

1 of the Governor's Representative on Rota. Having heard the oral arguments of the parties and
2 reviewed all documents in this matter, the Court now renders its decision.

4 I. FACTS

5 The idea to create a satellite Office of the Governor's Representative on Rota originated with
6 the House of Representatives when it adopted House Resolution No. 9-52 (H.R. No. 9-52) on June
7 10, 1994. In H.R. No. 9-52, the House requested Governor Tenorio to open a satellite Office of the
8 Governor on the Island of Rota to: (1) function as the eyes and ears of the Governor, (2) enhance the
9 confidence of local and outside investors to develop new industries and services, and (3) make
10 professionals available to assist the programs of the Governor on the Island of Rota. Several months
11 later, on October 12, 1994, the Governor responded to this request by establishing the Rota Office
12 "in order to efficiently take care of matters requiring [the Governor's] attention on Rota. Originally,
13 the Rota Office had only a handful of employees including the Governor's Rota Representative, Mr.
14 Victor Hocog, and Special Assistant for Administration, Mr. Antonio O. Quitugua. On January 24,
15 1995, Public Law 9-25 was enacted appropriating funds for the C.N.M.I. government for fiscal year
16 1995. Public Law 9-25 specifically granted the Governor's Representative on Rota twenty-one (21)
17 FTE's and appropriated \$549,900.00 to fund these positions and other expenses to be incurred at the
18 Rota Office.

19 In the Memorandum Decision of June 14, 1995, the Court held that "[the Rota Office
20 operated] in violation of Article III, Sections 14 & 15 of the Commonwealth Constitution and Title
21 1, Section 2053 of the Commonwealth Code." *Inos v. Tenorio*, Civil Action No. 94-1289 (June 14,
22 1995) (hereinafter *Inos I*). The Court reasoned that "while the existence of the Governor's
23 Representative on Rota as a satellite Office of the Governor is consistent with the Commonwealth
24 Constitution, it is unconstitutional for the Governor's Representative to do any more than the
25 Constitution allows and the legislature authorizes the Governor to do." Thus, based on the limited
26 duties of the Office of the Governor outlined in 1 CMC § 2053, and the Governor's factual
27 admissions, the Court found that the Governor's Representative on Rota had been acting in an

1 unauthorized manner. Although the Court's ruling limited the authority of the Governor's
2 Representative on Rota, the Court did not strike down the existence of the Rota Office itself.

3 Later, on October 18, 1995, the Court ruled on several of the remaining Counts in the
4 Mayor's Amended Complaint including Count Nine. Count Nine concerns the extent to which the
5 Mayor has expenditure authority over public funds earmarked for Rota. The Court interpreted Article
6 VI, Section 3(b) of the Commonwealth Constitution as granting the Mayor of Rota the authority to
7 spend public funds appropriated by the Legislature for the Island of Rota. As a result, the Court
8 enjoined the Governor from "denying the Mayor of Rota his constitutional right to expend funds
9 appropriated for those resident departments primarily responsible for the delivery of public services
10 unless such denial is accompanied by a just cause revocation." *Inos v. Tenorio*, Civil Action No. 94-
11 1289 (Oct. 18, 1996) (hereinafter *Inos II*).

12 On September 21, 1995, House Joint Resolution No. 9-21, H.D. 1 (the resolution) passed both
13 houses of the Legislature. The resolution attempted to conform with *Inos I* by essentially
14 "transferring the appropriations and employment authorization [all twenty-one FTE's] of the Office
15 of the Governor's Representative on Rota" to the Mayor's Office. See H.J.R. No. 9-21. The
16 Legislature went on to declare that "the employees of the Office of the Governor's Representative on
17 Rota are to be unaffected by the decision in *Inos v. Tenorio*, and that the employment of these persons
18 constitutes a contractual right which under the Commonwealth Constitution cannot be impaired." *Id.*
19 Finally, the Legislature announced that "these [twenty-one] employees are to continue to be paid,
20 pursuant to the Mayor's expenditure authority recognized by [this] Court, from funds appropriated
21 to the Office of the Governor's Representative on Rota by P.L. 9-25. As authority for this action,
22 the Legislature cited Article X, Section 7 of the Commonwealth Constitution claiming that this Article
23 grants the Legislature authority by joint resolution to authorize additional employment in any part of
24 the Commonwealth government.

25 Upon receiving word of this legislation, the Mayor made several attempts to have the
26 Governor transfer the appropriation for the employees salaries to the Mayor. The Governor has
27 repeatedly refused to do so. On October 29, 1995, the Mayor filed his Motion for Contempt claiming
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1 that the Governor had violated the Court's injunction in *Inos II* by refusing to recognize the Mayor's
2 expenditure authority. During the course of reviewing the January 8, 1996 hearing, it appeared to
3 the Court that a resolution of the Mayor's contempt motion might require an interpretation of Article
4 X, Section 7 of our Commonwealth Constitution.

5 Based on this observation, the Court set an additional hearing for May 2, 1996. At the
6 hearing, the Mayor argued that Article X, Section 7 authorizes the Legislature to raise FTE levels in
7 the Mayor's Office and to fund such staff increases by shifting appropriations from the Office of the
8 Governor's Representative on Rota by joint resolution. Alternatively, the Mayor claimed expenditure
9 authority over the Office of the Governor's Representative on Rota pursuant to that portion of *Inos*
10 *II* concerning the Mayor's expenditure authority over public funds appropriated by the Legislature for
11 the Island of Rota. In contrast, the Governor contended that the Legislature's shift of appropriated
12 funds is unconstitutional because it lacks his approval. In addition, the Governor contended that the
13 Mayor's expenditure authority does not extend to funds earmarked for a satellite Office of the
14 Governor.

