

BOARD OF TRUSTEES
Special Board Meeting
Tuesday, December 27, 2005, 9:00 A.M.
Retirement Fund Conference Room

MINUTES

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Special Meeting was called to order at 9:14 a.m. Tuesday, December 27, 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
Gerard A. Cruz, Trustee
George A. Santos, Trustee

Board of Trustees Absent:

Anthony C. Blaz, Trustee

Staff Present:

Paula M. Blas, Acting Director
Pete Tajalle, Controller
Vince Camacho, Great West Retirement Services
Jackie Blas, Recording Secretary

Public Present:

Oliver Wood, Retiree

II. CORRESPONDENCE

A. December 21, 2005 Letter from Don Parkinson Regarding Proposed Legislative COLA Raid on the Retirement Fund / Public Law 28-94

Chairman San Agustin stated that he received a letter from Mr. Don Parkinson challenging the proposed legislation to fund the COLA payment. Chairman San Agustin stated that Mr. Parkinson's letter stated that the money was earmarked to pay the unfunded liability to the Retirement Fund of the GTA employees, which was negotiated as part of the contractual agreement to sell GTA. Chairman San Agustin stated that the question is whether the funds that are in escrow is an asset of the Retirement Fund or could it be changed by the parties involved. Chairman San Agustin stated that the Legislature was advised that they can modify the sales agreement. Chairman San Agustin stated that the agreement was modified that the \$11.9 Million that was originally allocated to pay for the unfunded liability is still subject to legislative direction.

Chairman San Agustin stated that the Legislature put \$7.7 Million of the \$11.9 Million to fund the COLA payment; and the \$4.2 Million will go to the unfunded liability and the balance should be coming from the sale of the GTA stocks. Chairman San Agustin stated that GTA has outstanding stocks in the amount of \$14 Million which would be redeemed no later than May 10, 2006. Chairman San Agustin stated that the Fund should be getting \$4.2 Million by today, December 27, 2005, or by tomorrow, December 28, 2005.

Chairman San Agustin stated that the issue from Mr. Parkinson is that the Retirement Fund is a third party beneficiary to the agreement to sell GTA and it would be violating the Impairment of Contracts clause of the Organic Act. Chairman San Agustin stated that Mr. Parkinson is saying that the funds belong to the Retirement Fund and that by legislation, the fund is being diverted to pay for the COLA.

Vice-Chairman Wilfred Leon Guerrero asked about the \$11.9 Million. Chairman San Agustin stated that \$11.9 Million unfunded liability from GTA retirees is based on the current actuarial study. Chairman San Agustin stated that this is the figure that former Retirement Fund Director Wilfred Aflague had sent to GTA. Secretary James Taylor stated that he recalls a recent newspaper article putting that amount over \$20 Million. Secretary Taylor asked what the amount is. Acting Director Paula Blas stated \$28.1 Million. Chairman San Agustin stated that the balance due as of December 14, 2005 is \$28.1 Million. Chairman San Agustin stated that the amount comes out from the \$1.2 Billion unfunded liability. Vice-Chairman Leon Guerrero asked why are they anticipating that there will be some money left over after the COLA and the \$4.2 are paid out. Chairman San Agustin stated that there are two sources - one is from the sale of GTA proceeds and the other is from the sale of GTA stocks. Vice-Chairman Leon Guerrero reiterated that they are anticipating that there is going to be some money left over after payment of the \$7.7 Million and the \$4.2 Million. Secretary Taylor asked if the Legislature has acknowledged that they carry the liability. Chairman San Agustin stated that the General Fund has acknowledged the unfunded liability because they are carrying it in their books. Secretary Taylor stated that he would like to see the audited financial statement. Chairman San Agustin stated that this needs to be referred to Legal Counsel Joanne Grimes. Chairman San Agustin stated that Legal Counsel Grimes has expressed some doubts on whether the Fund owns the unfunded liability in the sales agreement and also did the Fund suffer damages because the Fund did not receive the money.

Secretary Taylor read a phrase from Section 3 on Page 3 of Public Law 28-94: "The GTA Interim Transition Committee is hereby divested of any authority over said redemption proceeds, and shall execute all documents necessary to expedite the actions mandated by this Act. Expenditure of any amount of the redemption proceeds, or of the interest or earnings on the investments made pursuant to this Section, shall be only by legislative appropriation subsequent to this Act." Secretary Taylor stated that this says they got no claim on it. Chairman San Agustin stated that this law does not go by allotment or appropriation. Chairman San Agustin further stated that the balance of \$7.7 Million will be automatically made to the Fund which is not subject to legislative appropriation. Secretary Taylor stated that any amount received from the sale of stocks is subject to legislative appropriation. Chairman San Agustin stated that it is after the Fund gets its share. Acting Director Blas read from Section 3 on Page 3 of Public Law 28-94: "Seven Million Seven Hundred Thousand dollars (\$7,700,000.00) of the cash received as a result of the redemption of Rural Telephone Bank stock shall first be used to pay the unfunded liability of GTA's Defined Benefit Plan as indicated in Government of Guam Retirement Fund's letter to GTA Interim Transition Coordinating Committee, dated May 11, 2005, and shall be remitted immediately and directly to the Government of Guam Retirement Fund."

Vice-Chairman Leon Guerrero asked what is the net gain. Chairman San Agustin replied, "\$11.9 Million." Vice-Chairman Leon Guerrero asked if the Privatization Proceeds Fund going to be phased out. Acting Director Blas replied, "yes." Vice-Chairman Leon Guerrero asked why does Section 6 on Page 4 of Public Law 28-94 state: "If this entire appropriation is not used for the COLA, the balance shall revert to the GTA Privatization Proceeds Fund." Acting Director Blas stated that the \$7.7 Million amount was based around 7,000 retirees. Vice-Chairman Leon Guerrero stated that you get the impression that there is going to be money left over. Chairman San Agustin stated that if there is any money left over, it goes back to the original fund.

Vice-Chairman Leon Guerrero asked what is the amount owed. Chairman San Agustin stated that overall it is \$1.2 Million from the entire Government of Guam. Chairman San Agustin stated that all the Fund is doing is reducing \$1.2 Million by \$11.9 Million.

Vice-Chairman Leon Guerrero asked if supplemental payments going to GTA retirees coming from the General Fund. Chairman San Agustin stated that the supplemental payment is coming from the General Fund.

Trustee George Santos, seconded by Trustee Gerard Cruz, moved to refer Mr. Don Parkinson's letters dated December 21, 2005 and December 27, 2005 to Legal Counsel Joanne Grimes for clarification on whether the Fund owns the asset and if the Fund must resist any legislation under Judge Lamorena's Court Order. Without objection, the motion passed.

Chairman San Agustin stated that he received a letter hand carried by Mr. Oliver Wood from Mr. Don Parkinson dated today, December 27, 2005. Vice-Chairman Leon Guerrero recommended asking Legal Counsel to identify what the issues are. Chairman San Agustin stated that the question is does the Fund own the money in escrow. Chairman San Agustin stated that the Fund will not allow legislation to take the Fund's money. Secretary Taylor asked when will this action be taken. Secretary Taylor stated that he would like to see Legal Counsel's opinion in writing.

Secretary Taylor asked is there any action the Board could take along the line suggested by Mr. Parkinson. Chairman San Agustin stated that he is not going to court based on what Parkinson says. Trustee Gerard Cruz suggested getting Legal Counsel Grimes on the phone to speed up the process. Secretary Taylor agreed on getting Legal Counsel Grimes on the phone or suggested getting a temporary injunction that nothing be done until a clarification is made. Trustee Cruz agreed to have Legal Counsel's email dated December 22, 2005 given to the Board of Trustees for their review.

Secretary Taylor read out paragraphs 4 and 5 of Legal Counsel Grimes' email – "You also asked if the Fund should oppose Bill No. 1 and perhaps sue on behalf of its membership that its provisions (if enacted) would constitute an impairment of contract?" Secretary Taylor read out Legal Counsel Grimes' response to that question – "Perhaps – this would require research as to whether the Fund has standing." Secretary Taylor read out the next question – "Should the Fund object to Bill No. 1? Secretary Taylor read out Legal Counsel Grimes' response to that question – "Probably." Secretary Taylor asked to see something in writing showing the Retirement Fund's objection to Bill No. 1. Acting Director Blas stated that it was a part of the testimony. Secretary Taylor stated that the Board needs a copy of the testimony. Secretary Taylor suggested getting Legal Counsel Grimes on the phone and having her change the "maybe" and "probably" to something definite.

Vice-Chairman Leon Guerrero read out a section from paragraph 5 – "The Legislature has the authority to appropriate funds as it sees fit, and can amend, repeal and change prior legislation so long as the change does not constitute an impairment of contract." Secretary Taylor stated that the Legislature does not have the authority to appropriate funds as it sees fit if it is an impairment of a contract. Acting Director Blas stated that the contract is between the Guam Telephone Authority and the Government of Guam. Secretary Taylor stated that the Fund has nothing defensible at this time. Secretary Taylor stated that the Fund may be sued for not following the Fund's responsibility to enforce a contract.

Secretary Taylor requested to modify the motion to refer Mr. Parkinson's letter to Legal Counsel Grimes immediately and get an immediate feed back to the Board.

Secretary James Taylor, seconded by Trustee Gerard Cruz, moved that Mr. Parkinson's letters be referred to Legal Counsel immediately and to get a response to the Board immediately. Without objection, the motion passed as modified.

Vice-Chairman Leon Guerrero stated that if the Legal Counsel determines that the Fund has to go to court then the Board should authorize the Acting Director to proceed and file. Vice-Chairman Leon Guerrero suggested to write a letter to the Governor or the Legislature that the Fund is concerned about this matter and in the future to give ample time to the Fund on any action to be taken. Chairman San Agustin stated that the Fund will communicate the Board's action to the Governor and the Legislature and also to Mr. Parkinson.

Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee Gerard Cruz, moved to approve that if Legal Counsel determines that the Fund has to go to court, the Board authorizes the Acting Director to proceed immediately. Without objection, the motion passed.

III. NEW BUSINESS

A. Government of Guam Retirement Fund Director's Position: Employment

Chairman San Agustin stated that there were two applicants. Chairman San Agustin stated that one of the applicants did not meet the requirements. Chairman San Agustin stated that the Board of Trustees did meet with the applicant. Chairman San Agustin stated that the Board is now ready to entertain a motion to do the appointment and selection of a new Director and to appoint a special committee to negotiate with the employment contract agreement. Secretary Taylor stated that since this is a personnel matter the Board has the right to have a closed session. Acting Director Blas stated that the Fund would need to advertise for an Executive Session. Secretary Taylor stated that he wants to see something in writing showing that the Board can not go into Executive Session to discuss personnel matters. Secretary Taylor stated that he believes that the Board has the right to discuss the motion in closed session. Secretary Taylor stated that there should be a discussion of the appointment now subject to negotiations. Vice-Chairman Leon Guerrero stated that an offer be made to begin negotiations.

Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee George Santos, moved to approve to make an offer to begin negotiations. Without objection, the motion passed.

Secretary Taylor stated that he intends to vote for this motion because he believes that the recommended individual could do the job well, but would like to express his concern that there is only one applicant that was considered. Secretary Taylor stated that in the future, there should be multiple viable applicants. Vice-Chairman Leon Guerrero stated that he shares Secretary Taylor's concern.

Chairman San Agustin recommended for Vice-Chairman Wilfred Leon Guerrero to Chair the Special Committee along with Treasurer Katherine Taitano and other Trustees are welcomed to join.

IV. OPEN DISCUSSION / GENERAL PUBLIC INPUT

A. John Rios' Request for Indemnification

Chairman San Agustin stated that the Board does not have access to the transcript of the Executive Session that was held on September 28, 2005. Acting Director Blas stated that the transcript is sealed to the public. Trustee Cruz stated that the Board has access to the transcript. Chairman San Agustin stated that Board can not use the transcript from the Executive Session as a supporting document. Chairman San Agustin stated that the minutes of the Executive Session are sealed for six months.

Acting Director Blas stated that there are two separate issues. One is the indemnification and the other is for the recalculation. Chairman San Agustin stated that the issues are related. Vice-Chairman Leon Guerrero stated that the Rios case is still on-going. Chairman San Agustin asked what the underwriters said. Trustee Cruz stated that if anyone is going to pay it would be the Fund. Vice-Chairman Leon Guerrero stated that he does not agree with this and that the insurance company should be fired. Acting Director Blas stated that she has not been able to get all the information from Mr. Rios' attorney to be forwarded to the underwriters. Acting Director Blas stated that with the new indictment, Management is not sure if it is a separate claim or is it all tied

into one. Vice-Chairman Leon Guerrero stated that the Board is aware that there is a pending litigation. Vice-Chairman Leon Guerrero stated that most insurance companies do not cover claims of criminal activities. Chairman San Agustin stated that investigation was done but that it was inconclusive. Chairman San Agustin stated that there was a misunderstanding on what the investigator was supposed to do. Acting Director Blas stated that the investigation was to determine whether or not Mr. Rios acted in bad faith. Acting Director Blas stated that the investigation concluded that Mr. Rios did not act in bad faith. Acting Director Blas stated that the Board now has to make a decision as to whether or not the Board is going to entertain the indemnification with the underwriters paying out the claim or not.

Secretary Taylor asked if there is a written recommendation from Legal Counsel with regards to their findings. Acting Director Blas stated that a copy was provided at the last Board meeting. Vice-Chairman Leon Guerrero stated that it was Legal Counsel's recommendation to investigate this matter. The Board of Trustees agreed that it was Legal Counsel who recommended the investigation. Acting Director Blas stated that she will ask Attorney Pat Mason to conduct a more intensive investigation. Secretary Taylor stated to ask Legal Counsel to further their investigation.

Secretary James Taylor, seconded by Trustee George Santos, moved to inform Legal Counsel to expand their investigation on the John Rios case and to obtain a list of the attorney's fees from Attorney Michael Phillips. Without objection, the motion passed.

B. Status of Legal Cases

Secretary Taylor stated that a presentation of the status of the pending lawsuits has not been made at the Board meetings. Secretary Taylor stated that Legal Counsel's report should be made a part of the regularly scheduled Board meetings. Chairman San Agustin stated that Legal Counsel's Report should be placed regularly on the meeting agenda.

V. ANNOUNCEMENTS

A. Off-Island Conference

Chairman San Agustin informed the Board of Trustees that he will not be on island at the next regularly scheduled Board meeting. Chairman San Agustin stated that he will be attending the Public Funds Summit on January 11-13, 2006 in Scottsdale, Arizona.

VI. ADJOURNMENT

There being no further business before the Board of Trustees, on motion of Trustee George Santos, seconded by Trustee Gerard Cruz, and without objection, the Special Board Meeting was adjourned at 10:35 a.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of December 27, 2005 Special Board Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on February 10, 2006.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas