During the preliminary survey conducted to plan the audit of TCGCC operations in fiscal years 1996 and 1997, we immediately found numerous indications that the management of TCGCC did not carry out its task of conserving TCGCC's limited resources. Consequently, TCGCC even had to borrow from the CNMI Government in order to operate in FY 1997. However, in spite of operating on borrowed funds, and instead of being more prudent and economical in their spending, it appeared that TCGCC officials continued their wasteful spending practices.

One of the highly questionable actions of the TCGCC was contracting Oscar C. Rasa as a consultant at \$100,000 per year for four years. Not only was the very high cost unjustified, the consultancy contract awarded also violated CNMI and local budget laws, and the TCGCC Procurement Regulations.

Background

The Tinian Casino Gaming Control Act of 1989 (codified as 10 CMC, Division 2) was enacted by a local initiative pursuant to Article IX, Section 1, of the CNMI Constitution to provide for the regulation and control of the operation of gambling enterprises in the Second Senatorial District (Tinian). The Act took effect on January 1, 1990. The Act established the Tinian Casino Gaming Control Commission (TCGCC) to administer, implement, and enforce the requirements of the Act. The Act

provides guidelines and procedures on matters pertaining to casino licenses, casino employee licenses, casino service industry licenses, fees and taxes, casino operation, internal controls, administrative and accounting procedures, and audit requirements.

In April, 1997, OPA received a letter of complaint from a concerned citizen citing alleged violations of TCGCC regulations. Since then, OPA has continually received hotline calls citing alleged violations of laws and regulations by TCGCC officials, resulting in waste

Since TCGCC officials did not have funding authority to execute the Agreement with Mr. Rasa, as no appropriation was passed in fiscal year 1997, and since TCGCC officials failed to comply with regulations for the procurement of professional services, the Agreement cannot be considered valid. Consequently, the Consulting Service Agreement awarded to Oscar Rasa should be declared null and void.

and abuse of TCGCC funds. These complaints prompted OPA to conduct an audit of TCGCC.

During the preliminary survey that was conducted to plan and determine the scope of our audit, we immediately found serious fiscal management problems that, in our opinion, have put the funds under the custody of TCGCC at very high risk of misappropriation. One of the highly questionable actions of the TCGCC was contracting Oscar C. Rasa as a consultant at the rate of \$100,000 per year for four years. This contract included certain fringe benefits normally reserved for regular government employees. Those added benefits appear to be excessive and unnecessary considering the very high rate of the consultancy contract. In addition, TCGCC failed to identify available resources for the contract. TCGCC made payments to Mr. Rasa that appear to be either excessive cash advances or undocumented cash transactions. The irregularities in the processing of the contract and the various payments to Mr. Rasa, which have now exceeded the total amount due for the entire four-year period, prompted OPA to conduct an immediate audit of his consultancy contract.

Objectives and Scope

The objective of our audit was to determine whether the consultancy contract awarded by TCGCC to Oscar Rasa was in accordance with CNMI and local laws, TCGCC Procurement Regulations, and other applicable requirements. We also sought to determine the propriety of all payments made to Mr. Rasa by TCGCC. To accomplish our objective, we reviewed and verified the transactions pertaining to the consultancy contract,

examined supporting documentation for payments made to the consultant, and interviewed officials and employees of TCGCC.

Invalid Consulting Service Agreement

The Consulting Service Agreement (**Appendix C**) executed between the TCGCC commissioners and Oscar C. Rasa violated CNMI and local budget laws and the TCGCC Procurement Regulations. The CNMI Planning and Budgeting Act and the Tinian Casino Gaming Control Act require that public funds be expended pursuant to currently effective appropriations, while the Procurement Regulations provide that no contract shall be valid unless it complies with the Procurement Regulations. Since TCGCC officials did not have funding authority to execute the Agreement with Mr. Rasa, as no appropriation was passed in fiscal year 1997, and since TCGCC officials failed to comply with regulations for the procurement of professional services, the Agreement cannot be considered valid. Consequently, the Consulting Service Agreement awarded to Oscar Rasa should be declared null and void. All payments made to Oscar Rasa by TCGCC are considered illegal and should be recovered immediately.

On November 17, 1997, the Office of the Public Auditor issued a letter to the Chairman of the Senate Committee on Executive Appointments and Governmental Investigations giving an opinion that the Consulting Service Agreement between TCGCC and Oscar Rasa was legally defective (**Appendix D**). Although the letter recommended that the Attorney General consider instituting an action to declare the contract null and

Payments received by Mr. Rasa for his professional fee, housing allowance, travel advances, advances from DOF, and relocation costs totaled \$739,346.07 as of September 30, 1997. To date, however, we have not seen any accomplishment reports, finished work product, or other convincing evidence that Oscar Rasa has provided valuable services to TCGCC that would justify his \$400,000 professional fee and excessive fringe benefits.

void and to recover the amounts paid to Oscar Rasa, no such action has been initiated by the Attorney General.

Other Irregularities Related to TCGCC's Consultancy Agreement and Other Transactions with Oscar Rasa

\$2.6 Million Loan of TCGCC from the CNMI General Fund

In a TCGCC resolution adopted on December 4, 1996, the Commissioners approved and ratified a Memorandum of Agreement (MOA) entered into between the Office of the Governor and the TCGCC Chairman for a \$2,651,800 loan (subsequently increased to \$3.45 million) from the CNMI General Fund. Pursuant to the MOA, the Office of the Governor was extending an advance of \$2.6 million to TCGCC due to insufficient funding for TCGCC's operation in fiscal year 1997. The MOA was signed by the former TCGCC Chairman; however, it was unsigned by the former Governor and therefore was invalid.

In our interview with Mr. Rasa, he said that he was instructed by the former Chairman to look for funds to finance TCGCC's operation in fiscal year 1997. Mr. Rasa said that he was promised a ten percent finder's fee by the former Chairman based on the total amount of funds he could find for TCGCC. Mr. Rasa stated that it was through his effort that TCGCC was able to borrow funds from the CNMI Government. If the plan for the loan was indeed a recommendation by Mr. Rasa, then he made a recommendation that was illegal and costly to CNMI taxpayers.

Illegal Payments to Oscar Rasa

Payments received by Mr. Rasa for his professional fee, housing allowance, travel advances, advances from DOF, and relocation costs totaled \$739,346.07 (**Appendix A**) as of September 30, 1997. In addition to these payments, Oscar Rasa requested reimbursement for charges totaling \$27,931.41 (**Appendix B**) billed to him by his son, Diego Rasa.

All payments made to Oscar Rasa and his son are illegal since the Consulting Service Agreement, which is the basis for those payments, is considered null and void.

Excessive Compensation Given to Consultant

In our opinion, the Consultancy Service Agreement awarded to Mr. Rasa involved excessive basic compensation and fringe benefits. The contract amount was approved by the commissioners without determining its reasonableness based on objective evaluation factors. Additionally, we find it disturbing that during the nine months from the effective date of the Consultancy Service Agreement, the five commissioners decided to increase the already excessive compensation of Mr. Rasa, and authorize the advance payment of his \$100,000 yearly professional fee, along with \$543,375 in unidentified advances.

To date, we have not seen any accomplishment reports, finished work product, or other convincing evidence that Oscar Rasa has provided valuable services to TCGCC that would justify his \$400,000 professional fee and excessive fringe benefits.

Illegal Use of Government Vehicle

Pursuant to the Consulting Service Agreement, TCGCC provides Oscar Rasa with an automobile for his full-time use during both working hours and non-working hours. If a government vehicle is provided, this arrangement violates the Government Vehicle Act of 1994.

The Commissioners should be held responsible for allowing the illegal use of a government vehicle. The Government Vehicle Act specifically states that any person who has custody or authority over a government vehicle and allows the vehicle to be used in violation of the Act shall be guilty of an infraction punishable by a fine of up to \$500, and/or 3 days imprisonment.

Absence of Review of Consultancy Contract by Legal Counsel

The commissioners failed to exercise due care when they approved the Consulting Service Agreement without proper review by a legal counsel. The commissioners approved the Agreement, although it contained provisions that were very favorable to Oscar Rasa but disadvantageous to TCGCC. For example, the termination clause in the contract is one-sided because it requires TCGCC to pay the full contract amount of \$400,000 to Mr. Rasa even if the Agreement is terminated by Mr. Rasa for no reason. Another provision in the contract allows Mr. Rasa to resign at any time for compelling humanitarian reasons as determined by TCGCC, and receive all or any portion of the unearned contractual fees.

Conclusion and Recommendations

The commissioners have a duty to protect the interest of TCGCC on behalf of the people of Tinian. However, they not only failed in this duty, but they breached the trust of the public as well by not exercising due care and impartiality in the performance of their functions. The commissioners should be held accountable for gross negligence in approving the unjustified procurement of Oscar Rasa's services; violating the provisions of the Planning and Budgeting Act, Tinian Casino Gaming Control Act, and TCGCC Procurement Regulations; and allowing excessive payments to be made to Oscar Rasa despite the absence of an appropriation for such purpose.

Accordingly, we recommend that the Mayor of Tinian and Aguiguan:

1. Consider the removal of the commissioners on grounds of gross neglect and dereliction of duty.
2. Request the Attorney General to institute an action to declare the Consulting Service Agreement between TCGCC and Oscar Rasa null and void, and to recover all amounts paid by TCGCC to Oscar Rasa and his son Diego Rasa.

Tinian Mayor's Response

The Mayor of Tinian and Aguiguan concurred with the findings discussed in the audit report. He said that from almost the beginning of his administration, he has taken the position that the Rasa contract was *void ab initio*, and has urged TCGCC to take the appropriate steps to terminate its relationship with Mr. Rasa. The Mayor stated that he

stopped all payments to Mr. Rasa when he was given expenditure authority over TCGCC funds.

In response to recommendation 1, the Mayor stated that he does not intend to follow OPA's recommendation at this time. As the basis for his decision not to remove the commissioners, the Mayor cited the recent action by the commissioners to accept the legal advice that Mr. Rasa's contract was null and void. Also, the Mayor gave consideration to the point that no current commissioner (with the exception of the present Chairman) was involved in the original hiring of Mr. Rasa in October 1996. The Mayor stated that he will give the present commissioners additional time to demonstrate their commitment to the laws, rules, and regulations. The Mayor stated also his belief that the resolution of issues concerning Mr. Rasa and other issues that may come to light will clarify his duty with regard to the removal of the commissioners.

In response to recommendation 2, the Mayor stated that he agrees to institute

legal action, and did in fact, request the former Acting Attorney General to take action on the Rasa matter in October 1998. The Mayor said that this request was not acted on, but that in compliance with recommendation 2, he has instructed his Legal Counsel to make another request to the present Acting Attorney General. The Mayor stated further that in considering whether Mr. Rasa may have a valid claim on a portion of the contract amount, the Mayor consulted with the Chairman of the Commission, and was advised that Mr. Rasa has not produced any of the contract deliverables or provided any substantial benefit to the TCGCC, the Municipality of Tinian and Aguiguan, or the CNMI Government.

OPA Comments

Based on the Mayor's written response (**Appendix G**) that we received on March 25, 1999, we consider recommendation 1 closed and recommendation 2 resolved. The additional information or action required to close recommendation 2 is presented in **Appendix H**.

