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LEGAL OPINION

Number: OAC-21-02

Subject: Legislative Allowance

Agency: Department of Finance

Office of the Attorney General **047867**



**Commonwealth of the Northern Mariana Islands
Office of the Attorney General**

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

OAG 21-02

November 1, 2021

Subject: Legislative Allowances

Agency: Department of Finance

Opinion of the Attorney General¹

I. QUESTIONS PRESENTED

1. The Commonwealth Constitution allows legislators “reasonable allowances for expenses provided by law.”² Public Law 20-67 appropriates funds to the House and Senate for expenditures authorized by House or Senate rule in Fiscal Year 2019. The House of Representatives has enacted rules of procedure granting an allowance to its members (the “Allowance”).³ Are the Allowances “validly provided by law?”
2. The Commonwealth Constitution prohibits legislators from using appropriated funds for personal and political activities. The Allowance is written broadly, potentially authorizing Representatives to claim personal expenses. Can legislators use their allowances for personal or political expenditures?
3. Article II, Section 10 authorizes “reasonable allowances.” The Allowances in both houses purport to authorize an allowance of \$5,000.00 per month (\$60,000.00 per year). Is an allowance of \$5,000.00 per month reasonable?
4. The Secretary of Finance has the constitutional duty to control and regulate public funds. The Secretary of Finance, through the Commonwealth Treasury, would be required to issue public funds pursuant to the Allowance. Can the Secretary of Finance disburse public funds for the Allowances?

¹ This opinion was first issued on January 8, 2020 at the request of the Secretary of Finance.

² NMI Const. art. II, § 10.

³ 21st Northern Mariana Islands Commonwealth Legislature, House Rule of Procedure XIII, § 10(a).

Civil Division
Telephone: (670) 237-7500
Facsimile: (670) 664-2349

Criminal Division
Telephone: (670) 237-7600
Facsimile: (670) 234-7016

Attorney General’s Investigative
Telephone: (670) 237-7625
Facsimile: (670) 234-7016

Division Domestic Violence Intervention Center
Telephone: (670) 664-4583
Facsimile: (670) 664-4589

II. SHORT ANSWER

1. Yes. Article II, Section 10 of the Commonwealth Constitution provides: “The members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law.”⁴ The Commonwealth Supreme Court has recognized that the term “as provided by law” means the provision is not self-executing, and requires further action to gain the force of law.⁵ Public Law 20-67 is a valid law enacted by the Legislature and signed by the Governor. Public Law 20-67 appropriates funds for “expenditures authorized by the adopted rules of the House of Representatives.”⁶ The passage of Public Law 20-67 satisfies the provided-by-law requirement.
2. No. Commonwealth Constitution Article II, Section 16(f) explicitly prohibits legislators from using any appropriation for the Legislature other than their salaries on personal or political expenses.⁷ Section 16(f) provides: “No part of the appropriations for the legislature or the legislative bureau, other than a member's salary, may be used for personal or political activities.”⁸ The Allowance appears to be for personal expenses, i.e., “to defray the costs of food, lodging, and other incidental expenses related to community events and activities and other expenses incurred by reason of attending to legislative business.”⁹ House Legislative Initiative 10-8, SS1 added Section 16(f) “to prevent the Legislative Members from abusing the limited budget of the legislative bureau for their own purposes for their self-indulgence.”¹⁰ Article II, Section 16(f) was added to the Constitution to address precisely this kind of conduct by legislators.
3. No. A reasonable allowance is around \$30,000.00, though an increase in legislators’ salaries may reduce this amount. Public Law 1-3 established a maximum allowance of \$8,000.00, which amounts to approximately \$31,352.06 adjusted for inflation.¹¹ Public Law 3-17 increased the maximum allowance to \$13,000.00, approximately \$33,703.47 per year adjusted for inflation.¹² Early legislators considered a reasonable allowance to be between \$31,000 and \$35,000 in today’s currency. Their contemporary interpretation is

⁴ NMI Const. art. II, § 10.

⁵ *United States v. Borja (Mayor of Tinian)*, 2003 MP 8 ¶ 8.

⁶ P.L. 20-67, § 703(b)(2).

⁷ NMI Const. art. II, § 16(f).

⁸ NMI Const. art. II, § 16(f).

⁹ 21st Northern Mariana Islands Commonwealth Legislature, House Rules of Procedure XIII, § 10(a).

¹⁰ HLI No. 10-8.

¹¹ U.S. Dep’t of Labor, Bureau of Labor Statistics, Consumer Price Index Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl> [hereinafter Bureau of Labor Statistics CIP Calculator].

¹² *Id.*

persuasive.¹³ The current maximum allowance is almost double what the first legislators considered to be reasonable. Furthermore, the Fourth Legislature repealed the authorization for legislative allowances in the same legislation that first increased the salaries of government officials, including legislators.¹⁴

4. Yes, but only to the extent the Allowance is set within the reasonable limit discussed in the analysis. Otherwise, if the disbursements are at the current \$60,000.00 yearly limit, the Secretary of Finance would violate his or her duty to control public funds by disbursing funds to pay the Allowances based on such an unreasonable amount. The Allowances violate Article II, Section 10 because they are not reasonable. The Allowances violates Article II, Section 16(f) to the extent that legislators use their allowances for personal or political activities.

