

BOARD OF TRUSTEES
Emergency Board Meeting
Wednesday, April 12, 2006, 12:00 Noon
Retirement Fund Conference Room

MINUTES

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Emergency Meeting was called to order at 12:10 p.m. Wednesday, April 12, 2006, 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
George A. Santos, Trustee

Board of Trustees Absent:

Gerard A. Cruz, Trustee (Off-Island)

Staff Present:

Paula M. Blas, Acting Director
Jackie Blas, Recording Secretary

Legal Counsel Present:

David Dooley, Attorney of Record, Case No. SP206-93

Chairman San Agustin stated that the purpose of the Emergency Board Meeting is to address the Candelaria Rios vs. Government of Guam Retirement Fund COLA issue.

II. OLD BUSINESS

A. Candelaria Rios vs. Government of Guam Retirement Fund COLA Issue

Chairman San Agustin stated that Attorney David Dooley is the attorney of record for this case for the past thirteen years. Chairman San Agustin stated that when this case was filed, the Senators at that time stated that they would provide for the COLA with the understanding that the government was going to seek dismissal of the case having satisfied the issue of the COLA. Chairman San Agustin stated that the government did not follow through with the dismissal. Chairman San Agustin stated that Attorney Michael Phillips did not make it an issue until the one year that the COLA was not paid. Chairman San Agustin asked why Attorney Phillips waited so long. Attorney Dooley stated that the bill was passed in 1988 and Attorney Phillips filed suit in 1993. Attorney Dooley stated that COLA was never paid.

Chairman San Agustin stated that he is concerned that the Board at that time did not act under the statute of limitation. Chairman San Agustin stated that the issue is to what extent the Fund maybe liable. Attorney Dooley stated that the Fund does not pay anything. Chairman San Agustin asked whether the Fund would share liability. Attorney Dooley replied, "no." Chairman San Agustin asked whether the Board is liable for any damages and any costs of the attorney's fees. Attorney Dooley stated that the attorney's fees would come from the money recovered. Attorney Dooley stated that there is a 10% contingency fee. Attorney Dooley stated that of the money taken from the General Fund and given to the Retirement Fund to disburse, Attorney Phillips will take 10% and the remaining 90% would go out to the retirees. Acting Director Paula Blas stated that Attorney Phillips decided not to pursue the interest portion. Attorney Dooley stated that there is no right to interest against the government. Chairman San Agustin wanted to make it clear that the Fund would not be liable to pay for any of the attorney's fees or any costs related to this case. Attorney Dooley stated that the Fund might have to pay for some of the costs, such as the filing fee and deposition fee. Attorney Dooley stated that the proposed response specifies that Attorney Phillips would need to provide proof of the costs. Chairman San Agustin asked if this will be from the General Fund or is it going to be shared with the Retirement Fund. Attorney Dooley stated that the Retirement Fund as a defendant might share the costs. Chairman San Agustin asked whether the Fund would be paying Attorney Dooley directly or would it be part of the award. Attorney Dooley stated that the Fund has been paying him for the past thirteen years. Acting Director Blas stated that there were several years where no fees were paid.

Vice-Chairman Wilfred Leon Guerrero asked what the judgment was. Attorney Dooley stated that there is no judgment yet. Attorney Dooley stated that the Judge has made a ruling but has not issued a Judgment. Attorney Dooley stated that the Judge had announced from the bench that he was going to order the Retirement Fund to administer the program. Vice-Chairman Leon Guerrero asked where the notion came from that the COLA was going to be paid from the General Fund. Acting Director Blas stated that it is in the statute. Chairman San Agustin stated that Judge Arthur Barcinas did make a ruling. Acting Director Blas stated that it is the Decision and Order.