15 16 **II. ISSUES**

17 1. Whether the Governor's refusal to transfer the \$549,900 to the Mayor, regardless of
18 constitutionality, could possibly constitute a violation of the injunction in *Inos II* concerning the
19 Mayor's expenditure authority.

20 2. If so:

21 (a) Whether Article X, Section 7 of the Commonwealth Constitution allows the Legislature
22 to raise the FTE ceiling of an agency *and to shift appropriations from one agency to another agency*
23 by Joint Resolution without an appropriation bill.

24 (b) Whether the \$549,900.00 earmarked for the Governor's Representative on Rota constitutes
25 public funds appropriated by the Legislature for the Island of Rota, and thus falls under the Mayor's
26 expenditure authority.

1 **III. ANALYSIS**

2 Governor's Actions Outside Injunctive Order

3 The Mayor has based his Motion for Contempt on two separate issues. First, the Mayor
4 contends that the Governor violated that portion of *Inos II* which enjoins him from denying the
5 Mayor's expenditure authority, by refusing to release funds which the Legislature had constitutionally
6 shifted to the Office of the Mayor. Second, the Mayor contends that regardless of whether H.J.R.
7 No. 9-51 constitutionally achieved its objective, the Governor should still be held in contempt because
8 he has refused to allow the Mayor to expend funds earmarked for the Office of the Governor's
9 Representative on Rota even though they are funds appropriated by the Legislature for the Island of
10 Rota, and thus fall within the Mayor's expenditure authority outlined in *Inos II*. Resolving either of
11 these issues would require the Court to make a ruling on a matter of constitutional law.

12 Courts will not make a ruling on a matter of constitutional law where the matter can be
13 disposed of on non-constitutional grounds. *Marianas Public Land Trust v. Marianas Public Land*
14 *Corporation*, 1 C.R. 974, 978 (C.N.M.I. Tr. Ct. 1984) citing *Bush v. Texas*, 83 S.Ct. 922. Thus,
15 the Court cannot reach the constitutional questions raised without first determining whether the
16 Governor's refusal to turn over the \$549,000.00 in question can possibly constitute an act in violation
17 of the injunction in *Inos II*.

18 In Count IX of his Fourth Amended Complaint, the Mayor took issue with the manner in
19 which the Governor had denied the Mayor his right to spend appropriations provided for *the resident*
20 *departments on Rota*. At no time did the Mayor allege facts or assert that the Governor had usurped
21 his expenditure authority over the Office of the Mayor, or over the Office of the Governor's
22 Representative on Rota. Accordingly, in *inos II*, the Court specifically addressed the parameters of
23 the Mayor's expenditure authority within the resident departments. This Court stated:

24 the Mayor of Rota has the authority to spend public funds appropriated by the
25 Legislature for the Island of Rota . . . subject to the confines of the delicate balance
26 created by Amendment 25. Thus, the Governor has discretion to revoke the Mayor's
27 expenditure authority over those departments primarily responsible for the execution
of Commonwealth law. However, absent a showing of just cause, the Governor
cannot deny the Mayor's authority to spend appropriated funds for those resident
departments primarily responsible for the delivery of public services.

1 *Inos II* at 12-13. The Court eventually enjoined the Governor and his secretaries “from denying the
2 Mayor of Rota his constitutional right to expend funds appropriated for those resident departments
3 primarily responsible for the delivery of public services *unless* such denial is accompanied by a just
4 cause revocation of the Mayor’s authority over the resident department concerned.” Thus, the Court
5 limited the application of it’s interpretation of Article VI, Section 3(b) of the Commonwealth
6 Constitution, and thus the injunctive relief, to mayoral expenditure authority over resident
7 departments.

8 The Mayor’s Motion for Contempt alleges that the Governor has ignored the Court’s
9 *injunction* in *Inos II* by either usurping mayoral expenditure authority over funds in *the Office of the*
10 *Mayor* or, if H.J.R. No 9-51 is held unconstitutional, in *the Office of the Governor’s Representative*
11 *on Rota*. Neither of these aspects of mayoral expenditure authority were addressed in *Inos II*, or the
12 injunctions contained therein. In fact, a close look at the record reveals that both of these expenditure
13 issues have arisen from an act which occurred after the Court’s issuance of *Inos II*; namely the
14 passage of H.J.R. No. 9-51.

15 Violation or disobedience of an injunction issued by a court is only punishable as contempt
16 if an actual violation of the injunction is shown. *Brown v. Toledo Mental Hygiene Clinic*, 410 NE2d
17 1262 (Ohio). In this case, the allegedly contemptuous activity does not concern mayoral expenditure
18 authority in the resident departments, and thus, does not violate the narrowly tailored injunction
19 contained in *Inos II*. Thus, as a matter of law, the Mayor’s Motion for Contempt must be DENIED.

20 The Court’s decision to refrain from reaching constitutional issues unnecessarily should not
21 be construed as tacit approval of H.J.R. No. 9-51. To be sure, a legislative attempt to unilaterally
22 shift appropriations in the middle of a fiscal year from one executive branch office to another without
23 executive approval implicates separation of powers issues of the highest order. If, as the Mayor
24 advocates, Article X, Section Seven of the Commonwealth Constitution grants the Legislature
25 unilateral power to shift FTE’s and “zero out” entire executive branch departments, then the
26 Legislature holds in its hand a political trump card which, when thrown, will shake the very
27 foundations of the republican form of government promised in our Covenant.

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IV. CONCLUSION

For the foregoing reasons, the Mayors motion for contempt regarding Count Nine of the Court's October 18, 1995 Decision is hereby DENIED.

So ORDERED this 6 day of June, 1996.


EDWARD MANIBUSAN, Associate Judge