This page was intentionally left blank.

Introduction

Background

The Tinian Casino Gaming Control Act of 1989 (codified as 10 CMC, Division 2) was enacted by a local initiative pursuant to Article IX, Section 1, of the CNMI Constitution to provide for the regulation and control of the operation of gambling enterprises in the Second Senatorial District (Tinian). The Act took effect on January 1, 1990. The Act established the Tinian Casino Gaming Control Commission (TCGCC) to administer, implement, and enforce the requirements of the Act. The Act provides guidelines and procedures on matters pertaining to casino licenses, casino employee licenses, casino service industry licenses, fees and taxes, casino operation, internal controls, administrative and accounting procedures, and audit requirements.

Organization

TCGCC is composed of five members appointed by the Tinian Mayor with the advice and consent of the Tinian Municipal Council. A member serves a term of six years; the Act prohibits any person from serving as a commissioner for more than one term. Commission members elect from among themselves a chairman and a vice-chairman to serve a term of two years. The chairman and the vice-chairman may be re-elected. The commissioners are required by the Act to devote full time to the affairs of TCGCC during their tenure and are prohibited from engaging in any other employment. Pursuant to the Act, each commissioner is to receive an annual salary of not less than \$50,000 and not more than \$75,000.

TCGCC is managed by an executive director under the direction of the commissioners.

Funding for Annual Appropriations

The Tinian Casino Gaming Control Act provides that all license fees and gambling revenue taxes generated by casinos in the Second Senatorial District (Tinian) are local revenues available for appropriation by the Tinian Municipal Council and the Tinian Legislative Delegation to be expended by the Mayor for local public purposes. An appropriation for local public purposes may include, but is not limited to, assistance in education; programs for youth and elderly development; scholarship; medical referral; agricultural and fisheries development; cultural programs; community and recreational development; programs for invalids, disabled and disadvantaged individuals; limited medical and dental insurance assistance; and assistance to law enforcement. As of the end of fiscal year 1997, the goal of providing these public services had not been realized by the Municipality of Tinian, as revenues have been used chiefly to finance the operating costs of TCGCC and the Tinian Municipal Treasurer for the past eight years (1990 to 1997).

Based on TCGCC's Internal Fiscal Management Procedures, the fiscal officer of TCGCC annually prepares an operating budget that itemizes the estimated revenues

and expenses of TCGCC for the next fiscal year, and submits the proposed budget to the Commissioners no later than June 30 of each year for discussion and adoption. Once adopted, the proposed budget request is presented to the Tinian Municipal Council for consideration no later than July 31. During the budget deliberation process, the Council may request TCGCC officials or staff members to appear before the Council. A local appropriation ordinance is then passed by the Tinian Municipal Council, concurred by the Tinian Legislative Delegation, and approved by the Governor.

Investigation of TCGCC

In April, 1997, OPA received a letter of complaint from a concerned citizen citing alleged violations of TCGCC regulations. Since then, OPA has continually received hotline calls citing alleged violations of laws and regulations by TCGCC officials, resulting in waste and abuse of TCGCC funds. These complaints prompted OPA to conduct an audit of TCGCC.

During the preliminary survey that was conducted to plan and determine the scope of our audit, we immediately found serious fiscal management problems that, in our opinion, have put the funds under the custody of TCGCC at very high risk of misappropriation. Among these problems are:

1. The absence of reliable financial records due to the loss of computerized accounting records. TCGCC management failed to maintain printed copies of accounting records or backup computer files, a very basic but necessary control procedure for computerized accounting systems.
2. The absence of a reliable system of internal controls. The missing accounting records, documents supporting financial transactions, and incomplete written financial management and accounting policies and procedures further resulted in lost management and audit trails for financial transactions undertaken by TCGCC.
3. The lack of cooperation from key officials when they are asked to explain the propriety of financial transactions with missing supporting documents. Most TCGCC officials interviewed claim lack of knowledge of significant financial transactions, and claim that they were only following the former Chairman's instructions. Amidst the ongoing investigation, the former Chairman and the Executive Director resigned without providing the needed information concerning highly questionable financial transactions.
4. The lack of proper fiscal management. Despite the unavailability of guaranteed funding from the casino industry, TCGCC continued to spend funds at a rate that surely would result in a deficit. TCGCC resorted to borrowing about \$2.6 million in December 1996 (subsequently increased to \$3.45 million) from the CNMI General Fund, a tactic that was illegal since no funds were appropriated for such purpose.

One of the highly questionable actions of the TCGCC was the hiring of Oscar C. Rasa as a consultant at the rate of \$100,000 per year for four years. This contract included certain fringe benefits normally reserved for regular government employees. Those added benefits appear to be excessive and unnecessary considering the very high rate of the consultancy contract. In addition, TCGCC failed to identify available resources for the contract. TCGCC made payments to Mr. Rasa that appear to be either excessive cash advances or undocumented cash transactions. The irregularities in the processing of the contract and the various payments to Mr. Rasa, which have now exceeded the total amount due for the entire four-year period, prompted OPA to conduct an immediate audit of his consultancy contract.

**Objective,
Scope, and
Methodology**

The objective of our audit was to determine whether the consultancy contract awarded by TCGCC to Oscar Rasa was in accordance with CNMI and local laws, TCGCC Procurement Regulations, and other applicable requirements. We also sought to determine the propriety of all payments made to Mr. Rasa by TCGCC.

To accomplish our objective, we reviewed and verified the transactions pertaining to the consultancy contract, examined supporting documentation for payments made to the consultant, and interviewed officials and employees of TCGCC.

Scope Limitation

The audit of the consultancy contract was expected to be a part of an audit covering the entire operations of TCGCC for fiscal years 1996 and 1997. However, our efforts have been delayed by a lack of cooperation from TCGCC officials and the unavailability of important documents. Some TCGCC officials refused to provide necessary information. For example, a letter (**Appendix E**) to TCGCC dated March 6, 1998 seeking clarification of several issues was answered only a year later (a written response was provided by the present Chairman to OPA on April 5, 1999 after we released the draft report on the Audit of TCGCC Consultant's Contract). On several occasions, the former Chairman and the former Executive Director rejected or avoided requests for interviews. Also, due to the absence of updated financial records of TCGCC operations for the past four fiscal years (no financial books for fiscal years 1994 and 1995, and incomplete and unreconciled books for fiscal years 1996 and 1997), it became necessary for us to perform a compilation of financial records. The accounting and financial records need to be compiled before the audit of fiscal years 1996 and 1997 transactions can be completed. At present, the process of compiling the data is ongoing. The sources of data for the compilation are the depository banks, CNMI Department of Finance, and whatever cash receipt and disbursement records were available at TCGCC and the Office of the Tinian Municipal Treasurer.

As soon as adequate financial data are gathered for a particular segment of TCGCC financial operations, an audit report will be prepared. We now deem it practical to

break the scope of our audit of TCGCC into specific areas of operations. Subsequent audit reports will cover areas of TCGCC operations such as revenue collections, travel expenditures, payroll, procurement of goods and services, advances to the Tinian Mayor's Office, and loans from banks and the CNMI.

Pending the completion of the data compilation for other financial areas, and because of the current concerns being raised in Mr. Rasa's contract, we decided to now release the results of our audit of the consultancy contract awarded to Oscar Rasa.

The audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as were considered necessary under the circumstances.

**Prior Audit
Coverage**

The Office of the Public Auditor has issued two audit reports covering the operations of TCGCC from fiscal year 1990 to fiscal year 1993.

Findings and Recommendations

Invalid Consulting Service Agreement

The Consulting Service Agreement awarded to Oscar Rasa should be declared null and void. All payments made to Oscar Rasa by TCGCC are considered illegal and should be recovered immediately.

The Consulting Service Agreement (**Appendix C**) executed between the TCGCC commissioners and Oscar C. Rasa violated the CNMI and local budget laws and the TCGCC Procurement Regulations. The CNMI Planning and Budgeting Act and the Tinian Casino Gaming Control Act require that public funds be expended pursuant to currently effective appropriations, while the Procurement Regulations provide that no contract shall be valid unless it complies with the Procurement Regulations. Since TCGCC officials did not have funding authority to execute the Agreement with Mr. Rasa, as no appropriation was passed in fiscal year 1997, and since TCGCC officials failed to comply with regulations for the procurement of professional service, the Agreement cannot be considered valid. Consequently, the Consulting Service Agreement awarded to Oscar Rasa should be declared null and void. All payments made to Oscar Rasa by TCGCC are considered illegal and should be recovered immediately.

On November 17, 1997, the Office of the Public Auditor issued a letter to the Chairman of the Senate Committee on Executive Appointments and Governmental Investigations giving an opinion that the Consulting Service Agreement between TCGCC and Oscar Rasa was legally defective (**Appendix D**). Although the letter recommended that the Attorney General consider instituting an action to declare the contract null and void and to recover the amounts paid to Oscar Rasa, no such action has been initiated by the Attorney General.

Violation of CNMI and Local Budget Laws

The Planning and Budgeting Act (CNMI law) and the Tinian Casino Gaming Control Act (local law) govern the expenditure of funds by TCGCC. Pursuant to 1 CMC §7401, under the Planning and Budgeting Act, “No expenditure of Commonwealth funds shall be made unless the funds are appropriated in currently effective annual appropriation acts or pursuant to 1 CMC §7204(d). No Commonwealth official may make an obligation or contract for the expenditure of unappropriated Commonwealth funds, unless provided by law or approved in advance by joint resolution of the legislature.” Pursuant to the Tinian Casino Gaming Control Act, 10 CMC, Div. 2, Part VI, §50 (1), “All license fees and gambling revenue taxes generated by casinos in the Second Senatorial District (Tinian) shall be local revenues and shall be available for appropriation by the Tinian Municipal Council to be expended by the mayor for local public purposes...”

Based on current policies and procedures for appropriating revenues generated under the Tinian Casino Gaming Control Act, a local appropriation ordinance is passed by the Tinian Municipal Council, concurred by the Tinian Legislative Delegation, and approved by the Governor. A local appropriation ordinance usually includes funding for the operations of TCGCC, the Tinian Municipal Treasurer (TMT), and other programs and activities of the Mayor included in the appropriation. In fiscal year 1997, no local appropriation was passed for the Second Senatorial District. In the absence of a local appropriation, TCGCC officials did not have legal authority to incur expenditures on behalf of TCGCC. Therefore, the Consulting Service Agreement awarded to Mr. Rasa and executed by the TCGCC commissioners in October 1996 was not legally binding on TCGCC due to lack of authorized funding.

Violation of Procurement Regulations

Sections 1-105 and 1-107 of the TCGCC Procurement Regulations provide that the TCGCC Procurement Regulations apply to every expenditure of TCGCC funds for goods, services, or construction irrespective of source, and that no contract shall be valid unless it complies with the regulations.

With respect to procurement of professional services, Section 3-104 of the TCGCC Procurement Regulations provides that the services of accountants, lawyers, architects, engineers, or other professional practitioners shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, expedited procurement, or sole source procurement:

- (1) It is the policy of TCGCC to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. Waiver of this public announcement may be approved by the Chairman when an emergency short-term need is determined to exist and a qualified professional is found to be immediately available at a fair and reasonable price.
- (2) Adequate notice of the need for professional services shall be given by the Chief through an RFP (Request for Proposal). The RFP shall describe the services required, list the type of information and data required of each offeror and state the relative importance of particular qualifications.
- (3) The Chief or Executive Director may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration and for the purpose of negotiation of a compensation amount determined to be fair and reasonable. Discussions shall not disclose any information derived from proposals submitted by other offerors.

- (4) The Executive Director shall make a written recommendation to the Commission as to the best qualified offeror based on the evaluation factors set forth in the RFP, and the negotiated compensation amount. The Commission shall vote to accept or reject the recommendation of the Executive Director.
- (5) If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors in the order of their respective qualification ranking, and the contract may be awarded to the highest ranked offeror with whom the amount of compensation is determined to be fair and reasonable.

In fiscal year 1997, TCGCC awarded a \$400,000 Consulting Service Agreement to Oscar C. Rasa for his consultancy services covering a four-year period starting on October 22, 1996, and ending on October 21, 2000. Since this transaction was a professional services procurement, the above Procurement Regulations requirements applied to it. During our examination, however, TCGCC officials could not provide us with the required documentation for this procurement. It was apparent that TCGCC did not publish an RFP, nor did the Chairman issue an approved waiver of the public announcement. We requested a justification of TCGCC's selection of Mr. Rasa, but TCGCC could not provide one. We found no evidence that Mr. Rasa's qualifications were evaluated by TCGCC based on objective evaluation factors for the purpose of determining the reasonableness of the compensation amount. As a result, TCGCC was not assured that Oscar Rasa was the best qualified individual with the most reasonable offer for the consultancy service.

We question the motives of TCGCC management in awarding a consultancy contract to Mr. Rasa. Some of the commissioners claimed that it was the former Chairman's decision to contract with Mr. Rasa. Regardless of whose idea it was to contract with Mr. Rasa, all commissioners who signed the Consulting Service Agreement are equally responsible for their actions. As commissioners, they should promote public confidence in the Commission at all times by ensuring that their actions serve the best interests of TCGCC and the public, and that they do not violate any law, regulation, policy, or procedure. This is consistent with the Declaration of Policy outlined in the Tinian Casino Gaming Control Act, which provides that an integral and essential element of the regulation and control of casino facilities rests in the public confidence and trust in the credibility and integrity of the regulatory process.

Other Irregularities Related to TCGCC's Consultancy Agreement and Other Transactions with Oscar Rasa

1. \$2.6 Million Loan of TCGCC from the CNMI General Fund

In fiscal year 1997, no appropriation was passed by the Tinian Municipal Council and the Tinian Legislative Delegation. Despite the absence of an appropriation, however, collections made under the Act in fiscal year 1997, which totaled about \$.5 million based on official receipts issued by TCGCC, were used to pay for the salaries and other operating expenses of both TCGCC and the Tinian Municipal Treasurer (TMT). Of the \$.5 million collections, about \$275,000 was collected in November and December 1996 and turned over by TCGCC to TMT for deposit. The amount was deposited by TMT to a bank account under its control and was spent with the approval of the former Mayor to pay for the expenses of TMT and TCGCC. Starting January 1997, collections made by TCGCC were no longer turned over to TMT, but were deposited directly by TCGCC to a bank account under its control. About \$225,000 in revenue collections was received by TCGCC in January and February 1997, which was spent with the approval of the former TCGCC Chairman.

Having used up prior years' collections and anticipating insufficient collections in fiscal year 1997, TCGCC officials decided to borrow funds from the CNMI Government. In a TCGCC resolution adopted on December 4, 1996, the Commissioners approved and ratified a Memorandum of Agreement (MOA) entered into between the Office of the Governor and the TCGCC Chairman for a \$2,651,800 loan (subsequently increased to \$3.45 million) from the CNMI General Fund. Pursuant to the MOA, the Office of the Governor was extending an advance of \$2.6 million to TCGCC due to insufficient funding for TCGCC's operation in fiscal year 1997. The MOA was signed by the former TCGCC Chairman; however, it was unsigned by the former Governor and therefore was invalid.

In addition, the MOA cannot be considered valid because it was not made in accordance with CNMI law. In the absence of enabling legislation, it was illegal for the former Governor to encumber CNMI government funds for a loan to TCGCC. Again, we are citing the provision of the Planning and Budgeting Act, 1 CMC §7701(b), which states that: "No officer or employee of the Commonwealth shall willfully and knowingly involve the Commonwealth or any agency in any contract or other obligation for the payment of money for any purpose, or make or authorize any payment out of the Commonwealth Treasury, in advance of, or in the absence of, appropriations made for such purposes, unless such contract or obligation is authorized by law or joint resolution."

Since the repayment of the \$2.6 million will come from future revenues collected under the Act, a local appropriation ordinance should also have been passed appropriating the proceeds of the loan for TCGCC's operation in fiscal year 1997. Since the \$2.6 million loan represented TCGCC collections under the Act, the loan

proceeds should have been under the custody of the Tinian Municipal Treasurer pursuant to the Tinian Casino Gaming Control Act, 10 CMC, Div. 2, Part VI, §50 (4), which states that: “There is hereby created the office of the Tinian Municipal Treasurer within the office of the Mayor of Tinian and Aguiguan, whose duties shall be established by regulations issued by the mayor, which shall include the duty to collect and receive all monies due under this Act.” This was not the case, however, as the MOA provided that draw-downs from the \$2.6 million loan be deposited directly to TCGCC’s Imprest Account (a checking account maintained and controlled by TCGCC), with the Chairman of TCGCC or his designee as the sole expenditure authority for the funds. Under the MOA, TCGCC had custody and control of the funds prior to a local appropriation ordinance designating their use. The stipulations in the MOA itself were obviously contrary to the provisions of the Act.

In our interview with Mr. Rasa, he stated that he was instructed by the former Chairman to look for funds to finance TCGCC’s operation in fiscal year 1997. Mr. Rasa said that he was promised a ten percent finder’s fee by the former Chairman based on the total amount of funds he could find for TCGCC. Mr. Rasa stated that it was through his effort that TCGCC was able to borrow funds from the CNMI Government. If the plan for the loan was indeed a recommendation by Mr. Rasa, then he made a recommendation that was both illegal and costly to CNMI taxpayers.

Therefore, in the absence of a local appropriation granting expenditure authority to TCGCC in fiscal year 1997, the Consulting Service Agreement awarded to Mr. Rasa in October 1996 should be considered null and void.

2. *Illegal Payments to Oscar Rasa*

Payments received by Mr. Rasa for his professional fees, housing allowance, travel advances, advances from DOF, and relocation costs totaled \$739,346.07 (**Appendix A**) as of September 30, 1997. In addition to these payments, Oscar Rasa requested reimbursement for charges totaling \$27,931.41 (**Appendix B**) billed to him by his son, Diego Rasa. All payments made to Oscar Rasa and his son are illegal since the Consulting Service Agreement, which is the basis for those payments, is considered null and void.

Unexplained Payments from the \$2.6 MOA Funds

Out of the \$2.6 million MOA funds, about \$.5 million was paid directly by DOF to Mr. Rasa in a span of three months. These unexplained payments had no valid supporting documentation, and in most cases, were supported only by faxed copies of letter requests signed by the former Chairman or his designee. Additionally, these direct payments contradicted the MOA’s provision that all fund draw-downs should be deposited directly by DOF to TCGCC’s Imprest account. When we inquired about the nature of these payments, no explanation could be provided to us by either the former DOF Secretary or any TCGCC official. There is a possibility, however,

that some of these payments may have been Mr. Rasa's alleged ten percent finder's fee promised to him by the former Chairman for negotiating the \$2.6 million loan with the former Governor.

When interviewed, Mr. Rasa claimed that payments made to him by DOF were used to finance the investigative work he was doing for TCGCC. He cited a June, 1997 memorandum (**Appendix F**) from the former Chairman assigning him to work with the former Executive Director to conduct a full investigation of two manufacturers of gaming machines who were applying for casino service industry license on Tinian, and to provide a full report to the Commission.

Although Mr. Rasa claimed that he used the funds advanced to him by DOF for investigative expenses, he cannot provide the necessary invoices or supporting documents to validate this claim. When asked how he can justify spending more than \$.5 million for investigative expenses, he merely stated that TCGCC would eventually be able to recover all costs of the investigative work from the two casino service industry license applicants that he was investigating. In our opinion, however, the two companies (which were already licensed in other major gaming jurisdictions in the U.S. and other countries) could not be reasonably expected to pay for costly investigative expenses that exceed the profit they would gain from doing business with the sole casino on Tinian. In fact, one of these companies considered the \$250,000 investigative fee assessed by TCGCC officials to be excessive, and expressly refused to pay it. The company paid only \$25,000. The other company withdrew its application for a casino service industry license and has asked for a refund of its \$100,000 investigative deposit fee.

The inability of the Consultant to provide the necessary documentation that would validate the investigative costs he claims to have incurred suggests that the \$.5 million may have been used for personal purposes. His claim that he was doing investigative work on behalf of TCGCC is doubtful because his credentials show that he did not possess any expertise in investigative work.

Advanced Payment of Professional Fees

Based on the Consulting Service Agreement, Oscar Rasa's basic compensation is \$100,000 per year. A total of \$643,375 (in addition to family relocation costs, travel advances, and housing allowance), however, was paid by TCGCC and DOF within nine months from the effective date of the consultancy contract. We questioned management's intent in granting Oscar Rasa these advance payments. No one among the officials could explain how TCGCC benefitted from paying Mr. Rasa's fees in advance. There was neither a justification nor an objective basis for approving the advances since there was no evidence that Mr. Rasa had substantially accomplished the services outlined in the Consulting Service Agreement. Based on the Consulting Service Agreement, Oscar Rasa was required to deliver the following services:

- to supervise and coordinate professional socio-economic research and development activity for prospective investors;
- to review the Act and other applicable rules and regulations and recommend appropriate changes to ensure efficiency and productivity;
- to establish a research and development program for Commission personnel;
- to prepare economic strategies for the support and protection of the Tinian Gaming Industry;
- to provide fiscal and management advice;
- to prepare educational and promotional material for public dissemination;
- to promote and facilitate the allocation of critical infrastructure for the development of full-scale casino gaming activity on Tinian;
- to serve as the Commission liaison to the Tinian Mayor, Municipal Council, Tinian Legislative Delegation, and other Northern Mariana Islands government agencies; and
- to provide other reasonable professional services as the Commission may deem appropriate and necessary.

To date, we have not seen any accomplishment reports, finished work product, or other convincing evidence that Oscar Rasa has provided valuable services to TCGCC that would justify his \$400,000 professional fee and excessive fringe benefits.

Relocation and Insurance Costs

On May 7, 1997, six months after Mr. Rasa was contracted as Consultant, TCGCC paid him the sum of \$47,887.85. This amount was requested by Mr. Rasa supposedly to cover the cost of repatriating his family from Apple Valley, California to Tinian. Of this amount, about \$36,000 was to be used for the purchase of business-class plane tickets for six adults and two children, in-transit expenses, shipment of household and personal effects, and \$500 cash to cover incidental needs of international travel. Also, about \$12,000 of the amount advanced was indicated by Oscar Rasa as payment for health and life insurance premiums.