III. STATEMENT OF FACTS

The people of the Northern Mariana Islands ratified the Commonwealth Constitution on March 6, 1977, and it took effect on January 9, 1978. Article II, Section 10 provides for the compensation of legislators: “The members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law.”¹⁵ Article II, Section 10 also established the mechanism for increasing salaries for executive, legislative, and judicial salaries.

A. Drafting History

The First Constitutional Convention’s Committee on Governmental Institutions addressed compensation for legislators, though it remarked on allowances only in passing. In deciding on legislative salaries, the Committee balanced four factors: (1) ensuring a salary adequate to attract citizens to public service, (2) avoiding legislative extravagance, (3) granting flexibility to respond to changing economic circumstances, and (4) “avoid[ing] a situation in which the legislature would be tempted to give itself an undeserved salary increase, or would appear to have given itself such an increase.”¹⁶ As to allowances, the Committee opted to leave the question of “expenses” to the political process, stating: “The Committee reserved to the legislature power over expenses, however, as traditional and necessary.”¹⁷ This single sentence is ambiguous as to the method for the Legislature would employ to authorize allowances.¹⁸

¹³ See *In re Petition of Comm’n on the Governorship of Cal.*, 603 P.2d 1357, 1357 (Cal. 1979); *City of Los Angeles v. Rancho Homes, Inc.*, 256 P.2d 305, 308 (Cal. 1953); *State ex rel. Gass v. Gordon*, 181 S.W. 1016, 1021 (Mo. 1915). See also 2A Norman Singer, *Statutes and Statutory Construction* § 46:01 (2000).

¹⁴ P.L. 4-32, §§ 3, 14.

¹⁵ NMI Const. art. II, § 10.

¹⁶ First Const. Convention, Comm. On Gov’tal Institutions, Report No. 3 18–19 (Nov. 4, 1976).

¹⁷ *Id.* at 19.

¹⁸ The Chamber of Commerce commented on Article II, Section 10, stating: “We recommend a salary of \$8,000 annually with a special allowance of an additional \$2,000 for the Speaker of the House and President of the Senate.” Chamber of Commerce,

As one of its first acts, First Commonwealth Legislature enacted legislation authorizing legislative allowances under Section 10.¹⁹ The Legislature explained: “The purpose of this Act is to provide each Senator and Representative with a reasonable allowance which he may use to defray the *necessary and official expenses* incurred in connection with his official duties.”²⁰ The statutory authorization for legislative allowances, originally codified at 1 CMC §§ 1201-1203, provided: “There shall be made available to each of the Senators and Representatives an allowance of \$8,000.00 per annum for the purposes specified in Section 1 of this Act.”²¹ Section 1203 provided for a detailed procedure:

Each Senator and Representative shall submit to the Treasurer of the Commonwealth of the Northern Mariana Islands a request for his projected expenses in connection with his office, approved by the President of the Senate or the Speaker of the House of Representatives, as the case may be. Such request may be for the full \$8,000.00 or for a lesser amount. In the case of a Senator's or Representative's request for a lesser amount, he shall be entitled to make subsequent requests; PROVIDED that a Senator or Representative may not receive more than \$8,000.00 in any one year. In the event that a legislator dies, resigns, or is removed from his office, he shall be entitled to no further expense allowance than that which he has expended, but his successor in office shall be entitled to an expense allowance which is equal to the ratio of the remaining percentage of the term in office and the same percentage of the \$8,000.00.²²

In 1982, the Legislature amended Sections 1202 and 1203 by increasing the amount to \$13,000.00. Both Governor Carlos S. Camacho and Governor Pedro P. Tenorio expressed concern as to the amount of the allowance when signing the respective public laws.²³ Governor Camacho expressed serious concern over legislator's documentation of their expenses, and noted that the Public Auditor could audit legislator's expenditures.²⁴

Comments Submitted to Public Hearing on Saipan 3 (Nov. 18, 1976). In the draft constitution submitted for public comment, Article II, Section 11 addressed the compensation of legislators.

¹⁹ P.L. 1-3.

²⁰ P.L. 1-3, § 1 (emphasis added).

²¹ 1 CMC § 1202 (1978), amended by P.L. 3-17 (1982), repealed by P.L. 4-32, § 14.

²² 1 CMC § 1203 (1978), amended by P.L. 3-17 (1982), repealed by P.L. 4-32, § 14.

²³ Letter from Carlos S. Camacho, Governor, to Lorenzo I. Guerrero, President of the Senate, and Oscar C. Rasa, Speaker of the House (May 3, 1978) (“I do so [sign P.L. 1-3 into law] in the interest of harmonious relations between the executive and legislative branches, although I am persuaded that an annual allowance smaller than \$8,000 would have been preferable.”); Letter from Pedro P. Tenorio, Governor to Olympio T. Borja, President of the Senate, and Benigno R. Fitial, Speaker of the House of Representatives (July 07, 1982) (“I am confident that the vast majority of our legislators spend their reasonable allowance expense in order to assist their constituents or to advance the interests of the Commonwealth. in implementing this Act, I would respectfully request that the Legislative Branch consider the financial condition of our government.”).