Secretary James Taylor pointed out that there are three documents dated April 7, 2006, April 10, 2006 and April 11, 2006. He asked for an explanation of the differences in the documents. Acting Director Blas stated that the April 11 document included some minor changes from the April 10, 2006 document. Attorney Dooley stated that he revised the part about "interest" due to the interview with Attorney Phillips on KUAM. Attorney Phillips said that he did not want to claim interest. Attorney Dooley also made a change stating that the "source of payments" shall be paid by the General Fund. Chairman San Agustin reiterated that the Fund might be sharing the payment of minimal costs. Attorney Dooley stated that it is up to the court to divide the costs. Vice-Chairman Leon Guerrero stated that he thought that Judge Barcinas indicated that the COLA would be paid. Attorney Dooley stated that Judge Barcinas has not issued a judgment. Vice-Chairman Leon Guerrero asked whether the law states that the money is supposed to come from the General Fund. Attorney Dooley replied, "yes." Vice-Chairman Leon Guerrero stated that Attorney Dooley was hired by the Fund and asked whether the Fund is now looking at appealing the case. Attorney Dooley stated that he recommends against it. Vice-Chairman Leon Guerrero stated that he has heard from the media that the Attorney General is going to appeal the case. Attorney Dooley stated that the Attorney General might appeal the case. Vice-Chairman Leon Guerrero stated that he has heard the Governor saying that if you lose the case you should pay it. Chairman San Agustin asked what is the Board's position. Chairman San Agustin stated that the Fund is not going to appeal the case but would like to seek clarification. Attorney Dooley stated that he is clarifying the order.

Secretary Taylor asked whether the Fund could charge Attorney Phillips for correcting his error. Secretary Taylor asked whether we could reduce any fees that he wants to charge the Fund. Attorney Dooley stated that he has suggested to the Court to pay Attorney Phillips on an hourly basis. Secretary Taylor asked why the Fund's current Legal Counsel is not involved with this case. Acting Director Blas stated that Attorney Dooley is attorney of record for this particular case. Chairman San Agustin reiterated that the Fund is not appealing the decision but the Fund is seeking clarification on Attorney Phillips' proposed writ. Attorney Dooley stated that Attorney Phillips circulated a draft and the Fund made comments to clarify issues. Chairman San Agustin asked whether this could be construed

as an appeal. Attorney Dooley replied, "no." Attorney Dooley stated that you couldn't file an appeal until a judgment is entered.

Acting Director Blas stated that she would like to clarify whether there was any COLA paid during the periods in question, and whether that is going to be offset against any proceeds going to the individual retirees. Attorney Dooley stated that if there were any proceeds paid under this law, it should be offset. Acting Director Blas stated that it is not under this law. Attorney Dooley stated that the other law is totally separate. Acting Director Blas stated that there was COLA paid under a different law. Acting Director Blas stated that this law covers the COLA that should have been calculated from 1988 to 1995. Acting Director Blas stated that during the years from 1989 through 1995, separate appropriations were made to disburse COLA. Acting Director Blas stated that what Attorney Dooley is saying is that this cannot be related to this particular judgment. Attorney Dooley stated that when the appropriations were made they should have said that this law was repealed. Secretary Taylor asked whether it is possible for the Legislature to repeal the law. Attorney Dooley replied, "no." Vice-Chairman Leon Guerrero asked whether retirees and survivors would get COLA twice. Acting Director Blas replied, "yes." Chairman San Agustin asked whether they would get a second COLA. Attorney Dooley replied "yes." Attorney Dooley stated that it is a supplemental type COLA. Chairman San Agustin asked whether the COLA could be offset.

