

BOARD OF TRUSTEES
Special Board Meeting
Friday, March 18, 2005, 1:00 p.m.
Retirement Fund Conference Room

MINUTES

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum, the Retirement Fund Board of Trustees Special Meeting was called to order at 1:00 p.m. Friday, March 18, 2005, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

Joe T. San Agustin, Chairman
Wilfred P. Leon Guerrero, Vice-Chairman
James J. Taylor, Secretary
Katherine T.E. Taitano, Treasurer
Anthony C. Blaz, Trustee
Gerard A. Cruz, Trustee
George A. Santos, Trustee

Staff Present:

Wilfred G. Aflague, Director
Paula M. Blas, Deputy Director
Pete Tajalle, Controller
Ken Dunstan, Acting Benefit Program Administrator
Jackie Blas, Recording Secretary

Public Present:

Dr. Jose Cruz, Chairman, Guam Education Policy Board
Governor Felix Camacho
Former Senator George Bamba, Governor's Senior Advisor
Shannon Taitano, Governor's Legal Counsel
Ken Wetmore, KUAM
Former Senator Franklin Gutierrez

Chairman San Agustin reported that today's Special Board Meeting is to address, in Executive Session, legal matters pertaining to threatened litigation regarding procurement.

Chairman San Agustin informed the Board of Trustees that there is correspondence under Item II of the Agenda from Attorney General Douglas Moylan requesting information on GMHA and DOE retirement payments. There is also correspondence with Dr. Jose Cruz from Attorney General Douglas Moylan regarding delinquent retirement payments and compact impact funding. Chairman San Agustin stated that this is for informational purposes only.

Deputy Director Paula Blas stated that in order for the Board of Trustees to go into Executive Session, the Board needs to affirm that that is what the Board wants to do. Deputy Director Blas stated that Legal Counsel has to be present at the Board meeting. In this situation it would be the AG's office. Also a certified court reporter was necessary. Deputy Director Blas stated that the Attorney General's office won't be at today's meeting. Deputy Director Blas stated that the Attorney General's Office will be faxing a written opinion for the Board of Trustees to consider based on the situation at hand. Deputy Director Blas stated that the AG's office does not feel that the Board should go into Executive Session.

Chairman San Agustin asked if the Board could discuss Item II of the agenda under Correspondence because this Board Meeting was called specifically for the Executive Session. Vice-Chairman Wilfred Leon Guerrero stated that the Chairman of the Education Policy Board is present at today's meeting and asked if it would be proper to have a working session. Trustee Anthony Blaz mentioned that Governor Camacho will be present at today's meeting and asked if the Board would agree to wait for the Governor. Treasurer Katherine Taitano stated that she wanted to get clarification. She stated that today's meeting was called to hold an Executive Session but that the Board could talk about anything that's on the meeting agenda. Deputy Director Blas stated that Item II, Section A and B of the agenda is under the open meeting law.

Vice-Chairman Leon Guerrero asked Chairman San Agustin if it is appropriate to declare a working session. Deputy Director Blas replied, "no." Deputy Director Blas stated that it would be under open discussion. Secretary James Taylor asked why is the Governor honoring the Board with his presence. Chairman San Agustin stated that the Governor is welcomed to attend the meeting. Chairman San Agustin stated that the Governor's presence is regarding Item IV under Open Discussion of the meeting agenda.

Vice-Chairman Leon Guerrero asked if it would be appropriate for the Board of Trustees to say that the Board won't have an Executive Session. Chairman San Agustin stated that based on the AG's opinion, there can not be an Executive Session. Deputy Director Blas stated that the intent was to have an Executive Session. Vice-Chairman Leon Guerrero stated that the Fund did advertise that the Board was holding an Executive Session. Deputy Director Blas stated that the advertisement was for a Special Board Meeting with an Executive Session. Vice-Chairman Leon Guerrero asked if this Special Meeting not exclusively for the Executive Session. Deputy Director Blas stated that the way it was advertised was that there was going to be a Special Board Meeting and an Executive Session, so it is proper.