²⁴ Letter from Carlos S. Camacho, Governor, to Lorenzo I. Guerrero, President of the Senate, and Oscar C. Rasa, Speaker of the House (May 3, 1978).

Public Law 4-32 repealed the statutory authorization for legislative allowances.²⁵ The repeal took effect on April 1, 1985.²⁶ The repeal coincided with two significant events: the first legislative salary increase and the authorization for the Second Constitutional Convention.²⁷ The historical and political context suggest that both of these events contributed significantly to the decision to repeal the statutory authorization for legislative allowances.

Legislators' extravagant expenditure of public funds was one of the most significant issues facing the Second Constitutional Convention. On the 10th day of the Convention Delegate Jesus P. Mafnas explained:

Many if not all of the successful and unsuccessful candidates to the Constitutional Convention were asked by our voters to address the excessive expenditures in the Legislative Branch. This Convention is left without any alternative but to diligently submit amendments with respect to legislative reforms.²⁸

Delegate Mafnas specifically suggested removing the "reasonable allowances" provision of Article II, Section 10, identifying approximate savings of \$312,000.00.²⁹ Delegate Mafnas had good reason to suggest removing the allowance. The documents from the Second Constitutional Convention are replete with examples of legislators' extravagant spending. "Extravagance" is not an overstatement. The Tinian Delegation, chaired by James M. Mendiola, wrote to the Public Auditor alleging that legislative allowances were "being paid to Bars, Ladies Drinks and Donations."³⁰ Delegate Mafnas, joined by several other delegates, made several proposals, all of which abolished the "reasonable allowance."³¹

Documents from the Second Constitutional Convention strongly suggest that the repeal of the statutory authorization for legislative allowance was directly related to the impending Constitutional Convention. In a letter to Delegate Lorenzo I. Guerrero commenting on Delegate Proposal 108-85, James H. Ripple, Acting Special Assistant for Planning and Budgeting suggested that constitutional amendments relating to the legislative allowances were unnecessary in light of

²⁵ P.L. 4-32, § 14.

²⁶ *Id.* § 15.

²⁷ *Id.* § 3; P.L. 4-30.

²⁸ Journal, Second Const. Convention, 10th Day 165 (June 27, 1985). Delegate Mafnas was a staunch advocate for fiscal responsibility and accountability for the Legislature. *See, e.g.*, Journal, Second Const. Convention, Transcript of 32nd Day, Tape 1A 14-17 (616-618 in final journal) (July 19, 1985).

²⁹ *Id.* The total savings adjusted for inflation is \$747,546.09 in February 2019.

³⁰ Letter from James M. Mendiola, William B. Nabors, David M. Cing, & Estevan M. King, Tinian Delegates to the Second Constitutional Convention, to Rex Palacios, Public Auditor (June 25, 1985).

³¹ *See* Delegate Proposal No. 47-85 (June 20, 1985); Delegate Proposal No. 290-85 (July 7, 1985).

Public Law 4-32's repeal of the legislative allowance.³² Considering this letter in the context strongly suggests that the Fourth Commonwealth Legislature repealed the legislative allowance authorization in response to public concerns regarding legislators' extravagant spending and the upcoming Second Constitutional Convention.

Ultimately, the delegates of the Second Constitutional Convention did not agree on any amendment that would have abolished the "reasonable allowance" in Article II, Section 10. However, the Second Constitutional Convention submitted Proposed Amendment No. 9 creating a budget ceiling of \$2.8 million for the Legislature.³³ The citizens of the Commonwealth ratified the Proposed Amendment No. 9, which was enshrined in the Constitution as Article II, Section 16. Article II, Section 16 originally read:

Section 16 Budget Ceiling. There shall be a ceiling on the budget of the legislature.

- (a) Appropriations, or obligations and expenditures, for the operations and activities of the legislature may not exceed two million eight hundred thousand dollars in any fiscal year. This ceiling on the legislative budget shall be divided equally between the Senate and the House of Representatives.
- (b) Obligations and expenditures for the operations and activities of the legislature for the period October 1 through the second Monday in January of a fiscal year in which there is a regular general election, may not exceed seven hundred thousand dollars or the spending authority otherwise available by law, whichever is less. This ceiling shall apply to the various offices and activities in the same proportions as the annual spending authority provided by law.

The citizens of the Commonwealth ratified two further amendments to Article II, Section 16.

In 1989, the citizens of the Commonwealth ratified House Legislative Initiative No. 6-2. House Legislative Initiative No. 6-2 amended Article II, Section 16(a) to exclude the legislator's salaries from the budget ceiling.³⁴ After amendment, the first sentence of Section 16(a) read: "Appropriations, or obligations and expenditures, exclusive of the salaries of the members of the legislature, for the operations and activities of the legislature may not exceed two million eight hundred thousand dollars in any fiscal year."³⁵ House Standing Committee Report No. 6-64 noted that Section 16 was ratified "[b]ecause of prior spending abuses by preceding legislatures."³⁶ The Committee explained that the Framers of Section 16 had not exempted the salaries of legislators.³⁷

³² Letter from James H. Ripple, Acting Special Assistant for Planning and Budgeting, to Lorenzo I. Guerrero, Delegate (June 28, 1985) ("Public Law 4-32 repealed 1 CMC 1201 to 1203 relating to Official Representation Allowance. Therefore, it would be most appropriate if this subject matter is addressed through Legislative procedures, rather than a Constitutional amendment.").