Secretary Taylor asked Attorney Dooley if the Legislature couldn't go back and say it was an error. Attorney Dooley replied, "no." Attorney Dooley stated that the Legislature couldn't take away something that they have already given. Attorney Dooley stated that the retirees and survivors were entitled to this payment under the law in existence at the time and they filed suit to enforce the law. Chairman San Agustin asked why the government couldn't argue that payment was partially made by a separate appropriation. Attorney Dooley stated that there are two separate laws. Acting Director Blas stated that it was a one-time lump sum payment. Attorney Dooley stated that the old law would be in effect at all times. Vice-Chairman Leon Guerrero asked what Attorney Phillips is proposing. Attorney Dooley stated that Attorney Phillips is proposing that the Board be mandated to implement the law. Vice-Chairman Leon Guerrero asked whether this contradicts Judge Lamorena's order. Acting Director Blas stated that the Retirement Fund is not paying this. Vice-Chairman Leon Guerrero asked whether the check is from the Fund or the Department of Administration (DOA). Attorney Dooley stated that it is from DOA. Acting Director Blas stated that the Fund only does the calculation. Vice-Chairman Leon Guerrero asked whether that is in compliance with Judge Lamorena's order. Acting Director Blas stated that the Fund is not paying COLA benefits. Acting Director Blas stated that the Retirement Fund is mandated to provide the necessary data. Acting Director Blas stated that it used to be an appropriation directly to the Retirement Fund but now it is an appropriation directly from the General Fund. Vice-Chairman Leon Guerrero asked what is needed from the Board. Acting Director Blas stated that the Board needs to approve the filing of the proposed response. Chairman San Agustin stated for the record that the Board is fully knowledgeable in discussing the fiduciary liability of the Fund. Chairman San Agustin reiterated that Attorney Dooley stated that double COLA is not an issue.

Trustee Anthony Blaz, seconded by Treasurer Katherine Taitano, moved to approve to proceed with filing the Government of Guam Retirement Fund Defendant's Response to Petitioners' Proposed Order Directing Issuance of Peremptory Writ of Mandate. Without objection, the motion passed unanimously.

Vice-Chairman Leon Guerrero requested for Attorney Dooley to go through the clarifications made on Attorney Phillips' proposed order. Secretary Taylor asked who is Mrs. Candelaria Rios. Chairman San Agustin stated that she is a retiree and a former Deputy Director of the Retirement Fund. Secretary Taylor asked whether there is any relationship to John Rios. Attorney Dooley replied, "mother."

Attorney Dooley stated that Attorney Phillips' proposed order was submitted to Court but that the "damages" provision was not defined in the proposed order. Attorney Dooley stated that there are no damages under the COLA payments. Attorney Dooley stated that there was no "pain and suffering" or other damages. The "source of payments" shall be from the General Fund and not the Retirement Fund. Attorney Dooley stated that the "costs" is not known yet but that Attorney Phillips needs to go through a procedure to prove his costs. Secretary Taylor asked

what costs. Attorney Dooley replied, "Court costs." Attorney Dooley stated the "time frame" was clarified for five (5) years instead of six (6) years. The "class counsel fees" is not just ten percent (10%) contingent fee. Attorney Dooley stated that Attorney Phillips must show the court the number of hours spent.

Secretary Taylor asked why the case has taken thirteen years. Attorney Dooley stated that Judge Janet Weeks was handling the case but was appointed to the Supreme Court. Other judges after that had a conflict of interest. Attorney Dooley stated that no "interest" would be awarded. Secretary Taylor asked for an estimate of the amount that will be coming out of the General Fund. Acting Director Blas stated that she is unable make a calculation at this time. Acting Director Blas stated that she just received the Consumer Price Index (CPI) from the Bureau of Statistics and Planning. Acting Director Blas stated that she would be looking at statistics from 1988 to 1995. Vice-Chairman Leon Guerrero asked what is the rate of inflation. Acting Director Blas stated that the rate of inflation varies from year to year - 8.7% in 1988 and 13% in 1989. Acting Director Blas stated that she is looking at about 4,000 retirees and survivors. Acting Director Blas asked what happens if there are no survivors. Acting Director asked whether it goes to their beneficiaries as indicated. Attorney Dooley stated that it would be disbursed in probate. Attorney Dooley stated that he would file the proposed response today.

III. CORRESPONDENCE

None

IV. NEW BUSINESS

None

V. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

VI. ANNOUNCEMENTS

None

VII. ADJOURNMENT

There being no further business before the Board of Trustees, on motion of Trustee Anthony Blaz, seconded by Treasurer Katherine Taitano, and without objection, the Emergency Board Meeting was adjourned at 12:50 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of April 12, 2006 Emergency Board Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on July 14, 2006.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas