

1
2 **FOR PUBLICATION**

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4
5 **IN THE SUPERIOR COURT**
6 **FOR THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 **EDWARD M. DELEON GUERRERO,**) **CIVIL ACTION NO. 06-0313C**

9 Plaintiff,)

10 vs.)

11 **DEPARTMENT OF PUBLIC LANDS,**)
12 **COMMONWEALTH OF THE**)
13 **NORTHERN MARIANA ISLANDS,**)

14 Defendant.)

15 **FINDINGS OF FACT**
16 **AND**
17 **CONCLUSIONS OF LAW**

18 This matter came before the Court for a bench trial on February 6-8, 2007, in Courtroom 220A.
19 Plaintiff Edward M. Deleon Guerrero appeared and was represented by counsel Brien Sers Nicholas, Esq.
20 The defendant Department of Public Lands, CNMI, (DPL) appeared by and through its counsel, Deputy
21 Attorney General Gregory Baka, Esq. In addition to the evidence presented by the parties, the Court
22 notified the parties prior to trial that it *sua sponte* took judicial notice of the Superior Court's own files in
23 the civil actions of *Bertha Leon Guerrero v. Marianas Pub. Land Authority*, Civ. No. 03-0229, and *Henry*
24 *S. Hofschneider v. Ana Demapan-Castro*, Civ. No. 04-0523, as well as the published order of the federal
district court in *Henry S. Hofschneider v. Ana Demapan-Castro*, D. N. Mar. I., Case No. CV-04-0022
(Order on Motion to Dismiss, April 11, 2005) (Munson, C.J.), as relevant to the issues raised in this
action. (Order Granting Pl.'s Mot. to Strike; Den. Pl.'s Mot. for Summ. J., Oct. 26, 2006, *amended*, Feb.
22, 2007). At the conclusion of the trial, the Court took the matter under advisement and the parties

1 stipulated to a schedule for their respective submission of proposed findings of fact and conclusions of
2 law. Having received and considered the post-trial submissions of the parties, and after considering the
3 evidence submitted and arguments at trial together with the applicable law, the Court hereby issues its
4 decision.

5 **I. FINDINGS OF FACT**

- 6 1. On October 8, 2004, the Chairperson of the Board of the Marianas Public Lands Authority
7 (“MPLA”), Ms. Ana Demapan-Castro, acting pursuant to a purported delegation of authority from
8 two former and one current board members, issued a memorandum terminating the employment of
9 the former Commissioner of Public Lands, Henry S. Hofschneider, and on the same day, hired
10 plaintiff Edward M. Deleon Guerrero as the new Commissioner of Public Lands. (Pl.’s Filing of
11 Doc. Evidence, Ex. “D;” *Henry S. Hofschneider v. Ana Demapan-Castro*, Civ. No. 04-0523,
12 Order, August 19, 2005).
- 13 2. On the same date, a written employment contract was signed by the Chairperson and Mr. Deleon
14 Guerrero as parties, and certified by MPLA’s Acting Commissioner Vincent T. Castro, CNMI
15 Comptroller David S. Demapan, and MPLA’s legal counsel Matthew T. Gregory, Esq. The
16 employment contract provided for a four-year term as Commissioner at a base salary of \$80,000 in
17 biweekly payments, with an automatic five percent annual increase subject to fund availability.
18 (Pl.’s Ex. “A”).
- 19 3. On December 29, 2004, a special meeting of the MPLA Board was convened on Saipan for the
20 purpose of ratifying the Chairperson’s actions terminating the former Commissioner and hiring
21 Deleon Guerrero. At the meeting, the Board voted to defer the matter of the termination of
22 Commissioner Hofschneider, but voted to approve the Chairperson’s appointment of Deleon
23 Guerrero as the new Commissioner of Public Lands. The Board indicated in its written resolution
24 that its confirmation of the Chairperson’s authority to hire the plaintiff was needed because “the

1 Office of the Attorney General has instructed the Secretary of Finance and the Commonwealth
2 Development Authority to stop processing all land compensation requisitions based on its
3 misguided belief and incorrect legal analysis concerning the promotion of Commissioner Edward
4 M. Deleon Guerrero.” (MPLA Board Resolution No. 04-009, Pl.’s Filing of Doc. Evidence, Ex.
5 “D”).

6 4. The legal effect of these actions by MPLA was under dispute at that time in a superior court civil
7 action.¹ Nevertheless, the plaintiff was hired and served as the Commissioner of Public Lands
8 commencing on October 8, 2004, and the plaintiff’s compensation and other terms of employment
9 were determined by the parties in accordance with his written contract of employment.