³³ Proposed Constitutional Amendment No. 9 (Aug. 10, 1985).

³⁴ H.L.I. 6-2, § 3.

³⁵ *Id.*

³⁶ H. Standing Comm. On Judiciary & Gov'tal Operations Rep. No. 6-64 at 2 (Sept. 15, 1989).

³⁷ *Id.*

The Committee asserted: “At this point in time, inflation has caught up with the budget ceiling so that the limitation becomes an injustice to both the Legislative Branch and to the people it purports to serve.”³⁸ The voters ratified House Legislative Initiative 6-2 in the 1989 general election.

In 1997, the citizens of the Commonwealth ratified House Legislative Initiative 10-8, which extensively revised Section 16 by raising the budget ceiling and imposing additional restrictions on legislator’s use of public funds. Two changes are relevant to this inquiry. Foremost, House Legislative Initiative 10-8 created Section 16(f): “No part of the appropriations for the legislature or the legislative bureau, other than a member’s salary, may be used for personal or political activities.”³⁹ Second, it exempted “major equipment or capital improvement projects” from the budget ceiling.⁴⁰ Third, it defined the term “major equipment or capital improvement projects” to exclude “the purchase, rental, or lease of vehicles for the use of individual members of the legislature or their offices.”⁴¹ The findings for the original House Legislative Initiative 10-8 stated its purpose was

to prevent the Legislative Members from abusing the limited budget of the Bureau for their own purposes or for their own self-indulgence with specific concern for the lease or purchase of vehicles, travel, and the use of the Bureau’s limited budget for the construction of new or expanded building facilities.⁴²

House Legislative Initiative No. 10-8 thus continued and expanded the Second Constitutional Convention’s policy of preventing legislators from abusing public funds for personal extravagance and self-indulgence.

B. 21st House of Representatives Rule XIII, Section 10.

Promulgating procedural rules is one of the first orders of business for an incoming legislature. Commonwealth Constitution Article II, Section 14(b) directs “[e]ach house of the legislature . . . [to] promulgate rules of procedure.”⁴³ The House of Representatives adopted its Rules of Procedure on January 14, 2019. On the same day, Speaker of the House Blas Jonathan T. Attao appointed an Ad Hoc Committee to review the rules of order and suggest any changes within 30 days.⁴⁴ On March 12, 2019, the House adopted the Ad Committee’s changes to the Rules of Procedure.⁴⁵

³⁸ *Id.*

³⁹ H.L.I. 10-8, SS1, § 1; NMI Const. art., II § 16(f).

⁴⁰ H.L.I. 10-08, SS1, § 1; NMI Const. art. II, § 16(a).

⁴¹ H.L.I. 10-08, SS1, § 1; NMI Const. art. II, § 16(d).

⁴² H.L.I. 10-8, § 1.

⁴³ NMI Const. art. II, § 14(b).

⁴⁴ H. Res. 21-4, HD1, at 1.

⁴⁵ *Id.* at 5.

The House of Representatives' amendment of Rule XIII, Section 10 states in full:

- (a) A member of the House may use a portion of the funds under the member's individual office account as an allowance of \$2,500 but not more than \$5,000 per month to defray the costs of food, lodging, and other incidental expenses related to community events and activities and other expenses incurred by reason of attending to legislative business in any Senatorial District and outside the Commonwealth. A representative may charge the member's office account for (a) per diem to cover food and lodging, (b) ground transportation and (c) cost of airline transportation to attend legislative business in any Senatorial District and outside the Commonwealth. Costs of transportation for airfare and car rental shall be charged to the member's office account through regular travel procedures.
- (b) Funds expended pursuant to this subsection shall be for expenses incurred during the month in which the allowance was disbursed. Additionally, the funds allocated in accordance with this subsection shall be disbursed each month and none of the said funds provided in this subsection shall be advanced.
- (c) Each member shall maintain a record of all transaction and corresponding public purpose justification related to the allowance authorized by this section.⁴⁶

The change to the Rule XIII, Section 10 is significant. The Section 10(a) is much broader than the Interim Rule which had only allowed for an allowance "to defray the cost of food, lodging and other related expenses incurred by reason of attending to legislative business." Similar to the corresponding rule in the Senate's Official Rules, the new Section 10(a) now authorizes an allowance of between \$2,500 and \$5,000 "per month to defray the costs of food, lodging, and other incidental expenses related to community events and activities and other expenses incurred by reason of attending to legislative business in any Senatorial District and outside the Commonwealth."⁴⁷ The phrase "incidental expenses related to community events and activities" is extremely vague, and the broad term "community events and activities" is undefined.

