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Commonwealth of the Northern Mariana Islands

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MEMORANDUM

OPA Ethics Opinion 2016-1

DATE: April 29, 2016

FOR PUBLIC RELEASE PURSUANT TO 1 CMC § 8561(j)

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CNMI Office of the Public Auditor

Signature:  Date: 4/29/2016

REVIEWED BY: Michael Pai, Public Auditor
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Signature:  Date: 5/4/16

Subject: Government Ethics Code Advisory Opinion

On April 5, 2016, the CNMI Office of the Public Auditor (“OPA”) received an email requesting review of proposed ethical guidelines drafted by the legal counsel for the Office of the Governor. The draft guidelines were for the purpose of providing information to the public and private sector concerning fundraising activities relating to the upcoming Marianas March Against Cancer (“MMAC”). OPA has construed the inquiry as a request for an advisory opinion under the CNMI Government Ethics Code Act of 1992 (“the Ethics Act”). OPA is empowered to offer advisory opinions by statute,¹ however it is not authorized to offer general opinions regarding the legality of actions under other sections of the CNMI Code. Therefore this opinion will be confined to evaluating the particular facts as presented under the Ethics Code.

Though the MMAC is a non-governmental entity associated with the Commonwealth Cancer Association, OPA has been assured that the MMAC was adopted by the Governor as an official Commonwealth function.² The following analysis is provided under that assumption.

1: Does the Ethics Act apply to MMAC fundraising activities undertaken by public employees and public officials?

¹ 1 CMC § 8561(j)

² OPA was informed the adoption by the Governor was during a meeting of the cabinet, however, OPA suggests a more formal written designation might be more appropriate under the circumstances.

Yes. The Ethics Act applies to public employees and public officials and generally prohibits the use of government offices, staff, employees, equipment, or supplies for the private gain of another entity. *See generally*, 1 CMC §§ 8531 & 8534(a). Additionally, restrictions on the soliciting of gifts by public officials or public employees in exchange for official action can be implicated even when soliciting on behalf of a third party organization. *See*, 1 CMC § 8551.

2: Does the Ethics Act allow Commonwealth agencies to fundraise on behalf of the MMAC?

Yes. Generally, the use of government offices, staff, employees, equipment, or supplies cannot be used for the private gain of any entity. *See*, 1 CMC §§ 8531 & 8534(a). However, the adoption by the Governor of the MMAC as an official Commonwealth function blurs the distinction between private and public entity. Ostensibly, the adoption of the MMAC as a Commonwealth function lifts the ban on the use of public resources to serve private ends, to include public employees' and public officials' working time. **However**, the Ethics Act does allow Commonwealth agencies to adopt more restrictive rules (*see*, 1 CMC 8576), and all expenditures of Commonwealth resources must be for public purposes pursuant to Article X, Section 1 of the Commonwealth Constitution. Public purpose is defined in Public Laws 11-84 and 12-2 and codified at 1 CMC § 121. Thus, OPA strongly encourages all agencies and expenditure authorities to maintain primary focus on serving the agency's ordinary purpose and to maintain reasonable restrictions to the use of public resources toward activities for the benefit of the MMAC.

Although the Ethics Act does not specifically address solicitations for charity, section 8551(h) of the Ethics Act allows government actors to accept gifts on behalf of the Commonwealth (in this case on behalf of the MMAC in its status as quasi-Commonwealth function). Section 8551(h) requires those gifts be reported to the Department of Finance and OPA and added to the inventory of Commonwealth property. Gifts may then be distributed via proper budgetary channels pursuant to 1 CMC § 7101 *et seq.* Such receipts of funds will be subject to audit under 1 CMC § 2301 and sufficient public records of such gifts must be recorded pursuant to 1 CMC § 7850(a). OPA recommends each entity designate one central agent to collect and report all such gifts, although it is the responsibility of each branch of government to designate appropriate policies and procedures to govern such activities and to ensure strict compliance with the law.

3. Can agencies solicit contributions to the MMAC from government employees at work?

Yes. The Ethics Act does not prohibit agencies from soliciting contributions from government employees. **However**, the Personnel Service System Rules & Regulations prohibit coercion in the workplace, so sturdy measures must be implemented to ensure all contributions are **voluntary**. *See* NMIAC § 10-20.2-482. OPA suggests prohibiting in person solicitation by managers, prohibiting "suggested" contributions, eliminating publicly posted lists of persons who did or did not make contributions, and eliminating participation goals.

4. Can agencies hold fundraising events such as rallies, fairs, sales, and contests to benefit the MMAC?

Yes. As discussed above, the use of government offices, staff, employees, equipment, and supplies may be used to fundraise on behalf of the MMAC provided they are used reasonably and with approval of the agency expenditure authority. **However,** the Ethics Act prohibits solicitation by any public official or employee of anything of value from any party providing goods or services to, or regulated by, the public entity served by the public official or public employee. Thus any such fundraising event, if open to the public, presents dangerous opportunity for an unlawful gift even if made with the most honest and generous intent. OPA suggests that if agencies wish to host fundraising events, they consider exclusive “in-house” events catering to employees and family members instead of the general public or private business interests.

OPA hopes the above guidelines provide ample information to public and private actors engaged in supporting the noble MMAC cause. Further guidance will be provided upon request. OPA cautions that this opinion merely provides advisory guidelines and that “official” fundraising events present a myriad of opportunities to violate Commonwealth and Federal law, so all participants are advised to participate with caution.³

Please note: the Ethics Act does not apply to fundraising activities conducted by MMAC that are not affiliated with government resources.

³ OPA is leery of the notion fundraising by government due to the likelihood of relaxed accountability of funds, coercion in the workplace, and inherent diversion from the ordinary operation of government. Indeed OPA has already received complaints concerning this event and will be diligently following up.