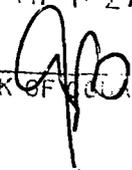


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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

Plaintiff,

v.

LUCIA S. MANGLONA,
aka LUCIA QUITUGUA,
LORENZO AYUYU, and
DIANE QUITUGUA

Defendants.

) Criminal Case Nos. 96-21, 96-22 & 96-23 (Rota)

) **MEMORANDUM DECISION
AND ORDER**

This criminal matter came before the Court on May 3, 1996, on the Defendant Lucia Manglona's (Ms. Manglona) and Defendant Lorenzo Ayuyu's (Mr. Ayuyu) Rule 12(b)(2) Motion to Dismiss. Defendant Diane Quitugua, appearing Pro Se, joined in the arguments of other Defendants. The Defendants claim that as a matter of law, they cannot be prosecuted under the Government Ethics Code of 1992. Having heard the oral arguments of the parties and reviewed all documents in this matter, the Court now renders its decision.

I. FACTS

Ms. Manglona, Mr. Ayuyu, and Ms. Diane Quitugua (Ms. Quitugua) were all appointed by a governor to become councilpersons for the Library Council (LC), the Rehabilitation Advisory Council (RAC), and the Developmental Disabilities Planning Council (DDPC) respectively. The Government

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1 Ethics Code (GEC) requires certain government officials to file a yearly financial disclosure report at
2 the start of their government service in order to prevent improper influence, instill public confidence,
3 and ensure accountability in government. Although Ms. Manglona, Mr. Ayuyu, and Ms. Quitugua
4 admit that they did not file their respective reports, they contend that the GEC, as it has been drafted,
5 does not include members of C.N.M.I. government councils.

6 7 **II. ISSUE**

8 Whether, under the common law rule of lenity, an appointed member of a council (i.e. the L.C.,
9 the R.A.C., or the D.D.P.C) can be prosecuted for violating 1 CMC § 8515(a) of the GEC for failing to
10 file a statement of financial interests as required by 1 CMC § 8511-14.

11 12 **III. ANALYSIS**

13 Under the rule of lenity, courts must strictly construe penal statutes in order to avoid violation
14 of the due process rights of the accused. Thus, in criminal cases where two reasonable interpretations
15 of a penal statute exist, one inculcating and the other exculpating a defendant, a court must employ the
16 less harsh reading. In the case at bar, the penal statute at issue is the GEC, which was created to
17 establish a code of ethics for "*all elected officials and appointed employees and officers of the*
18 *Commonwealth government and its political subdivisions, including members of boards, commissions*
19 *and other instrumentalities.*" Despite this broad statement of intent, council members are not specifically
20 included in the body of the GEC.

21 The GEC lists three categories of "reporting individuals" obligated to file financial statements
22 with the Public Auditor. 1 CMC § 8511. The second category, includes "each appointed
23 Commonwealth official and judicial officer." This language arguably encompasses council members
24 like the Defendants because they, in fact, are appointed to their posts. 1 CMC § 8511(a)(2). However,

1 when one consults Section 8503 of the GEC to ascertain the legislative meaning of the term
2 “Commonwealth official,” the term available is “public official.^{1/}”

3 According to the GEC, “‘public official’ means any person holding any elected office of the
4 Commonwealth or *any appointed*, non-employee member of the Commonwealth government, *including*
5 members of boards, commissions, and task forces.” 1 CMC § 8503(l) (emphasis added). According to
6 the Government, this definition, while it does specifically list some public officials, does not purport to
7 be an exhaustive listing of all public employees subject to the GEC. The Defendants read the term
8 “including” as “limiting” language necessarily excluding any Commonwealth officials who are not
9 members of boards, commissions, or task forces.

10 Ordinarily, the term “including” is a term of enlargement and not of limitation. *People v. Western*
11 *Air Lines*, 268 P.2d. 723, 733 (1954). When used in statutes, “including” is not a word of all-embracing
12 definition, but connotes an illustrative application of the general principle. *Argo Oil Corp. v. Lathrop*,
13 72 N.W.2d 431, 434 (1955). When the Court employs the ordinary definition of the term “including,”
14 as it appears in the definition of a *public official*, an “appointed Commonwealth official” required to
15 report a statement of financial interest constitutes any appointed, non-employee member of the
16 Commonwealth government such as, but not limited to members of boards, commissions, or task forces.
17 Thus, the rules of statutory interpretation suggest that Section 8511(a)(2) should be read to include
18 council members under the term “reporting individuals.”

19 However, the penal nature of the statute requires this Court to rule upon whether the Defendants’
20 interpretation is a reasonable one. When doing so, the Court must look for the manifested intentions of
21 the legislature, and may not manufacture ambiguity in order to defeat the intent. *Bifulco v. U.S.*, 100
22 S.Ct. 2247, 2252 (1980). The rule of lenity cannot be invoked to override a clear legislative directive,
23 *United States v. Littlefield*, 821 F2d 1365 (9th Cir. 1987). In the case at bar, the legislature has
24 expressed a general intent to include “all . . . appointed employees and officers of the Commonwealth

25
26 ^{1/} The legislature here has failed to define “Commonwealth official” but has defined “public
27 official.” Considering that the terms “public” and “Commonwealth” are effectively synonyms, the Court
shall employ the definition of a “public official” to establish a definition for “Commonwealth official.”

1 government and its political subdivisions including members of boards, commissions and *other*
2 *instrumentalities.*” 1 CMC § 8403 (entitled “Intent”). While this statement of intent erases some doubt
3 as to the breadth of the GEC, it offers the Defendants little guidance as to whether the legislature
4 considered “councils” to be instrumentalities of the Commonwealth. Further, the Court has not been
5 provided any legislative history demonstrating the intended inclusion of councils within the GEC.

6 Thus the Court finds that the intent expressed in Section 8403 of the GEC does not, by itself,
7 remove the ambiguity created by Sections 8511(a)(2) and 8503(l). In other words, though the Court’s
8 interpretation of the term “including” as it appears in Section 8503(l) renders the Defendants’
9 interpretation less likely, the Court does not view the Defendants interpretation as unreasonable.
10 Accordingly, pursuant to a strict construction of the GEC, the Court finds as a matter of law that the
11 Defendants cannot be prosecuted under 1 CMC § 8517(a) for willfully and knowingly failing and
12 refusing to file reports of their financial interests as required by 1 CMC §§ 8511-15.

13
14 **IV. CONCLUSION**

15 For the foregoing reasons, the Defendant’s Motion to Dismiss under Rule 12(b)(2) of the
16 Commonwealth Rules of Criminal Procedure is GRANTED.

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19 So ORDERED this 21 day of May, 1996.

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23 EDWARD MANIBUSAN, Associate Judge
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