The breadth of Section 10(a) does not end at "community events and activities." Whereas the Interim Rule provided an allowance for representatives attending to legislative business away from their home island and within the Commonwealth, amended Section 10(a) authorizes a Representative to use his or her allowance "to defray the costs of food, lodging, and . . . expenses incurred by reason of attending to legislative business in *any Senatorial District and outside the Commonwealth*."⁴⁸ Under the plain meaning of Section 10(a), a Representative from Saipan can

⁴⁶ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10.

⁴⁷ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10(a). *Compare* Interim H. R. of P. XIII, § 10(a)-(d), (f) with H. R. of P. XIII, § 10(a).

⁴⁸ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10(a) (emphasis added). *Compare* Interim H. R. of P. XIII, § 10(a)-(d), (f) with H. R. of P. XIII, § 10(a).

use his or her allowance to defray the cost of food and lodging in Saipan. Section 10(a) appears to authorize Representatives to use their allowances to purchase groceries and pay their rent or mortgage. The same application for the Representative from Tinian or Rota to pay for expenses incurred in their respective election district. This is the ordinary plain meaning of Section 10(a). Section 10(a) also authorizes the allowances to be used on the cost of “attending to legislative business *outside the Commonwealth*” rather than paying for travel through the per diem rates like the rest of the Commonwealth government.

The total amount of the allowance is a staggering \$60,000 per year per Representative. If every Representative took full advantage of the allowance, it would cost the taxpayers \$840,000 per year. Given the breadth of Section 10(a)—authorizing expenses such as groceries, rent, and the cost of travel within a Representative’s home island—it would not be difficult for a Representative to meet the \$5,000 limit while staying well within the plain meaning of its terms. The multiple amendments to Article II explicitly sought to prevent this kind of extravagance.

Finally, the only saving graces are the record keeping requirement and prohibition on allowances being advanced. Section 10(c)’s requirement that Representatives record the “public purpose” for each use of their allowance is useful. Although the definition of “public purpose” in the Commonwealth Code includes “expenditures authorized and regulated by legislative rules are expressly declared to be for a public purpose,” it also provides that one can prove that the expenditure in fact was for a personal or political activity.⁴⁹ These records will be useful in any action to recoup the cost of misspent public funds.⁵⁰

IV. ANALYSIS

Article II, Sections 10 and 16(f) restrain legislators’ use of allowances in several ways. First, any allowance must be “provided by” law.⁵¹ Second, any allowance must be “reasonable.”⁵² Third, the allowance—not being part of a legislator’s salary—cannot be used for “private or political activity.”⁵³ How the Supreme Court construes Constitution’s text is dispositive. The inquiry thus must begin with a review of constitutional construction.

A. Rules of Interpretation

The most important canon of construction is that “language must be given its plain meaning.”⁵⁴ The Supreme Court reads the Constitution’s language “in the context of the entire provision at

⁴⁹ 1 CMC § 121(i).

⁵⁰ H. Res. 21-4, HD1, at 5; H. R. of P. XIII, § 10(b).

⁵¹ NMI Const. art. II, § 10.

⁵² NMI Const. art. II, § 10.

⁵³ NMI Const. art. II, § 16(f).

⁵⁴ *Peter-Palican v. Commonwealth*, 2012 MP 7 ¶ 6 (quoting *N. Marianas Coll. v. Civil Serv. Comm’n*, 2007 MP 8 ¶ 9); see also *Palacios v. Yumul*, 2012 MP 12 ¶ 4.

issue,”⁵⁵ and “give[s] effect to every word of a constitutional provision.”⁵⁶ The Court considers the Constitution as a whole, giving meaning to every word.⁵⁷ In doing so, the Court takes care to harmonize conflicting provisions to prevent one provision from voiding or nullifying another.⁵⁸ If the Court can determine the meaning of a constitutional or statutory provision using the plain meaning, then the analysis ends.⁵⁹

The Court uses several “stabilizing canons” of construction to avoid unnecessarily disrupting the current order.⁶⁰ The Court presumes that a challenged provision is constitutional, and must give statutory text a constitutional interpretation if possible.⁶¹ The Court avoids interpreting statutes in a manner that will defies common sense.⁶²

Where the plain meaning results in ambiguity, the Court can look for clues outside of the text. In doing so, the Court “must attempt to ascertain and give effect to the intent of the drafters of the provision.”⁶³ The Court can look to the legislative history of the provision’s drafting.⁶⁴ This includes the materials of the Constitutional Conventions and the Analysis of the Constitution.⁶⁵ “The Analysis is a memorandum, approved by the Constitutional Convention following the adoption of the constitution in 1976, that provides an explanation of each section in the Commonwealth Constitution and summarizes the intent of the Convention in approving each section.”⁶⁶ “The Analysis . . . is extremely persuasive authority when one is called upon to discern the intent of the framers when the language of the Constitution presents an ambiguity.”⁶⁷ That being said, Commonwealth Courts have long recognized that “[t]he Analysis is not the law” and

⁵⁵ *Palacios*, 2012 MP 12 ¶ 4.

⁵⁶ *Id.* (citing *Sablan v. Superior Court*, 2 NMI 165, 185 n.21 (1991)).