Director Wilfred Aflague stated that there is an Attorney General's opinion which has not been signed by the Attorney General. Director Aflague stated that he met with Deputy Attorney General Debra Rivera and they went over in chronological order the correspondence related to the RFP for the Third Party Administrator. Director Aflague stated that he pointed out some points of concern and possible causes of action. Director Aflague stated that Deputy AG Rivera had asked Director Aflague to reiterate to the Board that the AG's opinion is forthcoming and their recommendation, after examining all the facts and data, is to cancel the Request for Proposal and for the Fund to reissue another RFP. Trustee Gerard Cruz

asked why is there an opinion without a hearing. Chairman San Agustin stated that that is the reason why there is a need for the Executive Session, which is to discuss how to deal with the threatened litigation regarding the protest. Chairman San Agustin asked whether this is a Board prerogative or is it a procurement problem. Trustee Cruz stated that the Board needs the opportunity to hear the facts. Director Aflague stated that the Attorney General stated that there's no need to have an Executive Session. Secretary Taylor stated that dealing with this issue is a prerogative of the Board. Secretary James Taylor stated that he is concerned as a member of the Evaluation Committee, that he has not read a single document that has been gathered.

Chairman San Agustin asked which direction the Board should go. Secretary Taylor suggested waiting for the Attorney General's opinion. Secretary Taylor stated that the Committee has the right to review the documents gathered. Chairman San Agustin asked Vice-Chairman Leon Guerrero if he wants to wait for the Attorney General's opinion or send it back to the Investment Committee. Treasurer Katherine Taitano also suggested suspending the matter until the Retirement Fund gets the AG's opinion. Trustee Cruz stated that he does not want the AG's opinion to have a final decision. Trustee Cruz stated that since there was a protest made, there needs to be a hearing and both sides need to come forward. Chairman San Agustin asked who will conduct the hearing. Secretary Taylor stated that the people that could conduct the hearing is the Procurement Board which does not exist. Secretary Taylor stated that this is the agency itself that must deal with it.

Trustee Cruz stated that his recommendation is to have a hearing to present the facts. Vice-Chairman Leon Guerrero suggested suspending action until the Fund receives the AG's opinion. Trustee Blaz agreed with the suggestion to suspend any action until the Fund receives the opinion from the Attorney General. Chairman San Agustin stated to suspend any action regarding the protest until the Fund receives the written opinion from the Attorney General at which time the Fund will come back to the Board for action.

Trustee Blaz, seconded by Trustee Cruz, moved to suspend any further action dealing with the protest until the Retirement Fund receives the written opinion from the Attorney General at which time the matter will then be brought back to the Board for action. Without objection, the motion passed.

Trustee Blaz, seconded by Trustee Santos, moved for a recess and then for the Board to proceed with Item IV of the Agenda. Without objection, the motion passed.

RECESS: 1:17 p.m.

RECONVENED: 1:32 p.m.

II. CORRESPONDENCE

A. March 16, 2005 Letter to Director Wilfred Aflague from Attorney General of Guam Douglas Moylan Regarding Request for Information for GMHA and DOE Retirement Payments

Chairman San Agustin informed the Board of Trustees that there is a correspondence from Attorney General Douglas Moylan requesting information on GMHA and DOE retirement payments. Chairman San Agustin stated that this is for informational purposes only.

B. March 17, 2005 Letter to Dr. Jose Cruz, Chairman, Guam Education Policy Board, from Attorney General of Guam Douglas Moylan Regarding Delinquent Retirement Payments; Compact Impact Funding – Municipal Lease Agreement

Chairman San Agustin informed the Board of Trustees that there is a copy of a correspondence addressed to Dr. Jose Cruz, Chairman of the Education Policy Board, from Attorney General Douglas Moylan regarding delinquent retirement payments and compact impact funding. Chairman San Agustin stated this is for informational purposes only.