As of September 30, 1997, Mr. Rasa had not submitted invoices and other documents to prove that he indeed used the \$47,887.85 to purchase plane tickets and insurance policies. In addition, Mr. Rasa did not submit documents to support his claim that all the adults and children are his qualified dependents.

Housing Allowance

The payment of a quarterly housing allowance to Mr. Rasa is questionable considering that he and his family had not relocated to Tinian at the time he received the housing allowance. Except for a few short trips to Tinian, Mr. Rasa continued to stay in his residence in California. In addition to receiving a housing allowance while staying in his California residence most of the time, Mr. Rasa also charged TCGCC for office space rental. This “office space” is actually a room in his California house that he allegedly “rented” to his son, Diego Rasa, which Diego in turn “rented” back to Oscar Rasa to be used as his office for doing investigative work for TCGCC. Why this arrangement was allowed by the Commissioners is a serious concern and requires further investigation.

As of September 30, 1997, a total of \$9,600 housing allowance had been paid by TCGCC to Oscar Rasa.

Charges Billed by Oscar Rasa’s Son

In a letter to TCGCC dated December 10, 1997, Oscar Rasa requested payment of expenses totaling about \$28,000, purportedly incurred while using an office at his residence in California to do investigative work for TCGCC. The amount was to be paid to his son, Diego Rasa, who issued a billing statement (**Appendix B**) for charges covering the period June to December, 1997. The charges were for office space rental, office equipment rental, office supplies, telephone services, and car rental.

As mentioned earlier, the “office space” was a room that Oscar Rasa allegedly rented from his son, Diego Rasa (although the room was part of Oscar Rasa’s California house). The room was “rented” by Diego to Oscar at the rate of \$250 per month, or \$1,500 for six months.

Oscar Rasa also claimed that Diego’s room was equipped with office equipment and accessories, which he rented on behalf of TCGCC. The equipment rented were a computer, a fax machine, a Xerox copier, and a word processor. The rental cost for a six-month period totaled about \$2,300. Aside from the rental cost, Diego separately charged Oscar for supplies, such as copier and fax machine toner, and paper. Diego also charged Oscar for copies made at the rate of \$0.15 per copy, or a total of \$900 for 6,000 copies. These copying charges constituted duplication of charges. It was excessive to charge for each copy when the copier itself was rented, and the papers and toner used were paid for separately. Furthermore, the 6,000 copies of documents should have been turned over to TCGCC by Oscar Rasa, as these technically belonged to TCGCC. By claiming to have made 6,000 copies of documents, Oscar Rasa implied that he has gathered a substantial amount of information for TCGCC. If that is so, then his work should have been evidenced by accomplishment reports and other work product. However, we have found no

work product evidencing that Oscar Rasa provided any significant service to TCGCC.

Charges for telephone services totaling about \$5,647.93 were also part of Diego Rasa's billing statement. The telephone expenses covered the basic and long distance charges supposedly incurred by Oscar Rasa while using his son's telephone lines. Why would Oscar Rasa, who owns the house, not have a single telephone line in his name while his son, who was supposedly a student and not gainfully employed, owned at least four telephone lines and a cellular phone? A proper billing of telephone charges should show the list of calls made that related only to TCGCC business. Mr. Rasa's bill not only included the basic cost that a registered customer should pay, but also could have included other personal calls made by him or his son.

Diego Rasa's billing statement included car rental charges totaling about \$17,000. The charges covered a six-month "lease" of his 1996 Ford Explorer to Oscar Rasa. In justifying why he rented the vehicle, Oscar Rasa stated that considering the vehicle's accessories (a navigation unit and a cellular phone), the cost was less than what would have been charged by other rental companies. Perhaps Mr. Rasa was right that other rental companies would charge more for that type of car. However, was it right to spend over \$2,833 a month (\$17,000 divided by six months) to lease a vehicle at the expense of CNMI taxpayers?

We find the transactions with Diego Rasa highly suspect since they appear to be part of a scheme by Oscar Rasa to gain financial advantage under the pretext of performing special functions for TCGCC. Despite the apparent irregularity of Diego's charges and Oscar Rasa's conflict of interest, we found no evidence that the TCGCC commissioners objected to the irregularities. On the contrary, of the almost \$28,000 charges billed by Diego Rasa, \$5,647.93 was immediately paid by TCGCC in December, 1997. This payment, which covered telephone charges, was authorized by the present TCGCC Chairman.

Travel Advances

In a period of six months, from December 1996 to May 1997, Oscar Rasa received travel advances from TCGCC totaling \$38,483 (**Appendix A**). The travel advance covered \$6,500 as a discretionary fund, \$18,950 per diem, \$4,350 ground transportation, and \$8,600 airfare for his trips to Saipan, Guam, California, and Nevada. To date, two years after he received those advances, Oscar Rasa has not submitted the required travel vouchers, trip reports, invoices, and other supporting documents justifying the validity and necessity of those trips, and showing how he spent the money advanced to him.

3. Excessive Compensation Given to Consultant

In our opinion, the Consultancy Service Agreement awarded to Mr. Rasa involved excessive basic compensation and fringe benefits. The contract amount was approved by the commissioners without determining its reasonableness based on objective evaluation factors. Additionally, we find it disturbing that during the nine months after the effective date of the Consultancy Service Agreement, the five commissioners decided to increase the already excessive compensation of Mr. Rasa and authorize the advance payment of his \$100,000 yearly professional fee, along with \$543,375 in unidentified advances.

Based on the Consultancy Service Agreement approved on October 22, 1996 and amended on April 1, 1997 by TCGCC commissioners, Mr. Rasa's compensation package includes the following:

- \$100,000 annual fee (or a total of \$400,000 for four years);
- \$2,400 quarterly housing allowance (or a total of \$38,400 for four years);
- automobile for Consultant's full-time use during both working hours and non-working hours, with the costs of insurance and repairs and maintenance chargeable to TCGCC;
- group health and dental insurance coverage for the Consultant and his dependents;
- reimbursable expenses including official travel (business class accommodations), professional dues and subscriptions, licensing fees, entertainment, promotion, mandatory continuing professional education programs, expenses incident to attendance at required meetings or seminars, communication expenses (telephone, facsimile, modem);
- paid vacation equivalent to four weeks per year, with unused vacation payable in cash upon termination of the Agreement;
- relocation and repatriation expenses from/to Apple Valley, California to/from Tinian for the Consultant and his qualified dependents;
- one business class round-trip airfare between California and Tinian for home leave upon completion of every year of service; and
- payment by TCGCC of Consultant's local, state, and federal taxes.

4. *Illegal Use of Government Vehicle*

Pursuant to the Consulting Service Agreement, TCGCC provides Oscar Rasa with an automobile for his full-time use during working hours and non-working hours. If a government vehicle is provided, this arrangement violates the following provisions of the Government Vehicle Act of 1994:

- 1 CMC §7406 (c) No person who is not a government employee shall operate or drive a government vehicle... Violation of this subsection shall be an infraction, punishable by a fine of up to \$500, and/or 3 days imprisonment.
- 1 CMC §7406 (d) Government vehicles are only to be used for official government business, and no person may operate or use any government vehicle for any purpose other than official government business... Violation of this subsection shall be an infraction, punishable by a fine of up to \$500, and/or 3 days imprisonment.

We understand that Mr. Rasa was provided a Commission vehicle for his full-time use on Tinian.

The Commissioners should be held responsible for allowing the illegal use of a government vehicle. The Government Vehicle Act specifically states that any person who has custody or authority over a government vehicle and allows the vehicle to be used in violation of the Act shall be guilty of an infraction punishable by a fine of up to \$500, and/or 3 days imprisonment.

5. *Absence of Review of Consultancy Contract by Legal Counsel*

The commissioners failed to exercise due care when they approved the Consulting Service Agreement without proper review by a legal counsel. The commissioners approved the Agreement, although it contained provisions that were very favorable to Oscar Rasa but disadvantageous to TCGCC. For example, the termination clause in the contract is one-sided because it requires TCGCC to pay the full contract amount of \$400,000 to Mr. Rasa even if the Agreement is terminated by Mr. Rasa for no reason. Another provision in the contract allows Mr. Rasa to resign at any time for compelling humanitarian reasons as determined by TCGCC, and receive all or any portion of the unearned contractual fees.

Conclusion and Recommendations

The commissioners have a duty to protect the interest of TCGCC on behalf of the people of Tinian. However, they not only failed in this duty, but they breached the trust of the public as well by not exercising due care and impartiality in the performance of their functions. The commissioners should be held accountable for gross negligence in approving the unjustified procurement of Oscar Rasa's

services; violating the provisions of the Planning and Budgeting Act, Tinian Casino Gaming Control Act, and TCGCC Procurement Regulations; and allowing excessive payments to be made to Oscar Rasa despite the absence of an appropriation for such purpose.

Accordingly, we recommend that the Mayor of Tinian and Aguiguan:

1. Consider the removal of the commissioners on grounds of gross neglect and dereliction of duty.
2. Request the Attorney General to institute an action to declare the Consulting Service Agreement between TCGCC and Oscar Rasa null and void, and to recover all amounts paid by TCGCC to Oscar Rasa and his son Diego Rasa.

Tinian Mayor's Response

The Mayor of Tinian and Aguiguan concurred with the findings discussed in the audit report. He said that from almost the beginning of his administration, he has taken the position that the Rasa contract was *void ab initio*, and has urged TCGCC to take the appropriate steps to terminate its relationship with Mr. Rasa. The Mayor stated that he stopped all payments to Mr. Rasa when he was given expenditure authority over TCGCC funds.

In response to recommendation 1, the Mayor stated that he does not intend to follow OPA's recommendation at this time. As the basis for his decision not to remove the commissioners, the Mayor cited the recent action by the commissioners to accept the legal advice that Mr. Rasa's contract was null and void. Also, the Mayor gave consideration to the point that no current commissioner (with the exception of the present Chairman) was involved in the original hiring of Mr. Rasa in October 1996. The Mayor stated that he will give the present commissioners additional time to demonstrate their commitment to the laws, rules, and regulations. The Mayor stated also his belief that the resolution of issues concerning Mr. Rasa and other issues that may come to light will clarify his duty with regard to the removal of the commissioners.

In response to recommendation 2, the Mayor stated that he agrees to institute legal action, and did in fact, request the former Acting Attorney General to take action on the Rasa matter in October 1998. The Mayor said that this request was not acted on, but that in compliance with recommendation 2, he has instructed his Legal Counsel to make a further request to the present Acting Attorney General. The Mayor stated further that in considering whether Mr. Rasa may have a valid claim on a portion of the contract amount, the Mayor consulted with the Chairman of the Commission, and was advised that Mr. Rasa has not produced any of the contract deliverables or provided any substantial benefit to the TCGCC, the Municipality of Tinian and Aguiguan, or the CNMI Government.

OPA Comments

Based on the Mayor's written response (**Appendix G**) that we received on March 25, 1999, we consider recommendation 1 closed and recommendation 2 resolved. The additional information or action required to close recommendation 2 is presented in **Appendix H**.

**Summary of Payments Made to Oscar Rasa
As of September 30, 1997**

1. Advances processed by Department of Finance by virtue of the \$2.6 million MOA

Date	DOF Check No.	DOF Voucher No.	In Payment For	Amount
03/14/97	470655	731856	Advances (no explanation provided in the request)	\$25,000.00
03/27/97	471584	733113	Advances (no explanation provided in the request)	27,000.00
04/01/97	471830	733363	Advances (no explanation provided in the request)	37,525.00
04/07/97	472419	733965	Advances (no explanation provided in the request)	27,000.00
04/11/97	473103	734672	Advances (no explanation provided in the request)	37,850.00
05/26/97	487845	739366	Advances (no explanation provided in the request)	45,000.00
06/13/97	502607	741700	Advances (no explanation provided in the request)	20,000.00
06/16/97	502616	741706	Advances (no explanation provided in the request)	125,000.00
07/02/97	507733	742885	Advances (no explanation provided in the request)	75,000.00
07/02/97	507732	742886	Advances (no explanation provided in the request)	124,000.00
Total Advances Out of the MOA				\$543,375.00

2. Relocation Costs of Oscar Rasa's family to Tinian

Date	Check No.	P.R. No.	In Payment For	Amount
05/07/97	1493	97-164	Shipment of household and personal effects	\$12,255.00
05/07/97	1493	97-164	Plane fare from California for 6 adults and 2 children	11,448.00
05/07/97	1493	97-164	Premiums for life and health insurances	12,054.80
05/07/97	1493	97-164	Others: TCGCC related costs and expenses	12,130.05
Total Relocation Costs				\$47,887.85

3. Professional Fees for FY 1997

Date	Check No.	P.R. No.	Period Covered	Amount
11/26/96	T-073	97-016	Partial -10/22/96-01/21/97	\$15,000.00
12/03/96	1027	97-025	Balance-10/22/97-01/21/97	10,000.00
12/13/96	1052	97-040	01/22/97- 04/21/97	25,000.00
03/03/97	1287	97-095	04/22/97-07/21/97	25,000.00
04/18/97	1447	97-146	07/22/97-10/21/97	25,000.00
Total Fees Paid				\$100,000.00

Appendix A
Page 2 of 2
Summary of Payments Made to Oscar Rasa
As of September 30, 1997

4. Travel Advances

Date	TA #	Destination	Per Diem	Airfare	Discretionary Fund	Others	Total
12/12/96	97-007	California/ Nevada	\$9,350.00	\$4,635.95	-	\$1,250.00	\$15,235.95
02/20/97	97-033	Saipan/ Guam	2,100.00	152.27	6,500.00	600.00	9,352.27
05/28/97	97-048	Nevada/ California	7,500.00	3,895.00	-	2,500.00	13,895.00
Total Advances Paid			\$18,950.00	\$8,683.22	\$6,500.00	\$4,350.00	\$38,483.22

5. Housing Allowance

Date	P.R. No.	Period Covered	Amount
12/06/96	PR97-026	Paid to James Mendiola for November 1996 to January 1997	\$2,400.00
02/19/97	PR 97-088	01/24/97-04/23/97	2,400.00
04/11/97	PR 97-138	04/24/97-07/23/97	2,400.00
09/30/97	PR 97-275	07/24/97-10/23/97	2,400.00
Total Housing Allowance			\$9,600.00

Total Payments Made to Oscar Rasa as of 9/30/97

\$739,346.07

Charges Billed to TCGCC by Diego Rasa
June 21 - December 22, 1997

Nature of Charges	Amount
Telephone (includes basic service and long distance charges)	\$5,647.93
Car rental	17,040.37
Office space rental	1,616.25
Office equipment rental	2,295.07
Office supplies expenses	1,331.79
Total	\$27,931.41

Appendix B
Page 2 of 5

CAR RENTAL/LEASE AGREEMENT

Diego S. Rasa
 19451 Tonto Road
 Apple Valley, CA 92307
 Tel: (760)946-0991

Account Statement

Date: Commencing June 21, 1997-December 22, 1997

Term	Extra per mile	Free miles	Total
Weekly	25	700/week	\$499.00
22 weeks	-	-	\$10,999.78

Insurance

Daily rate (required)	\$9.99
180 days	\$1,798.20

Mileage:

Checked out 6/21/97: 29,000 miles

Checked in 12/22/97: 56,467 miles

Free miles total: 15,400 (700 x 22 weeks)

Additional miles: 12,067 x 25 \$3,016.75

Summary

Rental	\$10,999.78	
Insurance	\$ 1,798.20	
Extra Miles	\$ 3,016.75	
Subtotal	\$15,814.73	
7.75% tax	\$1,225.64	
Total	\$17,040.37	\$17,040.37

Office Space Rental Fees

Date: Commencing June 21, 1997-December 22, 1997

TO:
Oscar C. Rasa
Consultant, TCGCC
19451 Tonto Rd Apple Valley, Ca 92307
Phone Number: (760)946-0991
Fax Number: (760)946-1518

cc: Chairman and Executive Director, TCGCC

ITEM NO.	QTY	DESCRIPTION	UNIT	UNIT PRICE	TOTAL
		Office Space Rental		\$250.00 per month 6 month rental	\$1,500.00
				<i>Subtotal</i>	1,500.00
				<i>Tax rate 7.75 %</i>	
				<i>Tax</i>	116.25
				<i>Total</i>	1,616.25

Appendix B
Page 4 of 5

Office Equipment Rental

Date: Commencing June 22, 1997- December 22, 1997

TO:
 Oscar C. Rasa
 Consultant, TCGCC
 19451 Tonto Rd Apple Valley, Ca 92307
 Phone Number (760)946-0991
 Fax Number (760)946-1518

cc: Chairman and Executive Director, TCGCC

ITEM NO.	QTY	DESCRIPTION	UNIT	UNIT PRICE	TOTAL
	1.00	Toshiba Infinia 7201 Computer		\$175.00 per month 6 month-rental	\$1,050.00
	1.00	Sharp UX-107 Fax Machine		\$50.00 per month 6 month-rental	\$300.00
	1.00	Xerox XC1045 Copier Machine		\$80.00 per month 6 month-rental	\$480.00
	1.00	Canon Star Writer Jet 4000 Word Processor		\$50.00 per month 6 month-rental	\$300.00
				<i>Subtotal</i>	2,130.00
				<i>Tax rate 7.75%</i>	165.08
				<i>Total</i>	2,295.08

Office Supplies/Other Charges

Date: Commencing June 21, 1997-December 22, 1997

TO:
Oscar C. Rasa
Consultant, TCGCC
19451 Tonto Rd. Apple Valley, Ca 92307
Phone Number (760)946-0991
Fax Number (760)946-1518

cc: Chairman and Executive Director, TCGCC

ITEM NO.	QTY	DESCRIPTION	UNIT	UNIT PRICE	TOTAL
	2.00	Copier Toner		\$40.00	\$80.00
	2.00	Fax Machine Toner		\$63.00	\$126.00
	10.00	Box Fax Machine Paper		\$13.00	\$130.00
		Per Copy Rate 15	6000		\$900.00
				<i>Subtotal</i>	1,236.00
				<i>Tax</i>	95.79
				<i>Total</i>	1,331.79



TINIAN CASINO GAMING CONTROL COMMISSION

Appendix C
Page 1 of 8

Municipality of Tinian and Aguiguan
Commonwealth of the Northern Mariana Islands

Commissioners

Jose P. Matnas
Chairman

Antonio S. Boria
Vice Chairman

Joseph M. Mendiola
Vicente M. Manglana
Vicente S. Sablan

Paul Palmer
Executive Director

Esther H. Barr
Deputy Director

CONSULTING SERVICE AGREEMENT

KNOW YE ALL MEN, by these presents that Oscar C. Rasa, presently residing at 19451 Tonto Road, Apple Valley, California, hereinafter referred to as "CONSULTANT," and the Tinian Casino Gaming Commission, hereinafter referred to as "COMMISSION" OR "TCGCC" enter into this agreement with the following terms and conditions:

TERM: The Commission hereby contracts for services of the Consultant for a period of four (4) years commencing on October 22nd 1996 and ending on October 21st, 2000.

DUTIES & RESPONSIBILITIES: The Commission hereby retains the Consultant and the Consultant hereby accepts such engagement to assist the Commission in the discharge of its duties pursuant to the Tinian Casino Gaming Control Act of 1989 including, but not limited to, the following: supervising and coordinating professional socio-economic research and development activity for prospective investors; to review Tinian Casino Gaming Control Act of 1989 (TCGCA) as revised and other applicable rules and regulations and recommend appropriate changes to ensure efficiency and productivity; to establish a research and development program for Commission personnel; to prepare economic strategies for the support and protection of the Tinian Gaming Industry; to provide fiscal and management advice; to promote and facilitate the allocation of critical infrastructure for the development of full scale casino gaming activity on Tinian; and to serve as the Commission Liaison to the Tinian Mayor, Municipal Council, Tinian Legislative Delegation and other Northern Mariana Islands government agencies. In general, Consultant shall inform and advise the Commission on any matter which may come before it and provide other reasonable professional services as the Commission may deem appropriate and necessary.

BASIC COMPENSATION: In consideration of the services to be rendered the Commission shall pay to the Consultant an annual fee in the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS per year, which sum shall be payable in proportional advance quarterly installments of \$25,000.00 each during the period this Agreement is in effect. The first payment shall be paid upon execution of this Agreement and each subsequent payment shall be paid every three months on or before the eighteenth day of every third month thereafter.

47

INITIAL RELOCATION EXPENSES: Consultant hereby agrees to make Tinian his principal place of residence during any term of the Agreement so long as termination has not occurred as set forth in this Agreement. The Commission shall reimburse Consultant for, or provide in-kind, one way business class airfare from Apple Valley, California to Tinian. Other reasonable and necessary in-transit expenses will be reimbursed upon Consultant's initial arrival in Tinian and completion of the prescribed expense reimbursement report. Additionally, the Commission will reimburse Consultant for surface shipment of up to 2,000 pounds of personal goods to Tinian upon presentation of a proper shipping invoice.

HOUSING AND TRANSPORTATION: The Commission shall provide Consultant with an automobile for his full-time use during working hours and non-working hours. The Commission shall bear the cost of any insurance, repairs, and maintenance associated with this automobile.

Consultant shall also be paid a housing allowance of TWO THOUSAND FOUR HUNDRED (\$2,400.00) DOLLARS for each three months of Consulting Services completed under the terms and conditions of the Agreement. Such allowance shall be payable in advance beginning with Consultant's initial arrival on Tinian and upon completion of each three month period thereafter. Any lease, purchase or rental agreement entered into by Consultant for housing, furniture or utility services shall be the sole responsibility of Consultant.

INSURANCE: Group health and dental insurance coverage, which includes reasonable benefit deductible provisions, will be provided for consultant and qualified dependents, as defined by the U.S. Internal Revenue Code, by the Commission subject to any normal enrollment criteria of the insurance carrier. The cost of such group health and dental insurance premiums will be fully paid by the Commission. Such payment obligation shall extend to normal basic premiums only and not to additional amounts resulting from high-risk or special purpose coverage.

REIMBURSEMENT OF EXPENSES: The Consultant is entitled to reimbursement for reasonable expenses incurred for the benefit of the Commission in connection with his position. To obtain reimbursement, Consultant will complete such forms and procedures as are adopted by the Commission. Reimbursable expenses include, but are not limited to, official travel, professional dues and subscriptions, licensing fees, entertainment, promotion, mandatory continuing professional education programs, expenses incident to attendance at required meetings or seminars and communication expenses (telephone, facsimile, and modem). Consultant shall always be entitled to business class travel expenses when seeking reimbursement. All expenses involving travel shall have proper prior approvals as required by applicable travel policy.