10 5. “Section 10” of the plaintiff’s employment contract sets forth terms under which the Commissioner
11 may be permitted to resign, or to be discharged either with or without cause. In the case of
12 termination without cause, Section 10(a) provides:

13 The Employer may terminate the Employee without cause upon sixty (60) days
14 advance written notice of termination of employment. In such event, Employer
15 shall pay the Employee a lump sum for the remaining duration of the Contract or
twelve months, whichever period is longer.
(Pl.’s Ex. “A”).

16 6. Subsection (c) of Section 10 requires the Commissioner to give sixty days advance notice in the
17 event he intends to resign his position, unless such notice is waived by the parties, and provides
18 that the Commissioner will in that event be entitled to a lump-sum severance payment of three
19 months’ salary and benefits. (*Id.*)

22 ¹ On August 19, 2005, the CNMI Superior Court ruled that the attempt by three of the board members to delegate to the
23 Chairperson the authority to make employment decisions regarding the Commissioner of Public Lands and the Chairperson’s
24 actions pursuant to that delegation of authority, as well as a subsequent attempt by the Board to ratify those actions at a public
meeting, were all actions taken in excess of the Board’s statutory authority and in a manner that violated the CNMI’s Open
Government Act. *Henry S. Hofschneider v. Ana Demapan-Castro*, Civ. No. 04-0523 (Order, August 19, 2005, at pp. 5-7).

- 1 7. The contract further provides that the Commissioner may be terminated at any time for cause.
2 Termination for cause is allowed upon the Commissioner's disability, or his commission of a
3 felony, fraud, embezzlement, insubordination, or upon a material breach of his obligations under
4 the contract. In any such event, the Commissioner is allowed forty-five days after receiving
5 written notice of such grounds to cure any cause for termination and is entitled to administrative
6 review of the final decision. If the termination is determined to be unjustified or improper, the
7 contract provides that the Commissioner may elect as a remedy either reinstatement or termination
8 under the "without cause" provision of Section 10(a). (*Id.*)
- 9 8. Section 12 of the contract provides in part: "If any provision of this Contract shall be held invalid
10 under the laws of the Commonwealth of the Northern Mariana Islands for any reason, the same
11 shall in no way impair the validity of this Contract and this Contract shall otherwise remain in full
12 force and effect." (*Id.*)
- 13 9. Following the election of Governor Benigno R. Fitial and the 15th Commonwealth Legislature in
14 November of 2005, the MPLA board members and employees generally became aware of the new
15 administration's proposals to abolish the MPLA. In the first week of February, 2006, the board
16 members and employees were aware of the introduction that week of House Bill 15-57, which
17 proposed to dissolve the MPLA and replace it with an executive agency to be headed by a
18 secretary appointed by the governor. This political development was naturally a matter of grave
19 concern to the MPLA and was the subject of informal discussions amongst board members and
20 employees, who on the whole viewed the imminent dissolution of the MPLA as being more than
21 likely. (Test. of Pl. Edward M. Deleon Guerrero; Test. of Ana Demapan-Castro).
- 22 10. At this time, it was mutually agreed between the members of the MPLA Board and Commissioner
23 Deleon Guerrero that it would be advantageous for the Board to terminate the Commissioner's
24 employment "without cause," thereby permitting the Commissioner to take advantage of the lump-

1 sum severance pay provision provided by Section 10(a) of his employment contract. A
2 memorandum was prepared, dated February 7, 2006, giving the Commissioner the 60-day notice
3 of termination as required under Section 10(a), along with an option to waive that notice, and
4 further promising that the lump-sum payment “shall be processed immediately” and directing the
5 Deputy Commissioner, by copy of the memorandum, “to process payment and all necessary
6 paperwork forthwith.” The memorandum was circulated to board members and was signed by
7 Chairwoman Ana Demapan-Castro, Vice-Chairman Manuel P. Villagomez from Tinian, and Board
8 Members Nicolas M. Nekai and Felix A. Sasamoto. (Pl.’s Ex. “B”; Test. of Pl. Edward M. Deleon
9 Guerrero; Test. of Ana Demapan-Castro).

10 11. The former MPLA Board Chairwoman testified that the Board’s primary motivation for agreeing
11 to terminate the Commissioner’s employment “without cause” was to ensure that he would secure
12 the benefit of the lump-sum severance payment under his contract prior to the legislature’s
13 termination of MPLA itself. This was done out of a sense of loyalty to the Commissioner, which
14 the Charwoman characterized as a “fiduciary duty” that the Board believed that it owed to the
15 Commissioner, its employee. The former Chairwoman offered as justification for the Board’s
16 decision the fact that the lump-sum severance provision was designed to attract qualified
17 candidates, that the contract was entered into in good faith, and that the Board should honor the
18 spirit of its contractual obligations by doing what it could to protect its employees’ expectation
19 interests. (Test. of Ana Demapan-Castro).

20 12. On the morning of February 8, 2006, the plaintiff instructed Margarita B. Salas, the former Chief
21 of the Human Resources Division of MPLA, to prepare a “Request for Personnel Action,” which is
22 a form used to formally request and memorialize changes in employment status. The Request for
23 Personnel Action describes plaintiff’s position as “Commissioner,” as FSLA exempt, with a salary
24 of \$84,000 per annum, and specifies the “Nature of Action Requested” as being “TERMINATION

1 – WITHOUT CAUSE.” The form has four signature lines for approval, indicating that the action
2 is “Requested By” Deputy Commissioner Vincent T. Castro, “Approved By” Chairperson Ana
3 Demapan-Castro, “Processed By” Chief of Human Resources Peggy B. Salas, and that the “Fund
4 [is] Certified By” MPLA Comptroller David S. Demapan. (Pl.’s Ex. “C”; Test. of Margarita B.
5 Salas).

6 13. Later on that same day, plaintiff personally took the Request for Personnel Action and presented it
7 individually to each of the MPLA officers whose signatures were required for approval. On that
8 date, the form was signed by Chairwoman Demapan-Castro, Deputy Commissioner Castro and
9 Human Resources Chief Salas. MPLA Comptroller David S. Demapan did not sign the request,
10 testifying that he refused on the basis that there were insufficient funds available at that time to
11 cover either the lump-sum severance payment or the five-percent annual salary increase as
12 provided for under plaintiff’s employment contract. Mr. Demapan further testified that he was
13 reluctant to approve the request because he considered the plaintiff’s termination to be politically
14 provocative. The Request for Personnel Action remained in plaintiff’s custody and was never
15 completed or returned to the Chief of Human Resources. (Pl.’s Ex. “C”; Test. of Pl. Edward M.
16 Deleon Guerrero; Test. of David S. Demapan; Test. of Margarita B. Salas).

17 14. The MPLA Board conducted three public meetings in February of 2006. The first was held on
18 Saipan at 9:00 a.m. on Tuesday, February 7, 2006, with a public notice and agenda published in
19 the Marianas Variety on February 6, 2006, as well as a memorandum issued to board members
20 setting forth the agenda, also on February 6, 2006. The next public meeting was held on Tinian at
21 11:00 a.m. on Wednesday, February 15, 2006. This meeting was originally set for February 13,
22 2006, on Rota, with a memorandum of agenda issued to board members on Friday, February 10,
23 2006, and a public notice published in the Saipan Tribune on Saturday, February 11, 2006. The
24 meeting required rescheduling, however, and an amended public notice was published on Tuesday,

1 February 14, 2006, that repeated the agenda and announced that the meeting would be held on
2 Tinian the next day. The MPLA Board began its final meeting on Tuesday, February 21, 2006, at
3 10:00 a.m. on Saipan. This meeting was preceded by a memorandum of agenda issued to board
4 members on Friday, February 17, 2006, and a public notice published in the Saipan Tribune on
5 Sunday, February 19, 2006. (Pl.'s Ex. "E," "F," and "G;" Def.'s Ex. "42," "44," "45," "46," "48,"
6 and "49").

7 15. There is no indication in the meeting agenda published in the newspapers or distributed to board
8 members that the MPLA Board intended to discuss or act upon any pending employment matters
9 at its February meetings. There is clearly no reference to the matter of the plaintiff's termination
10 as MPLA Commissioner. Moreover, the public record of these meetings that was presented to the
11 Court, including the board's executive session held on February 22, 2006, fails to show that
12 plaintiff's termination was ever discussed. Although plaintiff testified that the board discussed his
13 termination at nearly every meeting, and the former Chairwoman testified that the matter was
14 raised either "off-the-record," or in executive sessions under the agenda item labeled
15 "miscellaneous," the Court finds based upon the written documents and recorded proceedings that
16 the MPLA Board actually made no decision and took no action regarding the termination of the
17 plaintiff's employment at any of its February meetings. (*Id.*; Def.'s Ex. "59;" Test. of Pl. Edward
18 M. Deleon Guerrero; Test. of Ana Demapan-Castro).