⁵⁷ *Peter-Palican*, 2012 MP 7 ¶ 6 (citing *Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 11); *Hackel v. Macomb Cty. Comm’n*, 298 Mich. App. 311, 323, 826 N.W.2d 753, 761 (2012) (“Courts must avoid a construction that would render any part of a statute surplusage or nugatory.”).

⁵⁸ *Commonwealth v. Lot No. 218-5 R/W*, 2016 MP 17 ¶¶ 24–26.

⁵⁹ *Calvo v. NMI Scholarship Bd.*, 2009 MP 2 ¶ 21 (“If a statute is clear and unambiguous, that is the end of the matter, as the court and the agency must give effect to the unambiguously expressed intent of Congress.”).

⁶⁰ *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶¶ 18–19.

⁶¹ *Rayphand v. Tenorio*, 2003 MP 12 ¶ 58.

⁶² *Manibusan v. Larson*, 2018 MP 7 ¶ 12 (quoting *Peter-Palican*, 2012 MP 7 ¶ 6).

⁶³ *Id.*

⁶⁴ *Aldan-Pierce v. Mafnas*, 2 NMI 122, 142 n.23 (1991); *Maratita v. Palacios*, 2013 MP 15 ¶ 15.

⁶⁵ The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (Dec. 6, 1976)

⁶⁶ *Dep’t of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 7.

⁶⁷ *Rayphand*, 2003 MP 12 ¶ 71.

may not be used to overcome “the clear language of the Constitution.”⁶⁸ Where the text’s plain meaning is unambiguous, the text controls.

The Supreme Court will avoid considering most challenges to legislative rules of procedure under the political question.⁶⁹ Although the Commonwealth Supreme Court has not addressed the question, the courts of the several states recognize an exception to the political question doctrine when a legislative rule of procedure directly contravenes a provision of the Constitution.⁷⁰

B. The Legislature Has Provided for Allowances Under Article II, Section 10 in Public Law 20-67.

By appropriating funds for “expenditures authorized by . . . the adopted rules of the House of Representatives,” Public Law 20-67 has satisfied the requirement that allowances be “provided by law.” The Supreme Court presumes that every provision of the Constitution is self-executing.⁷¹ However, the words “as provided by law” contemplate further legislative action.⁷² Here, Public Law 20-67 appropriates funds for “expenditures authorized . . . by adopted rules of the House of Representatives,” thereby delegating to the House the implicit power to authorize reasonable allowances for legitimate expenses.

An appropriation bill can satisfy the provided-by-law requirement. An appropriation is “[a] legislative body’s . . . act of setting aside a sum of money for a specific purpose.”⁷³ Unlike codified statutes, appropriations are ephemeral, and only carry authority for a limited period, usually a year. Appropriation bills are similar to other legislative enactments. Both houses of the legislature must pass an appropriation bill by majority vote, and the bill only becomes law with the Governor’s approval or, in the case of a veto, the Legislature overrides the Governor’s veto with a two-thirds vote in both houses.⁷⁴ This is the classic method of creating law in a democratic government; the fact that an appropriations bill has an expiration date does not make it any less of a law.

Public Law 20-67 does not violate the provided-by-law requirement because the houses of the Legislature have the inherent authority to define expenditures. The Commonwealth Constitution is a limitation on power; an instrumentality of Commonwealth thus possesses all inherent powers

⁶⁸ *Camacho v. Camacho*, 1 CR 620, 628–29 (Trial Ct. 1983).

⁶⁹ *Sablan v. Tenorio*, 4 NMI 351, 363–64 (1996) (“By refraining from interfering with the Senate’s constitutionally-exercised power to promulgate rules, we accord proper respect to the legislature as a separate and coequal branch of government which must be free from domination and unnecessary intrusion by the judiciary.”).

⁷⁰ *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74, 83–84 (Ky. 2018).

⁷¹ *Borja*, 2003 MP 8 ¶ 7 (quoting *Rockefeller v. Hogue*, 429 S.W.2d 85, 88(Ark. 1968) (“There is a presumption of law that any and every constitutional provision is self-executing.”)).

⁷² *Id.* ¶¶ 10–11; see also *Torres v. Commonwealth Utils. Corp.*, 2009 MP 14 ¶¶ 19–20. *Torres* also stands for the proposition that the “law” in the phrase “provided by law” does not necessarily mean “provided by statute.” *Id.* ¶ 20.

⁷³ *Appropriation*, Black’s Law Dictionary (10th ed. 2014).

⁷⁴ NMI Const. art. II, § 5(c) (“The legislature may not enact a law except by bill and no bill may be enacted without the approval of at least a majority of the votes cast in each house of legislature.”); NMI Const. art. II, § 7.

occurring “within its natural orbit.”⁷⁵ The Constitution authorizes both houses of the Legislature to create rules of procedure.⁷⁶ Defining the proper expenses by enacting rules of procedure falls within the “natural orbit” of each house of the Legislature.⁷⁷ Indeed, when discussing Article II, Section 10 in its report to the First Constitutional Convention, the Committee on Governmental Institutions stated: “The Committee reserved to the legislature power over expenses, however, as traditional and necessary.”⁷⁸ Thus, the fact that Public Law 20-67 delegated the power of defining proper expenses by formally rule does not violate the provided-by-law requirement.