III. EXECUTIVE SESSION

A. Consider Legal Matters Pertaining to Threatened Litigation Regarding Procurement

The Board of Trustees did not go into Executive Session due to the Attorney General's opinion.

IV. OPEN DISCUSSION / GENERAL PUBLIC INPUT

Chairman San Agustin acknowledged the presence of Governor Felix Camacho, Former Senator George Bamba, Ms. Shannon Taitano and Dr. Jose Cruz.

Chairman San Agustin stated that the Board and management is working with the Governor on proposed legislation. Governor Camacho thanked the Board of Trustees for allowing him to come before the Board regarding the delinquent contributions of DOE and GMHA.

Governor Camacho stated that DOE employees are threatening class action lawsuits and GMHA has been seriously delinquent with their remittances. Governor Camacho stated that he attempted to go into the bond market to borrow money. He stated this was authorized and passed into law. Governor Camacho stated that he was able to borrow up to \$418 Million. However, Governor Camacho stated the Attorney General opposed this action claiming that the administration is over the maximum on the debt ceiling. This matter has been brought to court. Governor Camacho stated that the Superior Court of Guam voted in favor of the administration allowing the administration to go ahead and borrow. Governor Camacho stated that the Attorney General appealed to the Ninth Circuit Court of Appeals. Governor Camacho stated that with the unified Court of Guam, Guam now is able to hear its own appeals. They go directly to the Supreme Court by passing the Ninth Circuit. Governor Camacho stated that it has always been the desire of his administration to pay the debt to the Retirement Fund. Governor Camacho stated that he does not have the money to pay the debt and that he needs to borrow money. Governor Camacho stated that the Attorney General will conduct investigate government officials to find out why the Retirement Fund has not been paid. Still it is the Attorney General who prevents the Governor from borrowing money needed to pay off the debts that the AG is complaining about.

Governor Camacho mentioned that Dr. Jose Cruz, Chairman of the Education Policy Board, is also present at today's meeting and that they believe that there are ways to address this issue. Governor Camacho stated that his administration presented the solutions to the Board to handle both DOE and GMHA along with other plans that they would like to pursue. Governor Camacho stated that if the Fund could allow the respective agencies to pay the interest and penalty. Then the balance will become an official debt that is acknowledged by the Fund and the government. Governor Camacho stated that DOE has twenty (20) employees who can retire and GMHA has thirty (30) or more employees that can retire. Governor Camacho stated that he has ordered the Civil Service Commission to work on the compensation issue which will free up some of the monies. Governor Camacho stated that he is present at today's meeting respectfully asking for the Board's favorable consideration on his administration's proposals. Governor Camacho stated that he continues to seek ways to fund the full payment. Governor Camacho stated that the Attorney General has blocked every initiative that his administration has put forward to help the government.

Chairman San Agustin stated that the delinquencies occurred before Governor Camacho came into office, and to date, the agencies are making every effort to stay current with their payments. Chairman San Agustin stated that the Governor is doing well in keeping the agencies current. Chairman San Agustin stated that the Board and management have been working with both the Governor's staff and Speaker Forbes on the proposed legislation. Chairman San Agustin stated that some members of the Board raised questions which have been addressed to Ms. Shannon Taitano.