19 16. On February 22, 2006, the "Public Lands Act of 2006," Public Law 15-2, was passed by the
20 Commonwealth Legislature and signed into law by Governor Fitial. The Act abolished the MPLA
21 and transferred its functions to a new Department of Public Lands to be headed by a Secretary
22 appointed by the Governor with the advice and consent of the Senate. The Act provides for
23 transition from the former MPLA to the new Department of Public Lands as follows:
24

1 **Section 5. Transition.** Upon the Effective Date of this Act, the terms of the existing Board
2 of Directors for the Marianas Public Lands Authority shall be terminated, and the
3 Commissioner shall report to the Governor or his designee until the Secretary of Public
4 Lands is appointed. All property, funds, equipment, supplies, and personnel of the
5 Marianas Public Land Authority under PL 10-57, 12-33, and 12-71 as amended, are
6 transferred to the Department of Public Lands upon the Effective Date. Within 120 days
7 after the Effective Date of this Act, the Secretary of the Department, in consultation with
8 the Office of Personnel Management, shall take appropriate actions to ensure that all
9 Department employees are subject to the provisions of PL 7-31.

(PL 15-2, § 5)

- 10
- 11 17. Upon signing PL 15-2 into law, Governor Fitial appointed John S. Del Rosario, Jr., to serve as
12 Secretary of the Department of Public Lands, also designating Mr. Del Rosario as the acting head
13 of the department pending his confirmation by the Senate. A memorandum to this effect was
14 signed by the Governor on the same date, February 22, 2006, and then faxed to all government
15 agencies. (Pl.'s Ex. "I;" Test. of John S. Del Rosario, Jr.).
- 16 18. On February 22, 2006, the plaintiff signed a postscript to the February 7, 2006, notice of
17 termination from the board, indicating his waiver of the contractual requirement of a 60-day notice
18 prior to termination. (Pl.'s Ex. "B").
- 19 19. Although plaintiff claimed to have first received the written notice of his termination on February
20 22, 2006, the operative terms of this notice were contained in the written Request for Personnel
21 Action that he caused to be executed and which he personally presented to MPLA officers on the
22 morning of February 8, 2006. The Court finds that the plaintiff effectively received the written
23 notice of his termination contemporaneously with its execution. (Pl.'s Decl. in Supp. of Mot. for
24 Summ. J., Aug. 23, 2006, ¶ 4; Pl.'s Ex. "C"; Test. of Pl. Edward M. Deleon Guerrero).
20. Plaintiff did not report to the Governor or to Mr. Del Rosario, who refused plaintiff's request that
the Department of Public Lands honor the lump-sum payment provision of his employment
contract as the former Commissioner of Public Lands. Plaintiff's understanding was that his
waiver of the 60-day notice requirement was the last step necessary to effectuate his termination

1 and that, because he was no longer the Commissioner and because the MPLA no longer existed,
2 his reporting to the new department would be a useless act. (Test. of Pl. Edward M. Deleon
3 Guerrero; Test. of John S. Del Rosario, Jr.).

4 21. On April 24, 2006, Secretary Del Rosario issued a letter to the plaintiff notifying him of a decision
5 “to terminate your employment for cause,” effective “seven (7) days from the date you receive this
6 letter.” In the letter, the Secretary cites as grounds for termination the fact that the plaintiff failed
7 to report to the Governor or the Governor’s designee pursuant to Section 5 of PL 15-2, telling the
8 plaintiff that “[t]herefore, you are considered to have abandoned your position.” Plaintiff
9 recalls receiving the letter on May 5, 2006. (Pl.’s Ex. “H;” Test. of Pl. Edward M. Deleon
10 Guerrero).

11 22. Plaintiff filed the present action against the CNMI Department of Public Lands on June 26, 2006,
12 seeking payment of \$252,000, plus prejudgment interest and attorney fees. This figure represents
13 the approximate payment due under Section 10(a) of his employment contract, based upon the
14 thirty-one months and sixteen days remaining on his four-year contract after February 22, 2006.
15 At trial, plaintiff presented evidence to show that the precise contractual amount due, if he is
16 entitled to recover on this basis, is \$267,208.68.