VACATION: The Consultant shall be entitled to paid vacation time of four (4) weeks per year. Specific dates of absence will be scheduled subject to requirements of the Commission. Such vacation time shall be considered earned and accrue to Consultant at the rate of one week for every three months of consulting services completed under the terms of the Agreement. In the event that accrued unused vacation time remains upon termination of the Agreement, Consultant shall be paid for accrued vacation time at a rate commensurate with his annual compensation subject to conditions set forth in the section entitled "Termination" and "Payments upon Termination."

HOME LEAVE TRANSPORTATION: Upon completion of every year of service under this Agreement, Consultant shall be allowed one business class round-trip airfare between Apple Valley, California and Tinian for home leave. Time away from TCGCC for home leave shall be chargeable against accrued vacation time described in section entitled "Vacation."

REPATRIATION EXPENSES: If Consultant is entitled to payment of repatriation expenses as determined by sections labeled Termination and Payments Upon Termination, repatriation to Apple Valley, California shall be paid by the Commission. Such repatriation expenses shall be limited to one-way business class air fare, surface shipment of up to 2,000 pounds of personal effects and \$500 cash to cover incidental needs of international travel. If termination occurs due to notification by the Commission, the Commission will also reimburse Consultant for any lost lease deposit or other expenses incurred because of Consultant's unplanned departure from Tinian.

TERMINATION: This Agreement shall be considered terminated upon occurrence of any of the following:

- (a) Expiration of the four year term of the Agreement;
- (b) Notification by the Commission to Consultant that the Agreement is terminated for any or no reason with an immediate or deferred effective termination date;
- (c) Notification by Consultant to the Commission that Consultant will terminate the Agreement for any or no reason thirty days or more after the date of such notification and, subsequent lapse of such thirty day period with continues good faith performance by Consultant during that period;
- (d) Elective termination by Consultant, as evidenced by lack of performance or relocation from Tinian, with less than thirty days advance written notice; or
- (e) Death or permanent disability of the Consultant. Subject to other provisions of this Agreement, Consultant shall be entitled to receive full normal compensation and allowances hereunder during any period of disability or illness prior to permanent disability. In the event of death, all sums payable hereunder shall be paid to the lawful estate of Consultant. This provision shall not apply to death or permanent disability resulting from any life-threatening or potentially disablous medical condition known by Consultant to exist prior to the effective date of this Agreement.

PAYMENTS UPON TERMINATION: Upon termination of this Agreement, the Commission shall pay to Consultant an amount in lump sum to be determined by the event described in the above section entitled "TERMINATION" under which termination was effected as set forth hereunder.

(a) If termination occurs due to expiration of the Agreement term, Consultant shall receive payment for any accrued unused vacation time and expenses of repatriation as described hereinabove. Additionally, Consultant shall receive payment of any unpaid professional fees earned through the date of termination based on the daily equivalent of the annual amount set forth in "Basic Compensation" section.

(b) If termination occurs pursuant to sub paragraphs (b) and (c) under Termination, Consultant shall receive payment for any unused accrued vacation time and expenses of repatriation as described herein. Additionally, Consultant shall receive the full unpaid amount of professional fee set forth in basic compensation which would have been payable if this Agreement had run to full term.

(c) If termination occurs pursuant to sub-paragraph (c) under termination, Consultant shall receive payment for any accrued unused vacation time but shall not be entitled to payment for repatriation expense, both items as described herein. Additionally, Consultant shall receive payment of any unpaid professional fees earned through the date of termination based on the daily equivalent of the annual amount set forth in Basic Compensation.

(d) If termination occurs pursuant to sub-paragraph (d), Consultant shall be entitled to no payments from TCGCC whatsoever other than any unpaid professional fees earned through the date of termination based on the daily equivalent of the annual amount set forth in Basic Compensations. In the event of termination pursuant to sub-paragraph (d) under termination, accrued unused vacation time shall be considered forfeited by consultant without further recourse.

Irrespective of the event of termination, Commission shall be entitled to reduce any final payments to consultant by any amount which is owed at that time by Consultant to any direct or autonomous governmental entity within the CNMI. Any termination payments required hereunder may be withheld by the Commission until vehicles, equipment, keys or other property of TCGCC which were provided to Consultant are returned in satisfactory condition. In the event of uninsured loss or damage to Commission property entrusted to Consultant, Commission may reduce the amount of any final payment to Consultant for a reasonable amount sufficient to cover repair or replacement of such property.

Nothing contained in this section shall serve to prohibit the Commission from permitting the Consultant to resign at any time for compelling reasons of a humanitarian nature as determined by the Commission and subject to such proof as it may require. Under such circumstance, the Commission may authorize payment to Consultant of all or any portion of unearned contractual fees, accrued unused vacation time or repatriation expenses which are not payable under the provisions of this Agreement.

ADDITIONAL OUTSIDE PROFESSIONAL EFFORT FOR FEE: Within reason, Consultant may engage in outside professional activities for fee such as consulting, lecturing or writing and, earnings from such activities shall be the sole property of Consultant. However, no such activity may be undertaken if it would serve to reduce Consultant's ability to fully discharge the terms of this Agreement or, in any way, conflict mission in purpose, Consultant acknowledges that, during the term of this Agreement, his primary professional obligation is to the Commission.

GENERAL CONDUCT: Consultant agrees at all times during any period this Agreement is in effect to conduct himself in accordance with the letter and intent of the Tinian Casino Gaming Control Act of 1989, the By-Laws of the Tinian Casino Gaming Control Commission and the Code of Ethical Standards for the Tinian Casino Gaming Control Commission. Consultant shall immediately advise the Commission of any actual or attempted breach or circumvention of these guiding documents, by any person, which may come to his attention.

NECESSARY RESOURCES: TCGCC shall, at its own expense, provide Consultant with reasonable access to such equipment, periodicals, reference material and third party expertise as Consultant may deem necessary to accomplish the tasks assigned to him by the Commission. Additionally, the Commission shall provide Consultant with a support staff which shall include, but not be limited to, two research/development assistants and a secretary.

Appendix C
Page 5 of 8

NOTICES: All notices required or permitted to be given under this Agreement shall be considered sufficient if personally delivered in written form or sent by certified mail, return receipt requested, to the addresses set forth above or to such other addresses as either party shall notify the other.

NO ORAL MODIFICATION: This Agreement shall not be modified, altered, amended, changed, waived or terminated except as provided herein in writing with required notice.

CONSTRUCTION. This Agreement shall be governed by the laws of the Commonwealth of the Northern Mariana Islands and shall be construed in accordance herewith.

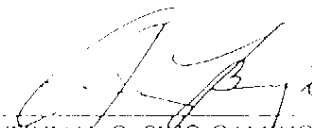
THE PARTIES: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, designated personal representatives and successors.

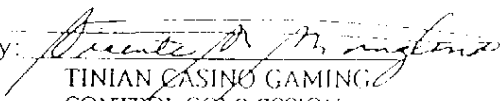
SEVERABILITY: In the event that any provision herein is held to be invalid by any court of competent jurisdiction, or otherwise conflicts with applicable law, such provision shall be deemed deleted herefrom and this Agreement shall be construed to give full effect to the remaining provisions herein.

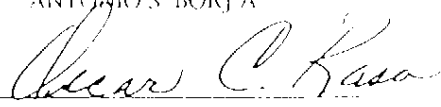
MULTIPLE COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which may be deemed to be an original hereof but, all of which taken together, shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on this 22nd day of October 1996.

By: 
TINIAN CASINO GAMING
CONTROL COMMISSION
Represented by:
JOSE P. MAENAS


By: 
TINIAN CASINO GAMING
CONTROL COMMISSION
Represented by:
ANTONIO S. BORJA

By: 
TINIAN CASINO GAMING
CONTROL COMMISSION
Represented by:
VICENTE M. MANGLONA

By: 
OSCAR C. RASA
Consultant

Certification

THIS AGREEMENT was duly approved by a unanimous vote of the Tinian Casino Gaming Control Commission, on this 22nd day of October, 1996.

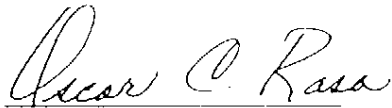
ATTEST: 
ESTHER H. BARR
Acting Executive Director

CONTRACT ADDENDUM

Know ye all men, that Oscar C. Rasa hereinafter referred to as "Consultant" and the Tinian Casino Gaming Commission hereinafter referred to as "Commission" does hereby agree to amend their contract for consulting services.

Commission and Consultant mutually agree to delete Commission's provisions for transportation and medical/dental insurance as stated on page 2 of 5 of the original contract for consulting services.

This CONTRACT ADDENDUM shall be effective immediately signed, certified, agreed to and acknowledged on this 22nd day of October 1996 in San Jose Village, Tinian Island, Commonwealth of the Northern Mariana Islands.



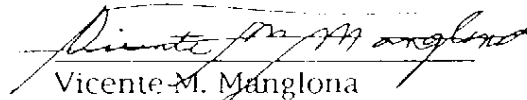
Oscar C. Rasa
Consultant



Jose P. Mafnas
Chairman
Tinian Casino Gaming
Commission



Antonio S. Borja
Vice-Chairman
Tinian Casino Gaming
Commission



Vicente M. Manglona
Commissioner
Tinian Casino Gaming
Commission



TINIAN CASINO GAMING CONTROL COMMISSION

Municipality of Tinian and Aguiguan
Commonwealth of the Northern Mariana Islands



Commissioners:

Jose P. Mafnas
Chairman

Antonio S. Borja
Vice-Chairman

Vicente M. Manglona
Jose P. San Nicolas

Paul Palmer
Executive Director

Esther H. Barr
Deputy Director

Oscar C. Rasa
Consultant

CONTRACT ADDENDUM II

Know ye all men, that Oscar C. Rasa hereinafter referred to as "Consultant" and the Tinian Casino Gaming Control Commission hereinafter referred to as "Commission" do hereby agree to amend their contract for consulting services as follows:

On page 1 as per Consulting Service Agreement, under Basic Compensation, after the word thereafter, added sentence shall read:

However, the Chairman and/or the majority members of the Commission may advance the Consultant of his basic compensation fee as an incentive compensation."

On page 2, the Commission and Consultant agree to reinstate the original provisions for transportation and medical/dental insurance as stated on page 2 of 5 of the original contract for consulting services.

On page 2 of the Consulting Service Agreement, a new section shall be added beneath the Insurance Section which shall read:

TAXES AND SALARY INCREASE

During the term of this contract, the Consultant and the Commission hereby agree that Consultant shall not be entitled to any salary increase, but the Commission shall pay for all of Consultant's local, state, and federal taxes, whichever is applicable.

On page 2 of 5, under Initial Relocation Expenses, the provision is amended to read as follows:



TINIAN CASINO GAMING CONTROL COMMISSION

Municipality of Tinian and Aguiguan
Commonwealth of the Northern Mariana Islands



Commissioners:

Jose P. Mafnas
Chairman

Antonio S. Borja
Vice-Chairman

Vicente M. Manglona
Jose P. San Nicolas

Paul Palmer
Executive Director

Esther H. Borr
Deputy Director

Oscar C. Raza
Consultant

"The Commission shall reimburse and/or pay consultant for, or provide in-kind, one way business airfares for Consultant and immediate members, from Apple Valley to Tinian." In addition, the provision on 2,000 lbs. is hereby amended to a 40-footer container.

