



# Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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## ETHICS OPINION 10-01

### Background

On August 25, 2010 the Office of the Public Auditor (OPA) received a request for an advisory opinion interpreting the Government Ethics Code Act of 1992 (Ethics Act), codified at 1 CMC § 8501 *et seq.* OPA has jurisdiction to render this advisory opinion pursuant to 1 CMC § 8561 (j) and maintains the anonymity of the requesting party under the same authority.

Please note: this opinion is limited to the facts, hypothetical or actual, as have been presented in the request. OPA makes no representation as to the truth or falsity of the facts or opines on any ethical issues beyond the factual scenario presented.

### Issue Presented by Requesting Party

The requesting party asked whether it is permissible under the Ethics Act for an elected public official, a member of the Commonwealth House of Representatives in the Saipan and Northern Islands Legislative Delegation, to introduce or vote on legislation that seeks to re-zone certain areas on Saipan. The request further specified that the re-zones were not part of a greater plan to re-zone the island and that each re-zoned area was discrete in size and included parcels of land owned by relatives of the Congressperson. More specifically, the re-zoned areas included parcels owned by the public official's brother, nephew and other individuals related by marriage. The request further stated that one re-zoned area included just a single parcel of land, which was also owned by a relative.

For purposes of this opinion, OPA assumes the re-zone is to the advantage, direct or indirect, of the subject property owners.

### Analysis

The Ethics Act is codified at 1 CMC § 8501 *et seq.* Certain provisions of the Ethics Act draw distinctions between public officials and public employees. Section 8503 defines public official as any person holding an elected office or appointed non-employee of the Commonwealth Government. Accordingly, OPA will analyze the facts presented under the provisions applying to public officials specifically, and not those applying to public employees. Furthermore, Section 8503 (m) defines relative as "a person who is related to an official ... as spouse or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather or stepmother,

stepson or stepdaughter, stepbrother or stepsister, half-brother or half-sister.” Based on the facts presented, OPA’s analysis will assume the relationships as specified in the request for this opinion qualify as “relatives” under the Ethics Act.

Several sections of the Ethics Act directly restrict a public official from using his or her public position to directly or indirectly benefit a relative. Each will be addressed in turn. Additionally, Article II, Section 15 of the Constitution of the Commonwealth of the Northern Mariana Islands (Constitution), as both the impetus behind the Ethics Act and as its own independent authority, provides further guidance on this issue and will be separately addressed. Finally, the Seventeenth Northern Marianas Commonwealth Legislature, House of Representatives adopted Rules of Procedure that address similar conflict of interest questions and will be commented on in this opinion.

*a) Restraints on Public Officials Using their Position to Benefit Relatives.*

The Ethics Act unequivocally restrains public officials from using their position to benefit themselves or their relatives. Specifically, Section 8532 (a) of the Ethics Act prohibits a public official from using or attempting to use his or her public position to obtain private financial gain or other personal or private advantage, direct or indirect, for the benefit of a relative. This provision restricts any public official, Congresspersons included, from using his or her position of authority to benefit a relative. This would include passing zoning legislation that specifically targets properties of persons qualifying as relatives under the Ethics Act.

An exemption exists within the Ethics Act when the act in question provides benefits to the public official or their relatives that are identical to those that accrue to the general public. While this exception is not specifically stated within Section 8532, it can be reasonably applied to this section, at least as applicable to legislators where their position requires passing measures intended to benefit wide ranges of the general public. Such generalized benefits to the public at large are not considered benefits to the public official or their relatives under Sections 8503 (f)(3)(iv) or 8535 (c).

Under the facts as presented, however, such an exemption is not available in this instance because the re-zone legislation specifically targets discrete areas owned by relatives and is not part of a larger scheme to comprehensively re-zone the island. Indeed, one such re-zone singles out an individual parcel of a relative. Accordingly, under this factual scenario, the legislator’s action would be in violation of Section 8532 of the Ethics Act.

*b) Restraints on Public Officials Voting or Deliberating on Issues that Bring Potential Benefits to the Public Official.*

Section 8535 of the Ethics Act provides guidance on voting or deliberating on legislation which provides a potential benefit to the public official. According to Section 8535 (a), a public official “shall not participate in, vote on, influence, or attempt to influence an official decision if the public official ... has a pecuniary interest in or a potential benefit from the matter under consideration by the governmental entity of which the public official is a member.” Section 8535 (b) provides that the public official, in such an instance, “shall abstain from participation in the discussion and vote on the decision. The public official’s abstention and the reason for the abstention must be recorded in the governmental entity’s minutes.”