17 **II. CONCLUSIONS OF LAW**

18 Under ordinary principles of common law, it appears that a contract existed between the former
19 MPLA Board and Mr. Deleon Guerrero by which he was employed as the Commissioner of Public Lands.
20 There was indisputably a meeting of the minds between the board and the plaintiff, in which the board
21 offered to employ the plaintiff as Commissioner of Public Lands and the plaintiff agreed to perform such
22 services according to the terms and conditions memorialized in their written contract of employment, and
23 according to which both parties actually performed their obligations commencing on October 8, 2004. *Isla*
24 *Financial Services v. Sablan*, 2001 MP 21, ¶ 13, 6 N.M.I. 338, 341 (citing, RESTATEMENT (SECOND) OF

1 CONTRACTS § 17 (1981)). As the Court has previously emphasized, however, a contract between a public
2 board and a public officer also implicates the public interest, so that the enforceability of its provisions
3 may not be determined solely from its four corners. *Benevente v. Marianas Pub. Land Corp.*, 2000 MP
4 13, ¶ 32, 6 N.M.I. 136, 143. A public board may not enter into a contract that exceeds its statutory
5 authority, and a person who contracts with a public entity is chargeable with knowledge of the statutes that
6 limit its contracting powers and is bound by them. *United States v. City and County of San Francisco*, 310
7 U.S. 16, 32, 60 S.Ct. 749, 757, 84 L.Ed. 1050 (1940) (citing, *Utah Power & Light Co. v. United States*,
8 243 U.S. 389, 409, 37 S.Ct. 387, 391, 61 L.Ed. 791 (1917)); *Sutton v. United States*, 256 U.S. 575, 579, 41
9 S.Ct. 563, 565, 65 L.Ed. 1099 (1921); *In re Peterson*, 74 P.2d 60, 62 (Or. 1937).

10 A. The Scope of MPLA's Authority to Contract

11 The MPLA, formerly the Board of Public Lands and successor to the Marianas Public Land
12 Corporation, was established as an independent public corporation within the executive branch by Public
13 Law 12-71, amending PL 12-33, and charged with the purpose of managing the use and disposition of
14 CNMI public lands as defined by Article XI, Section 1, of the N.M.I. Constitution. Public Law 12-71,
15 Section 2(b), added a separate subsection (c), granting the Board the authority to “select, employ, promote
16 and terminate employees....” Section 2(a) of PL 12-71 provides that the MPLA “shall be headed by [a]
17 Commissioner” and that “[t]he Commissioner shall serve at the pleasure of the Board of Directors.” The
18 Board was composed of five directors serving staggered four-year terms, and it could act “only upon the
19 affirmative vote of the majority of the five directors.” 1 CMC § 2673(d),(e) (PL 12-33, Section
20 103(d),(e)).

21 The authority of the MPLA Board to employ the Commissioner of Public Lands pursuant to a
22 written contract is not questioned, and such authority presumably carries with it the discretion to negotiate
23 and bind itself to any such terms as are reasonably included within government employment contracts and
24 that are consistent with its statutory purpose. Defendant DPL, however, argues that the contractual terms

1 providing for the Commissioner's four-year term of employment and guaranteeing the Commissioner's
2 receipt of the full balance of his compensation under the contract in the event he is terminated "without
3 cause," are in contravention of statute and violate the principle set forth at Article X, Sections 8 and 9, of
4 the N.M.I. Constitution, which prohibits an expenditure of public funds that is unsupported by a "public
5 purpose." Without reaching the defendant's constitutional argument, the Court agrees that the MPLA
6 Board's agreement to these terms was in excess of its statutory authority.

7 The legislature has decreed that the Commissioner shall be employed "at the pleasure of the
8 Board," and the board therefore has no power to circumvent this requirement by contractually binding
9 itself, its successors, and the public to employ the Commissioner for a fixed term. *See, Henry S.*
10 *Hofschneider v. Ana Demapan-Castro*, 2005 WL 817710, D. N. Mar. I., Case No. CV-04-0022 (Order on
11 Motion to Dismiss, April 11, 2005, p. 6) ("The [4-year term, termination procedure, and severance]
12 clauses in the employment contract conflict with the Pub. L. 12-71's clear statement that plaintiff served at
13 the pleasure of the Board. As such, the Board could not authorize these terms.") (*citing, Kelly v. Ogata*,
14 120 F.Supp.2d 1244, 1250 n.6 (D. Hawaii 2000)); *also, Shoemaker v. City of Lock Haven*, 906 F.Supp.
15 230, 236 (M.D.Pa. 1995) (City was only authorized to hire police chief on at-will basis; contract for fixed
16 term was therefore void *ab initio*). As the U.S. District Court stated in the *Hofschneider* case,

