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Commonwealth of the Northern Mariana Islands

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MEMORANDUM

OPA Ethics Opinion 2015-4

DATE: September 8, 2015

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

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CNMI Office of the Public Auditor

Signature:  Date: 9/8/2015

REVIEWED BY: Michael Pai, Public Auditor
CNMI Office of the Public Auditor

Signature:  Date: 9/8/15

Subject: Government Ethics Code Advisory Opinion

On August 24, 2015, the CNMI Office of the Public Auditor ("OPA") received an email requesting advice on whether certain disaster relief donations were acceptable under the law and whether such donations would prevent the Commonwealth Legislature from acting on matters relating to the donor. Finding the inquiry timely and appropriate for public education, OPA 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 in the aforementioned inquiry under the Ethics Code.

The situation presented involves donations for disaster relief in the wake of Typhoon Soudelor made by an entity heavily regulated by the CNMI Government. Specifically, the entity planned to dispense both in-kind and cash gifts to a variety of government sectors including the Governor's office, the Legislature, the Saipan Mayor's office, and various other government agencies or organizations.

OPA notes this inquiry was initiated during a complete blackout of all OPA operations. Since Typhoon Soudelor, OPA continues to lack any power or water services and has no access to its buildings or servers. It is understandable that given the urgency of the disaster relief resources and lack of prompt response by OPA, the inquiring donor has dispersed the relief aid prior to issuance of this opinion. OPA takes this opportunity

¹ 1 CMC § 8561(j)

to provide guidance to future donors and our government servants who receive them and not to criticize or condemn any generous acts by any donating parties.

The Ethics Act generally prohibits giving non-nominal value gifts to any government agent who enjoys regulatory authority over the donor. Likewise, the Ethics Act generally prohibits government agents from receiving or soliciting gifts from any donor over whom they regulate. The purpose of these prohibitions is to ensure that decisions of public agents are free from actual or perceived conflict of interest. While none of the donations in the present situation were gifts to individual government actors, some were akin class gifts to the government entities who enjoy direct regulatory oversight of the donor. While such donations may not violate the letter of the Ethics Act, they certainly counter its spirit.

The drafters of the Ethics Act had wisdom to allow for the generosity of regulated bodies while maintaining the dignity and impartiality of government regulators. Specifically, section 8551 (h) of Title 1 of the Commonwealth Code provides that nothing in the Ethics Act prohibits any official from accepting a gift on behalf of the Commonwealth provided the person accepting the gift promptly reports receipt of the gift to the Public Auditor and the Department of Finance, who shall then add the gift to the inventory of Commonwealth property. Accordingly, nothing prohibits in kind or cash gifts to the government, but such items must be promptly reported to the Public Auditor and the Department of Finance and must be added to the inventory and assets of the Commonwealth. These resources can then be distributed by proper budgetary process pursuant to 1 CMC § 7101 et seq. or pursuant to emergency declaration under Article III, Section 10 of the NMI Constitution.

Accordingly, all future disaster relief donations to Commonwealth entities shall be reported to OPA and the Department of Finance and shall be designated assets of the Commonwealth and distributed via proper channels.