Secretary Taylor stated that the current bill does not fully address some of the issues that need to be addressed and that there are reasonable ways to address them. Ms. Taitano has already come up with some suggestions. Trustee Blaz stated that the proposed legislation is a significant step to address the issues to have the employees retire. Chairman San Agustin asked Vice-Chairman Leon Guerrero if he is concerned about the court order. Vice-Chairman Leon Guerrero asked if Ms. Shannon Taitano is an attorney. Chairman San Agustin stated that Ms. Taitano is the Governor's Legal Counsel. Vice-Chairman Leon Guerrero stated that he agrees with the Governor and would like to get this issue resolved. Vice-Chairman Leon Guerrero asked the Governor's Legal Counsel which would prevail if there is a conflict between law and a court order. The Governor's Legal Counsel stated that if the legislation is subsequent to the court order then the legislation takes priority as long as it does not violate the fundamental principles that the court ordered and is not unconstitutional or inorganic. Vice-Chairman Leon Guerrero asked what happens if it is not consistent. The Governor's Legal Counsel stated that it could be susceptible to a challenge. Chairman San Agustin asked if the Fund could go to court and get a consent decree stipulating that this is not in violation of the court order.

Trustee Cruz stated that this should be forwarded to the Fund's Legal Counsel and the Legal Counsel should issue an opinion. Deputy Director Blas stated that it is being reviewed by the Fund's Legal Counsel. Chairman San Agustin stated that the court order states that the Fund should challenge any legislation that is deemed detrimental to the Fund. Vice-Chairman Leon Guerrero stated that he wanted to be assured that he is protected. Trustee Blaz stated that this legislation is consistent with the court order. Trustee Blaz stated that the Governor recognizes that he wants to be able to retire people but that he can not allow it irresponsibly. Treasurer Taitano asked if this was discussed at the previous Board meeting. Deputy Director Blas stated that the administration is entertaining this legislation. Treasurer Taitano noted that the Judge had previously restated the need to follow the court decree. Trustee Blaz stated that the legislation acknowledges interest and penalties as part of the principal debt. Chairman San Agustin

stated that there are two court orders outstanding. Former Senator George Bamba stated that the key language is whether the legislation is detrimental to the Fund. Former Senator Bamba stated that the legislation stands on its own merits and that it is not detrimental to the Fund. Trustee Blaz stated that the Fund's Legal Counsel has previously given the Board advice on matters similar to this. Trustee Blaz stated that the question is, is it detrimental to the Fund. Trustee Blaz stated that he thinks it is not detrimental to the Fund. Chairman San Agustin stated that if the Fund's Legal Counsel determines that this is not going to be detrimental and is not in violation of the court order, then the Fund should proceed on that basis.

Chairman San Agustin stated that there are three conditions in the legislation: 1) interest be paid; 2) principal be paid; and 3) agencies must be current with their payments.

Governor Camacho stated that the Attorney General has brought up the fact that compact impact funds should not be used to build schools and he would like to clarify that the use of the compact impact funds is at the Governor's discretion with the approval of the Department of Interior. Governor Camacho stated that the actual use of those funds are restricted and they cannot be used to pay down debts. Governor Camacho stated that how the money is spent requires approval from the Department of the Interior.

Vice-Chairman Leon Guerrero inquired about the last section of the proposed legislation. Chairman San Agustin stated that the last section is existing law. Chairman San Agustin asked how the Fund would enforce collection. Deputy Director Blas stated that this particular provision of the statute is in existence in the G.C.A. Treasurer Taitano stated that it is already in the law. Vice-Chairman Leon Guerrero stated that he would like a stronger provision stating that people will be personally liable for diverting funds. Vice-Chairman Leon Guerrero stated that the law is defective and that the proposed legislation is supposed to correct it. Vice-Chairman Leon Guerrero does not see it correcting it the way the Board would like it corrected. Governor Camacho stated that it is the fiduciary responsibility of every administrator to make the payments to the Retirement Fund. Governor Camacho stated that the debt is not from his administration. Governor Camacho stated that his administration continues to subsidize the hospital. Governor Camacho stated that the law is already in place. Vice-Chairman Leon Guerrero stated that payments are being made under Governor Camacho's administration. Governor Camacho stated that the Attorney General's attitude is extremely damaging.