17 The law of the Commonwealth is a part of every contract. *See 72 Am.Jur.2d States,*
18 *Territories and Dependencies* § 75 (2001). A person who contracts with the
19 Commonwealth is chargeable with knowledge of the statutes that regulate its contracting
20 powers and is bound by them. *Id.* It is generally held that officers of a government may not
21 enter into contracts that exceed statutory authority. *Id.* § 72. In the same vein, as stated by
22 courts addressing similar issues, "no employee has a vested contractual right to continue
23 employment beyond the time or contrary to the terms and conditions fixed by law."
24 *Berstein v. Lopez*, 321 F.3d 903, 905 (9th Cir.2003)(quoting *Miller v. State*, 18 Cal.d3 808,
813 (1977)). Statutes controlling the terms of employment cannot be circumvented by
contract. *Id.* *See Kelly v. Ogata*, 120 F.Supp.2d 1244, 1250 n.6 (D.Haw.2000). The clauses
in the employment contract conflict with the Pub.L. 12-71's clear statement that plaintiff
served at the pleasure of the Board. As such, the Board could not authorize these terms.

1 *Id.*²

2 A contract with a public board is a contract with the entity itself, not with its individual members,
3 so the validity of contracts regarding matters within its authority is not, as a general rule, defeated by the
4 fact that its composition changes during the term of the contract. *Town of Tempe v. Corbell*, 147 P. 745,
5 748 (Ariz. 1915). Although the public policy exception for certain contracts received widespread judicial
6 expression as a contrast between contracts involving the board’s “business or proprietary functions” that
7 may bind its successors, and its “legislative or governmental functions” that may not, a number of courts
8 have also embraced the view, supported by the bulk of the earliest case law, that these categories are
9 actually derivative of the more fundamental question of the *effect* that a particular contract will have upon
10 the successor board’s statutory discretion and the public interest in democratic government. *Mariano &*
11 *Assocs., P.C. v. Bd. of County Comm’rs of Sublette County*, 737 P.2d 323, 327-328 (Wyo. 1987). “Thus,
12 when determining whether a contract is binding on successor boards, it appears that “[t]he true test is
13 whether the contract itself deprives a governing body, or its successor, of a discretion which public policy
14 demands should be left unimpaired.” *Piedmont Pub. Serv. Dist.*, *supra* note 2, 459 S.E.2d at 881 (*quoting*,
15 *Plant Food Co. v. City of Charlotte*, 199 S.E. 712, 714 (N.C. 1938).

16 The rationale for the majority rule was expressed by the Supreme Court of South Carolina as
17 follows:

18 The power conferred upon municipal councils to exercise legislative or governmental functions is
19 done so to be exercised as often as may be found needful or politic; and the council holding such
20 powers is vested with no authority to circumscribe, limit or diminish their efficiency, but must
21 transmit them unimpaired to their successors. That acting as a governmental agency, it is bound

21 ² Even in the absence of a direct conflict with a statutory provision, it is also the rule in the vast majority of common law jurisdictions
22 that a public board may not enter into a contract, the term of which extends beyond the term of the present majority of members, if the effect
23 of the contract will be to constrain or to diminish the discretionary authority of a future or successor board. *Shows v. Morehouse Gen.*
24 *Hospital*, 463 So.2d 884, 886 (La.App. 1985); *Town of Tempe v. Corbell*, 147 P. 745, 749 (Ariz. 1915); *Egan v. City of St. Paul*, 58 N.W. 267,
268-269 (Minn. 1894) (*citing*, *In re Hennen*, 38 U.S. 230, 13 Pet. 230, 10 L.Ed. 138 (1839)). Such contracts are against public policy and are
typically declared to be void at the outset. *Piedmont Pub. Serv. Dist. v. Cowart*, 459 S.E.2d 876, 880 (S.C.App. 1996) (*citing*, 63 C.J.S.
Municipal Corporations § 987; 56 AM.JUR.2D *Municipal Corporations, Counties & Other Political Subdivisions* § 154 (1971); and 10
EUGENE MCQUILLIN, *The Law of Municipal Corporations* § 29.101 (3d ed., Rev. 1990)), *aff’d*, 478 S.E.2d 836 (S.C. Nov. 12, 1996); *Cf.*,
Myers v. Town of Plymouth, 522 S.E.2d 122, 124 (N.C.App. 1999).

1 always to act as trustee of the power delegated to it and may not surrender or restrict any portion of
2 such power conferred upon it.

2 *Newman v. McCullough*, 46 S.E.2d 252 (S.C. 1948)

3 In its 1894 opinion in the case of *Egan v. City of St. Paul*, the Minnesota Supreme Court expressed
4 a more practical aspect of this rationale when it considered the effect of allowing a public committee the
5 unrestricted freedom to contractually bind itself as a legal entity, regardless of its changes in membership:

6 Under this doctrine, places, with excessive salaries attached, could be made for a host of political
7 friends by the members of an outgoing committee; and their successors would be powerless,-
8 practically unable to change the force, or to drop persons not needed, or to reduce their
9 compensation. A rule of this kind in the public service would prove intolerable.

8 *Egan v. City of St. Paul*, *supra* note 2, 58 N.W. at 268.

9 This rationale applies not only to an employment contract containing a simple fixed term of
10 employment beyond the life of the board, but to any contract that interferes with the legislatively
11 delegated powers of its successor. Provisions in employment contracts that burden or restrict the
12 successor board's ability to appoint or remove an at-will employee, whether by directly imposing liability
13 for breach of the fixed term, by imposing procedural conditions for termination by the board, or by
14 imposing excessive severance pay requirements or other penalties upon termination, all operate to the
15 same effect and violate the rule.³ *Shows v. Morehouse Gen. Hospital*, *supra* note 2, 463 So.2d at 886
16 (when legislation did not provide for hospital administrator's term of employment, administrator's
17 contract requiring a two-year notice of termination or two-years' of severance pay was invalid); *City of*
18 *Hazel Park v. Potter*, 426 N.W.2d 789, 793 (Mich.App. 1988) (city manager's employment contract with
19 city council to work for thirteen years, or to receive severance pay of \$78,000, was void as a restriction on
20 the authority of future councils); *Figuly v. City of Douglas*, 853 F.Supp. 381, 386 (D.Wyoming 1994) (city

22 ³ In fact, because the degree to which such provisions offend public policy depends upon how they affect the successor's ability
23 to exercise its rightful authority, it would be a mistake to rank the provisions generally according to type. It is easy to imagine a
24 situation in which the successor's theoretical liability in contract for a simple breach of a fixed-term provision would be
nominal or slight, thereby imposing little burden on its exercise of authority, but also one in which the procedural prerequisites
to action are insurmountable or the financial cost imposed by contract upon the successor's exercise of its authority effectively
prohibits it.

1 administrator's contract providing 18-months severance pay of \$68,000 was an attempt by the council to
2 "bind its successors" by providing a "great disincentive" to terminate the administrator, was voidable and
3 not binding on successor council).

4 In this case, Section 2(a) of PL 12-71 establishes that the Commissioner of Public Lands was to
5 serve "at the pleasure of the Board," meaning that the Commissioner could only be employed on an "at-
6 will" basis. The provisions at Section 10 of the plaintiff's written employment contract that provide for
7 "termination with cause," and that impose procedural preconditions upon the effectiveness of the board's
8 decision to terminate the plaintiff's employment, work to transform the contract from an "at-will"
9 employment agreement into a "for-cause" agreement. The provisions are therefore in conflict with the
10 statute and are unenforceable on the basis of public policy. Likewise, the promise at Section 10(a) that the
11 plaintiff, if terminated without cause, would be entitled to a lump-sum payment of his salary for the
12 duration of the contract, or for twelve months, whichever is *longer*, is intended to inhibit the board from
13 dismissing the plaintiff without cause; i.e., "at its pleasure." PL 12-71 § 2(a).

14 The proffered, "good faith" justification for this provision is that it entices qualified candidates into
15 accepting the position of Commissioner by offering an assurance of job security. Of course, "job
16 security" in this case can only come at the expense of curtailing the board's freedom to dismiss the
17 Commissioner at will. Whatever merits such a generous severance provision may have in the private
18 sector, it is not available to a public board that is only authorized to employ a public officer "at its
19 pleasure." A civil service employee may be protected from political vicissitudes by contract provisions
20 inhibiting the employer's discretion to terminate the employee, but the Legislature has decreed that the
21 position of Commissioner of Public Lands is essentially a discretionary one. *City of Hazel Park, supra*,
22 426 N.W.2d at 793. This does not mean that a provision for severance pay for an at-will public employee
23 is necessarily invalid. In this case, however, the provision operates to curtail the authority of the board
24 and its successor by deviating from the prescribed basis upon which the Commissioner may be employed.