The fact that the first three legislatures enacted statutory authorization for legislative allowances did not bind future legislatures to use the same practice. Courts may resort to a contemporaneous, practical construction of a constitutional provision to determine its meaning.⁷⁹ Courts note that past practice, especially contemporary practice, can be “extremely persuasive.”⁸⁰ “The conclusiveness of the interpretation depends on whether the interpretation originated from a reliable source, the interpretation was made at or near the time of the enactment of the statute, and the interpretation has continued for a long period of time and received acceptance and following.”⁸¹

The fact that the first Commonwealth Legislatures chose to enact a statute authorizing allowances rather than authorizing expenditures in an annual appropriation is mostly irrelevant. The First Commonwealth Legislature enacted statutory authorization for allowances with Public Law 1-3.⁸² This authorization lasted almost seven years before its repeal by the Fourth Commonwealth Legislature.⁸³ At the most, this practice demonstrates that the first few legislatures interpreted “as provided by law” to require legislative enactment. Appropriations bills meet this definition.

C. Rule XIII, Section 10 Violates Commonwealth Constitution Article II, Section 16(f) to the Extent It Allows Representatives to Spend Their Allowances on Personal, Private Activities.

Whether a legislator can use his or her allowance for his or her own personal benefit is not a question of policy: Article II, Section 16(f) plainly forbids legislators from using allowances for their private or political benefit. Section 16(f) provides: “No part of the appropriations for the

⁷⁵ *Kabir v. Pub. Sch. Sys.*, 2009 MP 19 ¶ 17.

⁷⁶ NMI Const. art. II, § 14(b).

⁷⁷ *See, e.g., Watson v. Fair Political Practices Comm'n*, 266 Cal. Rptr. 408, 413 (Ct. App. 1990); *see also* 2A Norman Singer, *Statutes and Statutory Construction* §§ 7:1–7.2 (2000).

⁷⁸ First Const. Convention, Comm. On Gov'tal Insts., Report No. 3 19 (Nov. 4, 1976).

⁷⁹ *See In re Petition of Comm'n on the Governorship of Cal.*, 603 P.2d at 1357 (Cal. 1979); *Rancho Homes, Inc.*, 256 P.2d at 308; *Gass*, 181 S.W. at 1021. *See also* 2A Norman Singer, *Statutes and Statutory Construction* § 46:01 (2000).

⁸⁰ *Johnson v. Duke*, 24 A.2d 304, 307–08 (Md. 1942).

⁸¹ *Maiter v. Chicago Bd. of Ed.*, 395 N.E.2d 1162, 1165 (Ill. App. 1979), *rev'd on other grounds*, 415 N.E.2d 1034 (Ill. 1980).

⁸² P.L. 1-3.

⁸³ P.L. 4-32, § 14.

legislature or the legislative bureau, other than a member's salary, may be used for personal or political activities.”⁸⁴ The plain meaning of Section 16(f) is patently obvious: legislators are forbidden from using any funds appropriated for the Legislature other than their salaries on personal or political expenses.

Assuming for the sake of argument that Section 16(f) is ambiguous—it is not—the Framers’ unambiguous intent was to prevent legislators from using anything but their salaries for personal expenditures. The drafting history of Article II since the Second Constitutional Convention is replete with references to legislators “self-indulgence,” “self-aggrandizement,” and “extravagance.” Since 1985, the voters of the Commonwealth have acted to further restrict the legislator’s use of public money for personal gain. The original legislative findings for H.L.I. 10-8 specifically stated that it sought to prevent legislators from abusing the Legislature’s budget.⁸⁵

The Supreme Court would likely hold that Rule XIII, Section 10 violates Article II, Section 16(f) to the extent that it authorizes Representatives to spend the allowance on personal expenses. While the Court would normally refuse to rule on the interpretation of the House’s Rules of Procedure as a political question, Rule XIII, Section 10 is so broad that it conflicts directly with Article II, Section 16(f).⁸⁶ The Court will attempt to construe Rule XII, Section 10 to be constitutional if such an interpretation is possible.⁸⁷ Given the sheer breadth of Rule XIII, Section 10, the Supreme Court would likely find that Rule XIII, Section 10 is unconstitutional to the extent it purports to authorize personal and private expenditures. This includes meals and groceries purchased in the Representative’s district, paying for lodging in a Representative’s Senatorial District, and generally any expenses that are not legitimately connected with legislative business.

D. The Allowance Is Not Reasonable Because It Far Exceeds Previous Allowances.

The amount of the allowance is not reasonable because it is far in excess of any previous allowance. “Reasonable” means “[f]air, proper, or moderate under the circumstances; sensible.”⁸⁸ In context “reasonable” could mean “a reasonable amount,” “for a reasonable purpose,” or both. The previous Section shows that the Allowance can be used for purposes that are not reasonable. Unfortunately, the word “reasonable” is not specific and the Constitutional Convention materials do not suggest what a reasonable amount would be or how a reasonable amount is calculated. As such, contemporary construction is the best guidance on what “reasonable” means.

Contemporary practice is a useful tool for interpreting ambiguous constitutional language. The Court of Appeals of Maryland explains that “contemporaries of the framers have claims to our deference on the question of interpretation inasmuch as they enjoyed the best opportunities of

⁸⁴ NMI Const. art. II, § 16(f).

⁸⁵ See *supra* note 42 and accompanying text.

⁸⁶ Compare *Sablan*, 4 NMI at 363–64, with *Beshear*, 563 S.W.3d at 83–84.

⁸⁷ *Rayphand*, 2003 MP 12 ¶ 58.

⁸⁸ *Reasonable*, Black’s Law Dictionary (10th ed. 2014).

learning the intention of the framers and the understanding of the people who ratified the instrument.”⁸⁹ The doctrine must be used cautiously, as “[n]o acquiescence for any length of time can legalize a usurpation of power, where the people have plainly expressed their will in the Constitution and established judicial tribunals to enforce it.”⁹⁰ Contemporaneous construction is especially useful where other canons of statutory construction fall short.

Contemporary construction suggests that an amount between \$30,000 and \$35,000 is reasonable. The first few Commonwealth Legislatures’ interpretation of Article II, Section 10 is persuasive authority.⁹¹ Public Law 1-3 established an allowance of \$8,000, which is approximately \$31,352.06 adjusted for inflation.⁹² Public Law 3-17 increased the maximum allowance to \$13,000 in 1985, which is approximately \$33,703.47 per year adjusted for inflation.⁹³ This amount is half of the Allowance. An amount of no more than \$2,500 per month seems reasonable, especially considering the travel and lodging expenses of legislators from Tinian and Rota.

There is a strong counter argument against using contemporary construction in this case: The Legislature repeal of the statutory allowance was within seven years and the subsequent Constitutional Convention enacted a budget ceiling. Notably, this counter argument does not support the current allowance, but rather supports a figure of less than \$31,000.

E. The Department of Finance Is Forbidden from Disbursing Funds for Private and Political Activity.

The Constitution forbids the Department of Finance from disbursing funds to legislators for private or political expenditures and requires the Department of Finance to demand full documentation justifying a legislator’s expenditures. Article X, Section 8 provides:

The Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes.⁹⁴

Article X, Section 8 checks the powers of the other branches of government. By requiring reasonable documentation, the Department of Finance guarantees compliance with Article II, Section 16(f).

⁸⁹ *Johnson*, 24 A.2d at 308 (quoting *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 290 (1827)).

⁹⁰ *Id.*

⁹¹ *See In re Petition of Comm’n on the Governorship of Cal.*, 603 P.2d at 1357 (Cal. 1979); *Rancho Homes, Inc.*, 256 P.2d at 308; *Gass*, 181 S.W. at 1021. *See also* 2A Norman Singer, *Statutes and Statutory Construction* § 46:01 (2000).

⁹² Bureau of Labor Statistics CIP Calculator, *supra* note 11.

⁹³ *Id.*

⁹⁴ NMI Const. art. X, § 8.

The Department of Finance must refuse to issue payment to Representatives in two situations. The Department must refuse to issue payment to Representatives who do not provide reasonable documentation. The Department of Finance must also refuse to issue payment where the documentation demonstrates that a Representative's expenditure was for a personal or political purpose.

V. CONCLUSION AND RECOMMENDATIONS

House Rule of Procedure XIII, Section 10 appears to authorize payments that would violate the Constitution. Based on our review, the allowance of \$60,000.00 per year (\$5,000.00 per month) would be considered unreasonable under the Constitution. As explained, an allowance of about \$30,000.00 would be reasonable under a contemporary analysis which takes into account adjustments for inflation. Public Law 1-3 set the initial legislative maximum allowance at \$8,000.00 which would be about \$31,352.06 in today's dollars. Public Law 3-17 increased the allowance to \$13,000.00, approximately \$33,703.47 per year adjusted for inflation. The present maximum allowance of \$60,000.00 is double what the initial allowance would be today and still significantly higher than the second adjustment under PL 3-17. Moreover, the fact that the Fourth Legislature repealed the authorization for allowances within seven years and a constitutional ceiling was imposed on the Legislature with the ratification of Second Constitutional Amendment No. 9 strongly suggests the Legislature does not have a free hand in defining "reasonableness" well beyond the constitutional realm of what has been contemplated and approved. Doubling the allowance to \$60,000.00 from the initial allowance adjusted by inflation of \$31,352.06 appears to challenge any reasonableness standard.

Another constitutional concern is to guard against the use of the legislative allowance for any personal, private or political activities or expenses. As stated, each member of the House of Representatives must provide "full and reasonable" documentation to the Department of Finance to support requests for payment from each member's legislative allowance. Such documentation must prove that the payment will be used for a public purpose and not for any personal or political activities or expenditures. The Constitution compels the Secretary of Finance to ensure that no disbursement of public funds is made which would contravene the public purpose requirement under Article X, Section 8 of the Constitution. Only when the House of Representative members present the requisite documentation proving the public purpose of the disbursement from their respective legislative allowance, may the Department of Finance issue any payment.



EDWARD MANIBUSAN
Attorney General