This contract Addendum shall supersede any and all existing provisions of contract, as amended, and shall become effective as of the date of signing.

By: [Signature]
JOSE P. MAFNAS
Chairman
Tinian Casino Gaming
Control Commission
4/1/97

By: [Signature] 4/1/97
OSCAR C. RASA
Consultant

By: [Signature] 4/01/97
ANTONIO S. BORJA
Vice-Chairman
Tinian Casino Gaming
Control Commission

By: [Signature] 4-1-97
JOSE P. SAN NICOLAS
Commissioner
Tinian Casino Gaming
Control Commission

By: [Signature] 4/1/97
MARTIN DLG. SAN NICOLAS
Commissioner
Tinian Casino Gaming
Control Commission

By: [Signature]
VICENTE M. MANGLONA
Commissioner
Tinian Casino Gaming
Control Commission

Appendix D
Page 1 of 4



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

Internet Address: <http://www.opacnmi.com>

2nd Floor J. E. Tenorio Building, Middle Road

Gualo Rai, Saipan, MP 96950

Mailing Address:

P.O. Box 1399

Saipan, MP 96950

E-mail Address:

mail@opacnmi.com

Phone: 1-670-234-6481

Fax: 1-670-234-7812

November 17, 1997

Senator David M. Cing, Chairman
 Senate Committee on Executive Appointments
 & Governmental Investigations
 P O Box 129
 Saipan, MP 96950

Re TCGCC Contract with Oscar C. Rasa

Dear Chairman Cing

Our office has looked into the "Consultant Service Agreement" ("Agreement") dated October 22, 1996 between the Tinian Casino Gaming Control Commission ("Commission") and Oscar C. Rasa ("Rasa"). We believe the contract is so legally defective and wasteful of public funds that it violates public policy. We recommend that the Attorney General's Office be asked to consider instituting an action to declare the contract null and void, and to recover the \$734,000 heretofore paid to Rasa.

We note initially that many of the benefits provided in the Agreement are normally associated with employment contracts to provide professional services. Provisions for housing allowance, paid "vacations" and "home leave," group health and dental insurance coverage for the individual and dependents, payment of relocation and repatriation expenses, payment of shipping costs for personal property, and payments for "home leave" are usually considered to be employment "fringe benefits." In addition, the Commission approved a "Notice of Personnel Action" on October 22, 1996 and on the same day, Rasa signed a "Confidentiality Waiver" agreeing that if a violation occurred, "my employment shall be terminated immediately pursuant to the personnel policies and procedures of the Commission." We believe that if the Agreement is determined to be in fact an employment contract, it would be a gross violation of applicable regulations pertaining to personnel contracts.

However, because of other aspects of this hybrid document, notably the Commission's lack of control over the consultant's work environment, a court might find that Rasa is in fact an independent consultant rather than a Commission employee. For that reason, we have decided to treat the Agreement as the independent contract it purports to be.

Senator David M. Cing
November 17, 1997
Page Two

Section 3-104 **Professional Services Procurement** of the TCGCC Procurement Regulations provides, in pertinent part

The services of accountants, lawyers, architects, engineers or other professional practitioners shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, expedited procurement or sole-source procurement

(1) It is the policy of TCGCC to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. Waiver of this public announcement may be approved by the Chairman when an emergency short-term need is determined to exist and a qualified professional is found to be immediately available at a fair and reasonable price.

(2) Adequate notice of the need for professional services shall be given by the Chief through an RFP. The RFP shall describe the services required, list the type of information and data required of each offer and state the relative importance of particular qualifications.

(4) The Executive Director shall make a written recommendation to the Commission as to the best qualified offerer based on the evaluation factors set forth in the RFP, and negotiated compensation amount. The Commission shall vote to accept or reject the recommendation of the Executive Director.

No announcement of a professional consultant position was advertised, nor did the Chairman approve any waiver because of emergency short-term need. No RFP was ever published, nor was solicitation as a small purchase, emergency, expedited, or sole-source procurement authorized. The Executive Director made no written recommendation to the Commission, and of course there was no vote by the Commission on his recommendation. Instead, the Chairman simply negotiated a contract with Rasa and later obtained the signature of two other Commissioners on the Agreement.

Appendix D

Page 3 of 4

Senator David M. Cing
November 17, 1997
Page Three

The Commission's Procurement Regulations "apply to every expenditure of TCGCC funds for services" (Section 1-105), and "No TCGCC contract shall be valid unless it complies with these regulations" (Section 1-107.) As stated earlier, the negotiation and execution of the Agreement violated specific requirements of those Regulations. It is also worth noting that the Agreement and its later implementation are completely at odds with the stated purposes of the Procurement Regulations which include increasing public confidence in the Commission's procurement procedures, fostering effective broad-based competition, providing safeguards for a procurement system of "quality and integrity," and, perhaps most conspicuously here, "to provide increased economy in TCGCC procurement activities and to maximize to the fullest extent practicable the purchasing value of TCGCC funds" (Section 1-101)

There are many other problems with the Agreement. The Consultant's duties and responsibilities are so loosely structured as to give him virtually free rein as to his time and performance. In fact, more than one year after the execution of the contract, there is no evidence to show that Rasa has provided any services to TCGCC. Yet as our September 15, 1997 testimony to the Committee points out, Rasa has received payments totaling \$734,546, of which more than \$543,000 was paid by the Department of Finance on request of the Chairman and another Commissioner and never recorded in the Commission's books.

The Agreement was also executed in violation of the Commission's Code of Ethics, which provides in part:

2. No Commissioner or employee may use his position to secure or grant *unwarranted privileges, preferences, exemption or advantages for any other person* (emphasis added.)

Because of the legal and ethical violations, the Agreement is contrary to the public policy of the Commonwealth and should be declared null and void.

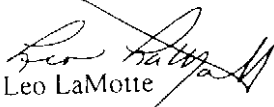
Courts of justice will not recognize or uphold any transaction which, in its object, operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty. It is not necessary to have a statute to prohibit a contract which is against public policy, in such a case, public policy itself prohibits it.

17A Am Jur 2d Contracts, §257

Senator David M. Cing
November 17, 1997
Page Four

We believe that the Chairman and other Commissioners who executed the Agreement had no authority to enter into a contract in violation of the Commission's own regulations, policies and procedures. Such a contract was *ultra vires*, or beyond the authority of the Commission, the Consultant was well aware of this and colluded with those Commissioners to execute an illegal and improper contract. Under such circumstances, the contractor is not entitled to be paid and if already paid, recovery may be obtained from him. Gerzhof v. Sweeney, 239 NE2d 521 (NY 1968) (stating that there is no difference where contractor is seeking payment and where he has already been paid under an illegal contract), Neacy v. Drew, 187 NW 218 (WI 1922) (recovery permitted where contract was illegal and void because official had exceeded his authority in executing it and there had been no competitive bidding as required, the court also stating that the money illegally paid could be recovered not only from the defendant contractor but from the officials responsible for the illegal payment)

Sincerely,


Leo LaMotte
Public Auditor

Appendix E
Page 1 of 3



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

Internet Address: <http://www.opacnmi.com>
2nd Floor J. E. Tenorio Building, Middle Road
Gualo Rai, Saipan, MP 96950

Mailing Address:
P.O. Box 1399
Saipan, MP 96950

E-mail Address:
mail@opacnmi.com

Phone: 1-670-234-6481
Fax: 1-670-234-7812

March 6, 1998

Mr. Vicente Manglona
Chairman, TCGCC
P.O. Box 143, San Jose Village
Tinian, MP 96952

Dear Mr. Manglona:

Subject: Inquiry Related to Audit of TCGCC

In our on-going audit of TCGCC, we came across certain transactions that require clarification by management. Please provide the Office of the Public Auditor a written response to the following questions:

- 1) Did TCGCC waive the \$500,000 casino license fee due from Hong Kong Entertainment in fiscal year 1997? If so, what was the legal basis or authority for granting such a waiver? Who authorized the waiver and why? If the waiver was not authorized by the Commission, why didn't the Commission members enforce the payment in 1997? Why was Hong Kong Entertainment not penalized for its failure to pay the \$500,000 license fee due in 1997?
- 2) Why was CNMI Investments allowed to pay the annual license fee of \$500,000 on installment basis from August 1996 to February 1997? What was the legal basis or authority for allowing the installment payment of license fee? Who authorized this arrangement?
- 3) Why was Paul Palmer paid a salary that exceeded the statutory ceiling of \$70,000 per annum for executive directors?
- 4) Paul Palmer's personnel file showed that he was hired by TCGCC in the CNMI. Considering that Paul Palmer was a local hire, and therefore not entitled to a housing benefit, why was he granted a housing allowance of \$800.00 per month?
- 5) Why has Oscar Rasa been paid a monthly housing allowance of \$800 since November 1996 although to date he has not relocated to Tinian and still resides in his residence in Apple Valley, California?

March 6, 1998
Inquiry Related to Audit of TCGCC

Page 2 of 3

- 6) Why did the Commission members allow the lease of a house on Tinian for Jose Mafnas although he was not entitled to a housing benefit as he was not an expatriate employee?
- 7) Why was it necessary to lease a house on Saipan (lease amount was \$1,200 per month starting May 1997)? What was the basis for selecting this house? Who among TCGCC officials and staff members have used the house? Where is the house located? Why did TCGCC enter into a lease agreement that included terms and conditions that were not to the best interest of TCGCC (like a requirement to pay a *non-refundable* security deposit of \$3,000)? Why did TCGCC make an advance payment of \$10,500 to Eli Cabrera before the effectivity of the lease? Did any of the Commission members raise objections to these arrangements considering that TCGCC did not have sufficient funds to operate?
- 8) Former Governor Froilan Tenorio directed TCGCC and Dept. of Finance not to release the salaries of Commissioners Jose Mafnas, Jose P. San Nicolas, Martin Dlg. San Nicolas, and TCGCC employee Herman Palacios effective pay period ending August 2, 1997 until they provided TCGCC or the Governor with an explanation as to how they spent the total amount of \$59,213.95 withdrawn from the \$2.6 million MOA funds on April 1, 1997. Four checks totaling \$59,213.95 were issued to them by Dept. of Finance upon the request of Jose Mafnas. Based on our examination of payroll records, the salaries of the four individuals have been released by TCGCC starting August 31, 1997. To ensure that those funds were used for valid TCGCC activities, please provide our office a copy of the four individuals' explanation as to how the funds were used.
- 9) Why did the Commission members authorize the release of Jose Mafnas' final payroll check of \$12,935 without requiring a complete accounting of his outstanding advances? What steps did the Commission members undertake to protect TCGCC's interest considering that Jose Mafnas did not provide TCGCC with a written explanation as to how he used the unaccounted funds, but instead submitted only an affidavit stating that he misplaced all the official receipts supporting the advances?
- 10) Why didn't the Commission members impose disciplinary action against Paul Palmer for his failure/refusal to explain numerous questionable transactions that involved him while he was on official travel? Did TCGCC settle with Paul Palmer the issue of the missing \$7,000 that was supposed to pay for the tuition fees of employees who attended a training in Australia? Why did the Commission members allow Paul Palmer continued access to TCGCC resources and authorize him to travel again to Las Vegas in November 1997 despite allegations of improprieties committed by him?
- 11) What is the purpose of providing discretionary funds to TCGCC officials? What is the basis for determining the amount of discretionary funds to be advanced to officials?