1 For the reasons cited above, this provision is also contrary to public policy and unenforceable by the
2 plaintiff.

3 B. The Effectiveness of Plaintiff's Termination

4 Public Law 12-71 authorized the Board of Public Lands to select, employ and terminate MPLA
5 employees. The MPLA was a "public agency" and the MPLA Board was a "governing body" under the
6 terms of the CNMI's Open Government Act (OGA). 1 CMC § 9902(c), (e). Pursuant to the OGA, the
7 Board was allowed to discuss employment issues related to a specific employee at a properly convened
8 executive session closed to the public, but any "final action" on such matters, including "discharging an
9 employee," was required to be taken at a meeting open to the public. 1 CMC § 9912(a)(4). A "final
10 action" means "a collective positive or negative decision, or an actual vote by a majority of the members
11 of a governing body when sitting as a body or entity, upon motion, proposal, resolution, order, or
12 ordinance." 1 CMC § 9902(b). At a properly convened meeting, the governing body may vote to add an
13 item to the noticed agenda, but may not take final action on the matter at that meeting. 1 CMC §§ 9901(b),
14 9911. Any actions taken at meetings failing to comply with the provisions of the OGA are "null and
15 void." 1 CMC § 9907.

16 The evidence wholly fails to show that the decision of the board to terminate Mr. Deleon
17 Guerrero's employment as Commissioner was ever considered or arrived at in a public meeting. The
18 decision instead appears to have sprung from the mistaken understanding that the Chairwoman possessed
19 the primary, if not plenary, delegated authority over personnel matters, whereupon the board reached its
20 final decision by way of an informal or seriatim consensus. Although the plaintiff served "at-will" and
21 could resign or be terminated at any time, the board could not act to terminate the plaintiff other than by a
22 collective majority vote at a public meeting. 1 CMC § 9912(a)(4). It follows that the board's 60-day
23 notice of termination dated February 7, 2006, together with plaintiff's February 22, 2006 waiver of notice,
24 were insufficient to officially discharge the plaintiff as the Commissioner of Public Lands.

1 Section 5 of Public Law 15-2 terminated the positions of the MPLA board members, but provided
2 for the transfer of MPLA employees to the new Department of Public Lands, where they would be
3 transitioned into civil service employment within 120 days. With respect to the Commissioner, the
4 legislation expressly required that he report to the Governor or the Governor's designee until the
5 appointment of the Secretary of Public Lands. The purpose of this section is to ensure the effective and
6 complete transfer of all MPLA property, funds and personnel to the new Department. PL 15-2 § 5. The
7 plaintiff, however, failed to comply with the new legislation, believing that his de facto termination by
8 mutual agreement with the board members on the date that the law passed meant that he was relieved of
9 all responsibility as Commissioner. Plaintiff also maintained that because Mr. Del Rosario had been
10 picked by the Governor to serve as Secretary on the same day, the legislation did not require him to report
11 to the administration.

12 Public Law 15-2 clearly contemplates that the position of Commissioner would extend beyond the
13 effective date of the Act as it directed the Commissioner to report to the newly established Secretary of
14 DPL, although there appears to be no place for a Commissioner in the new Department of Public lands
15 following the period of transition. Nevertheless, as discussed above, the position of Commissioner was
16 defined by law, not by contract. *Kelly, supra*, 120 F.Supp.2d at 1250. In this case, the plaintiff took no
17 steps to submit his resignation to the Governor or the new Secretary, relying instead upon the February 7,
18 2006, Notice of Termination issued by the former Board as well as his acceptance of the Notice of
19 Termination on February 22, 2006, the effective date of Public Law 15-2.⁴ On that date, the plaintiff
20 effectively abandoned his position and took no steps to assist in the transition to the Department of Public
21 Lands.

22
23 ⁴ At common law, the public interest has been held to mandate that an individual who once assumes a public office may not be relieved of
24 the obligations of that position through resignation until a successor is duly confirmed in the position. *Thompson v. U.S.*, 103 U.S. 480, 481-
483, 26 L.Ed. 521 (1880); *Badger v. U.S.*, 93 U.S. 599, 604, 23 L.Ed. 991 (1876). Moreover, resigning from public office will not prevent
mandamus to compel the resigning officer to perform outstanding duties that are urgently required by the public. *State ex rel. Westfall v.*
Blair, 105 S.E. 830, 832 (W.Va. 1921).