Section 8535 (c) does provide an exemption from the voting or deliberating restriction when the potential benefit to the public official is “incidental to the public officials position, or which accrues to the public official as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest or potential benefit could reasonably be expected to accrue to all other members of the profession, occupation, or large class.” As mentioned above, this exemption does not apply to the present scenario because the benefits flowing to the legislator’s relatives are not available to them as general members of the public, but instead as specific beneficiaries of the targeted and discrete re-zones.

It is important to note this subsection does not explicitly apply to relatives of a public official. This section can however be read to prohibit officials from engaging in acts which bring benefits to relatives. First, both the Constitutional restraints on conflicts of interest (which form the basis of the Ethics Act, as discussed below) and the overarching intent of the Ethics Act<sup>1</sup> indicate that conflicts of the public official’s relatives can be imputed upon the public official. Secondly, benefits to relatives of a public official would qualify as a potential benefit to the public official, which is explicitly prohibited by Section 8535. Accordingly, the conduct of the legislator, as provided by the requesting party, would be in violation of Section 8535 of the Ethics Act.

- c) *Constitutional Restraints on Debating or Voting on any Bill that Provides a Financial or Personal Interest to a Congressperson.*

The Commonwealth Constitution prohibits a member of the legislature from debating or voting on any bill in which they have a financial or personal interest. Article II, Section 15 provides “A member of the legislature who has a financial or personal interest in a bill before the legislature shall disclose that interest and may not debate on or vote on the bill.” This same section of the

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<sup>1</sup> One of the stated goals of the Ethics Act is to ensure public official’s acts are free from the dangers of conflicts of interest and undisclosed personal or business interests. *See* Section 8502 (a)(1) & (b)(1).

Constitution mandated the legislature to enact a comprehensive code of conduct for its members; this was the impetus behind enactment of the Ethics Act. See PL 8-11, Section 8403.

While the plain language of the provision fails to equate a family relatives' interest with personal interest, the *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* (Analysis) suggests such a relationship is intended. Indeed, the Analysis defines personal interest as "the gain or loss by a legislator or any member of his family of elected or appointed office, rights, privileges or other non-monetary benefits not common to all legislators or citizens as a result, direct or indirect, of the enactment or enforcement of a bill." *Analysis* at 69 (emphasis added). Accordingly, under the facts presented in the request, the conduct of the legislator is in violation of Article II, Section 15 of the Constitution.

- d) *House of Representatives Rules of Procedure Prohibiting Voting or Debating on any Bill that Provides a Financial or Personal Interest to a Congressperson.*

The Seventeenth Northern Marianas Commonwealth Legislature, House of Representatives, adopted rules of procedure that govern the ethical constraints of its members. Specifically, Rule XI, Section 7, prohibits members from voting or debating on any matter in which they have a financial or personal interest. This authority is based on the prohibitions of Article II, Section 15 of the Constitution and the Ethics Act and thus any analysis with respect to the factual scenario is identical to the sections above. Accordingly, the conduct of the legislator is in violation of Rule XI, Section 7, of the House of Representatives Rules of Procedure.<sup>2</sup>

## Conclusion

The Ethics Act, Constitution, and House Rules of Procedure all prohibit legislators from influencing, introducing, voting or debating on legislation that benefits relatives (as defined in the Ethics Act) to any degree greater than as members of the general public. Had the legislation discussed created an island wide re-zone or affected larger areas of land, only a small portion of which was owned by relatives of the legislator, disclosure on the record of the potential conflict and recusal could likely have cured the conflict of interest. However, the facts, as presented, indicate a direct conflict of interest where individual plots of land owned by relatives were re-zoned by the legislation, which was not part of a greater legislative scheme to revisit the zoning

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<sup>2</sup> Rule XV, Section 2, subsection (c)(1) of the Seventeenth Northern Marianas Commonwealth Legislature Rules of Procedure allows House members, employees, or members of the public to request advisory opinions from the Special Standing Committee on Official Conduct and Ethics on ethical matters concerning members of the Commonwealth House of Representatives. Furthermore, Rule XV, Section 2, subsection (c)(4)(A) allows House members, employees or members of the public to file complaints of unethical conduct by House members or employees.

designations of the zoning law. Furthermore, the legislator not only debated and voted on the matter, but actually introduced it, reinforcing the notion that the conflict was neither an accidental nor a passive one. The scenario presented by the requesting party constituted violations of the Ethics Act, the Commonwealth Constitution, and the House of Representative Rules of Procedures.

A handwritten signature in black ink that reads "Michael Pai". The signature is written in a cursive, flowing style.

Michael Pai, CPA  
Public Auditor