Governor Camacho stated that this proposed law is simply a means to pay people who are ready to retire. Secretary Taylor stated that there were a lot of subsistent problems that were left to Governor Camacho's administration and the Board needs to adopt policies that begin to solve the previous problems. Trustee Blaz stated that Governor Camacho has made more than a good faith effort. Secretary Taylor stated that the Fund needs to find a long term solution to the problem of the DOE and GMHA payments. Governor Camacho stated that the Board is considering an interim measure. Governor Camacho stated that the government is not going to be able to find a long term solution right now. Governor Camacho stated that the long term solution is to allow this government go out and borrow money to pay the debt off but the Attorney General has blocked it and continues to appeal the decisions made by the Superior and Supreme Court. Secretary Taylor stated that he recalls that the original list of things of what was going to be done with the bond money did not include paying the Retirement Fund off. Trustee Blaz stated that that was one of the Governor's priorities. Governor Camacho stated that Senator Lou Leon Guerrero argued against allowing payment for DOE and GMHA because they are autonomous agencies. Governor Camacho stated that the Board needs to allow his administration a method to at least pay the interest to get people to retire and then work on a long term solution of borrowing the money to pay the debt.

Governor Camacho stated that he looks at the legislation as an interim measure. Secretary Taylor stated that the Board is looking at a Fund that is going out of existence because too much money is being taken out of it. Secretary Taylor stated that the Fund needs to find a long term solution. Vice-Chairman Leon Guerrero asked what happens after December 2005. Chairman San Agustin stated that the Fund will be getting something now. Vice-Chairman Leon Guerrero stated that once the Fund receives payment, the auditor won't ask the Fund to write it off. Governor Camacho stated that he will pay off the debt and that will be done before the end of his term. Governor Camacho stated that the Board of Trustees may decide continue the status quo and receive nothing or allow the administration to pay the interest and penalty. Vice-Chairman Leon Guerrero stated that this would relieve the pressure that is placed on this Board to write-off the loan.

Governor Camacho thanked the Board of Trustees for allowing him the opportunity to appear before the Board.

RECESS: 2:06 p.m.

RECONVENED: 2:09 p.m.

Trustee Blaz, seconded by Treasurer Taitano, moved to approve the proposed legislation as amended by Secretary Taylor and as further amended by Vice-Chairman Leon Guerrero, and in conformance with the Governor's Legal Counsel, and in addition to getting the Fund's Legal Counsel's opinion regarding the court order. Without objection, the motion passed.

Vice-Chairman Leon Guerrero suggested that the Board of Trustees express their appreciation by drafting a letter to Governor Camacho thanking him for meeting with the Board and for his effort in trying to resolve this issue. Chairman San Agustin stated that he will direct Director Aflague to draft a letter to the Governor.

V. ANNOUNCEMENTS

Director Aflague mentioned that management and staff are starting to meet with a representative from the local U.S. Department of Labor. Director Aflague stated that the U.S. Department of Labor can not do anything on the government contributions. However, when an employee's contribution is withheld the U.S. Department of Labor could impose sanction on the agency head. Vice-Chairman Leon Guerrero asked when the investigation will commence. Deputy Director Blas stated that Mr. Candoleta is presently working at GMHA. Director Aflague stated that he will report to the Board at the next meeting. Deputy Director Blas stated that the U.S. Department of Labor's statute of limitation is two years. Deputy Director Blas stated that the U.S. Department of Labor's jurisdiction is relative to the employees' contributions.

Chairman San Agustin mentioned that GMHA nurses have hired Attorney Cesar Cabot to file a lawsuit. Chairman San Agustin stated that GFT is also finally moving on this. Director Aflague stated that Mr. Robert Koss from GFT was asked by Speaker Mark Forbes to hold off on any action until this proposed legislation goes through.

VI. ADJOURNMENT

There being no further business before the Board of Trustees, on motion of Trustee Anthony Blaz, seconded by Trustee Gerard Cruz, and without objection, the Special Board Meeting was adjourned at 2:16 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of March 18, 2005 Special Board Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on May 13, 2005.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas