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Commonwealth of the Northern Mariana Islands

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MEMORANDUM

OPA Ethics Opinion 2015-5

DATE: September 8, 2015

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

FROM: Joseph Przyuski, Legal Counsel
CNMI Office of the Public Auditor

Signature:  Date: 10/20/15

CONCUR: Michael Pai, Public Auditor
CNMI Office of the Public Auditor

Signature:  Date: 10/21/15

Subject: Government Ethics Code Advisory Opinion

On August 25, 2015, the CNMI Office of the Public Auditor (“OPA”) received a letter from the Commonwealth Casino Commission (hereafter “Commission”) requesting advice on whether use of certain items provided by Imperial Pacific Industries, LLC (dba: Best Sunshine International, Best Sunshine Live, and Grand Mariana) (hereafter “Best Sunshine”) for use by the Commission in carrying out its duties is acceptable under CNMI law. OPA has construed the inquiry as a request for an advisory opinion under the CNMI Government Ethics Code Act of 1992 (“the Ethics Act”). OPA is empowered to offer advisory opinions by statute,¹ however it is not authorized to offer general opinions regarding the legality of actions under other sections of the CNMI Code. Therefore, though the request sought advice regarding CNMI law in general, this opinion will be confined to evaluating the particular facts as presented under the Ethics Code.²

The Commission is created by statute to regulate and oversee the newborn casino gaming industry in Saipan.³ Best Sunshine is holder of the exclusive license to operate a casino in Saipan. Regulations promulgated by the Commission require that any casino “[c]ontain a specially designated office, located on the casino floor, for the exclusive use by the Commission for administrative, enforcement and regulatory purposes as approved

¹ 1 CMC § 8561(j)

² The Ethics Act applies to the Commission pursuant to 1 CMC § 8503 (b) & NMIAC § 175-10.2-101.

³ 4 CMC § 2313

by the Commission.”⁴ The statutes and regulations are silent on which party may provide or pay for furniture and amenities for use within the designated office. Based on representations in the present inquiry, which OPA will accept as fact for this opinion, Best Sunshine has provided the following for use⁵ by the Commission in their exclusive office space: three (3) computers, three (3) monitors, one (1) printer, one (1) telephone, four (4) office desks, four (4) office chairs, one (1) refrigerator, one (1) microwave oven, and one (1) coffee maker.

As evidenced by the present inquiry, the Commission understands the delicate relationship between the regulator and the regulated. What may be sincere collaboration might be perceived by others as a conflict of interest or inappropriate gift. The present situation is even more sensitive because the regulated must actually provide office space (presumably without charge for rent or utilities) inside the confines of their establishment.

The drafters of our Ethics Act recognized the potential harm of even well intended generosity between regulators and the regulated. Sections 8551 (c) and (d) of the Ethics Act generally prohibit solicitation or acceptance of non-nominal gifts between public officials and regulated parties. Stated purposes of our Ethics Act are to enhance public trust in our government and to ensure its officials are free from the danger of conflict of interest.⁶

One limitation within our Ethics Act, as we have recently explored in OPA Ethics Opinion 15-4, is that many of its prohibitions focus on conduct of **individual** government actors and disregard gifts or conflicts involving governing **bodies**, like the Commission. The prohibitions of the Ethics Act remain applicable to gifts and conflicts involving governing bodies as those bodies are merely made up of individual government actors, however the lines may become blurry when small gifts are spread widely. While some general gifts to government bodies might clearly violate the Ethics Act prohibitions (for example complimentary luxury vehicles for all Commission staff to drive, catered lunches, or complimentary food vouchers for all working staff), many fall within a less clear area of the law.

Several factors make most of the present provided items less troubling than the above hypotheticals. First, most of the items are directly related to the work of the Commission. The office desks and chairs are a necessity when tending to the duties and responsibilities of the Commission, as is the monitoring equipment, printer, and office telephone. Second, the casino gaming industry and the Commission are in their infancy stage. Best Sunshine is operating in a temporary facility and the Commission is newly established and has presumably yet to be fully funded through appropriation or regulatory fees. OPA views the temporary provision of these items, which are directly related to the Commission’s duties, to be acceptable under the Ethics Act. OPA expects once Best Sunshine relocates from the temporary facility, that the Commission will be able to provide all items and equipment necessary for their activities beyond those

⁴ NMIAC § 175-10.1-705 (e)

⁵ The Commission’s request letter clearly established that all items provided by Best Sunshine to the Commission were merely for the use of the Commission and remained the property of Best Sunshine.

⁶ See generally, 1 CMC § 8502.

expressly delineated under the law. Once fully established, the gaming industry, and the public, will benefit from a clearly defined barrier between the industry and its regulating party.

OPA remains concerned with several amenities not related to the work of the Commission, namely the microwave oven, the refrigerator, and the coffee maker. While none of these items could be labeled luxury, none are related to the work of the Commission, and acceptance of these perks by the regulating party from the regulated party present a more concerning gift situation.⁷ Though these items are of minimal importance, low dollar value, and are unlikely on their own to present a true conflict of interest, it is important to establish and maintain a bright-line rule for gifts between the gaming industry and its regulators. Accordingly, OPA recommends the Commission cease use of these items, return them to Best Sunshine personnel, and procure replacements out of their own resources.

⁷ Though the items were provided for the **use** by the Commission and not as the **property** of the Commission, this distinction makes no difference to the regulator who is enjoying a warm meal, cool beverage, or hot cup of coffee.