Appendix E
Page 3 of 3

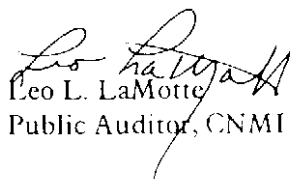
March 6, 1998
Inquiry Related to Audit of TCGCC

Page 3 of 3

What controls are in place to ensure that discretionary funds are not abused, are expended only for valid and authorized TCGCC transactions, and are returned or liquidated promptly? Please provide our office a copy of TCGCC's policy on discretionary funds.

- 12) Why has TCGCC continued to grant discretionary funds to traveling commissioners despite the lack of operating funds and criticisms on the commissioners' travel expenditures? Why has TCGCC tolerated the officials' practice of not submitting official receipts and other documents that prove the validity of travel expenditures, and allowed liquidations of huge travel advances to be supported only with affidavits?
- 13) Please provide our office a copy of the justification for the award of 4-year professional contract to Oscar Rasa. What was the procurement method and what were the criteria used in the selection? What steps did the Commission take to protect TCGCC's interest and ensure that the consultancy contract was awarded to the best qualified person who offered the best price?

Sincerely,


Leo L. LaMotte
Public Auditor, CNMI

cc: Senator David Cing

RECEIVED
Appendix F
Page 1 of 5
10:17 AM



TINIAN CASINO GAMING CONTROL COMMISSION

Municipality of Tinian and Aguiguan
Commonwealth of the Northern Mariana Islands



Commissioners:

Jose P. Mafnas
Chairman

Antonio S. Borja
Vice-Chairman

Vicente M. Manglona
Jose P. San Nicolas

Paul Palmer
Executive Director

Esther H. Barr
Deputy Director

Oscar C. Rasa
Consultant

June 21, 1997

FROM: Jose P. Mafnas, Chairman TCGCC

TO: Oscar C. Rasa

Subject: Assignment to investigate IGT and Aristocrat

The Tinian Casino Gaming Control Act mandates background investigation and licensing of all individuals and/or entities contemplating to do business relating to Casino Gambling within our jurisdiction. This includes, but not limited to, service industries, among others.

IGT and Aristocrat are manufacturers of Gaming Machines and have made requests for licensing.

You are hereby assigned to work with our Executive Director, Mr. Paul Palmer, to immediately take the necessary steps to conduct full investigation of the two companies mentioned above, and to provide a full report to the Commission.

The guidelines for compliance with respect to suitability are well enumerated in our Gaming Act.

Pursuant to our Gaming Act, all related costs and expenses of subject investigation shall be assessed and paid by applicants. Any unused portion shall be reimbursable.

By virtue of this letter, our licensing officer is hereby served notice that subject licences be held until such time that a thorough investigation report(s) is submitted for review and disposition.

Page 2 of 2

If you should have any questions or need additional information,
please advise accordingly.

Sincerely yours,



Jose P. Mafnas, Chairman
Tinian Casino Gaming Control Commission

cc: All Commissioners
Paul Palmer, Executive Director
Esther Barr, Deputy Director
M. Adriano, Licensing Officer

RECEIVED
12/12/97

12 07 A.M.



TINIAN CASINO GAMING CONTROL COMMISSION

Municipality of Tinian and Aguiguan
Commonwealth of the Northern Mariana Islands



Commissioners:

Jose P. Mafnas
Chairman

Antonio S. Borja
Vice-Chairman

Vicente M. Manglona
Jose P. San Nicolas

Paul Palmer
Executive Director

Esther H. Barr
Deputy Director

Oscar C. Rosa
Consultant

June 27, 1997

Mr. Jose P. Mafnas, Chairman
Tinian Casino Gaming Control Commission
P.O. Box 143
San Jose Village
Tinian, MP (96952)
Tel: (670) 433-9292
Fax: (670) 433-9290

Dear Chairman Mafnas:

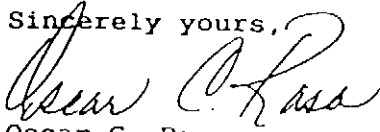
Your assignment memo, dated June 21, 1997, regarding due diligence investigations of IGT and Aristocrat will require extended time, and adequate funding to defray the necessary costs and expenses related to the investigations, including but not limited to, the establishment of a base office, and the hiring of personnel as required, among others.

The scope and magnitude of this task, in my opinion, is substantially and conscionably beyond the scope of the requirements of my contract.

Furthermore, this assignment may definitely have major impact in the timely fulfillment of the requirements of my contract. My accepting this assignment is contingent upon your assurance that my services be reasonably compensated, including, but not limited to, the hiring of the required staff, and all other costs and expenses reasonably related to the investigation. It is my position that since assessed fees for due diligence investigation are exclusively for investigation purposes, then such fees should be used to pay for all reasonable services related to due diligence investigations, no more, no less.

Kindly be advised that I have begun the mobilization process as per the date of your memo, and if you should have any objections or any further questions, please feel free to contact me.

Sincerely yours,

A handwritten signature in cursive script that reads "Oscar C. Rasa". The signature is written in dark ink and is positioned above the printed name.

Oscar C. Rasa



TINIAN CASINO GAMING CONTROL COMMISSION

Municipality of Tinian and Aguiguan
Commonwealth of the Northern Mariana Islands

Appendix F
Page 5 of 5
12/12/97
12:02 PM



Commissioners:

Jose P. Mafnas
Chairman

Antonio S. Borja
Vice-Chairman

Vicente M. Manglona
Jose P. San Nicolas
Martin Dig. San Nicolas

July 11, 1997

Mr. Oscar C. Rasa
Consultant
Tinian Casino Gaming Control Commission
P O. Box 143
Tinian, M. P. 96952

Paul Palmer
Executive Director

Esther H. Borr
Deputy Director

Oscar C. Rasa
Consultant

Subject: International Gaming Technology
Aristocrat Leisure Industries

Dear Mr. Rasa,

Further to and in accordance with the letter from Chairman Mafnas assigning you to assist in my investigative process of Casino Service Industry applicants, I am hereby requesting you to follow through on the permanent license application of these companies.

As you know we have assessed each of them an investigative deposit in the amount of USD\$250,000.00.

Please follow up on these investigations. By virtue of this letter I am also kindly requesting that you remain in the continental United States to closely monitor this situation and others that may arise.

All costs and expenses including but not limited to those for travel, communications, the hiring of necessary personnel, secretarial staff and otherwise, which you will encounter with these additional duties, will be reimbursable through and by the investigative fee's assessed.

Do not hesitate to contact me if you require any further information, clarification or otherwise.

Thank you for your time, attention and anticipated cooperation in this matter

Sincerely yours,

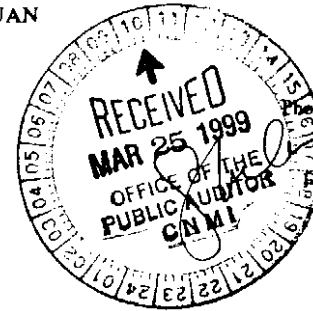
Paul Palmer
Executive Director

cc Chairman Jose P. Mafnas
Legal Counsel
file



FRANCISCO M. BORJA
Mayor

Office of the Mayor
MUNICIPALITY OF TINIAN AND AGUIGUAN
P.O. BOX 59
SAN JOSE VILLAGE
TINIAN, MP 96952



Phone: (670) 433-9231
(670) 433-9268
(670) 433-9269
Fax: (670) 433-9267

March 12, 1999

Leo L. LaMotte, Public Auditor
Office of the Public Auditor
2d Floor, J.E. Tenorio Bldg.
Middle Road, Gualo Rai
Saipan MP 96950

Dear Public Auditor,

Thank you for the Draft Report re; *Audit of TCGCC Consultant's Contract*, dated March 3, 1999. My comments follow:

I have no disagreement with the facts outlined in the Report. From almost the beginning of my administration I have taken the position that the Rasa Contract was *void ab initio* and have urged the Commission to take the appropriate steps to finalize their relationship with Mr. Rasa. It is only recently, however, that I have been vested with expenditure authority over Commission funds. When this authority was acquired, I immediately ceased all payments to Mr. Rasa on the ground that his contract was void.

As to the specific recommendations made by your office in the Audit Report Cover Letter, I intend the following actions:

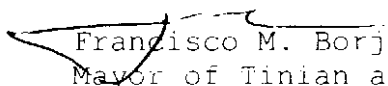
1. Given the Commission's action in public meeting on this date, where they voted to accept legal advice that the Consultant's Contract was null and void, I do not intend to follow OPA's recommendation that all Commissioners be removed, at this time. My decision is buttressed by the knowledge, that with the exception of the present Chairman of the Commission, Vicente M. Manglona, no Commissioner presently serving was involved in the original hiring of Mr. Rasa in October 1996. Since that time the Commission has been reluctant to take definitive action on Mr. Rasa's Contract in the absence of a clear opinion by their legal

counsel, Robert Naraja. Attorney Naraja has just recently rendered an opinion that the Contract is null and void on the ground that TCGCC's Procurement Regulations were not observed and that opinion formed the basis for their action today. I feel that the present Commissioners are now on the right track and will give them additional time to demonstrate their commitment to the law and rules and regulations that guide their task. In light of the Commission's action today I believe that one way or another, the Court will be involved soon and I feel that a resolution of the Rasa issues, and such other issues as may come to light, will more clearly define my duty with regard to your Recommendation Number 1.

2. I fully agree with Recommendation Number 2 and, in fact, did request the Attorney General to take action on the Rasa matter in October 1998. I received no response to this request. I am also aware that during the time that Robert Dunlap was Acting Attorney General, several requests were made that action be taken, again with no result. I have instructed my Legal Counsel to make a further request of the Acting Attorney General and to provide that Office with the documents and materials in our possession related to the matter.

As a final note, Counsel has advised me that Mr. Rasa may have a legitimate claim for some portion of the money that he has received on *quantum meruit* grounds. I have consulted with the Chairman of the Commission and been advised that Mr. Rasa has not produced any of the deliverables required by the Contract and am unaware of any substantial benefit that Mr. Rasa has produced for the Commission, the CNMI Government or the Municipality of Tinain and Aguiguan, which would provide grounds for that claim.

Sincerely,


Francisco M. Borja
Mayor of Tinian and Aguiguan

Appendix H

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Additional Information or Action Required
1. The Mayor of Tinian and Aguiguan should consider the removal of the commissioners on grounds of gross neglect and dereliction of duty.	Tinian Mayor's Office	Closed	None
2. The Mayor of Tinian and Aguiguan should request the Attorney General to institute an action to declare the Consulting Service Agreement between TCGCC and Oscar Rasa null and void, and to recover all amounts paid by TCGCC to Oscar Rasa and his son Diego Rasa.	Tinian Mayor's Office	Resolved	The Tinian Mayor should provide OPA with a copy of the letter requesting the Attorney General to institute legal action.