



February 9, 2023

Ref: GVB 23-0045

Honorable Carl T.C. Gutierrez
President / Chief Executive Officer
Guam Visitors Bureau
401 Pale San Vitores Road
Tumon, Guam 96913

Subject: Legal Opinion – Guam Visitors Bureau

Hafa Adai President Gutierrez:

You transmitted to this Office a February 3, 2023 letter requesting our legal opinion. In that letter you asked three (3) questions. Our response is as follows:

1. Whether, when there are vacancies in the ranks of the elected directors of the Board of Trustees of the GVB due to expiration of some of the elected directors terms, the remaining elected directors can appoint directors to fill the vacancies?

In short, no. The GVB Board consists of 5 directors appointed by the Governor with the advice and consent of the Guam Legislature (the "appointed directors"), 2 directors who are appointed by the Speaker (the "Legislative Directors"), 4 directors who are elected by GVB's contributing members (the "elected directors"), the "12th" director who is elected by the other 11 directors, and an alternate director who is appointed by the Speaker with the consent of the Legislature. Guam Visitors Bureau Act ("GVBA"), 12 G.C.A. § 9106 (a).

Elected directors are chosen by the contributing membership to serve a term of two (2) years. GVBA § 9106 (a)(c). Elections by the contributing membership differ from selections by elected directors to fill seats vacated by resignation or removal. The latter is accomplished via under the statutory process found at GVBA § 9106 (g), and which reads as follows:

Office of the Attorney General
Douglas B. Moylan · Attorney General of Guam

590 S. Marine Corps. Drive · ITC Bldg., Ste. 901 · Tamuning, Guam 96913 · USA
671-475-3324 · 671-475-4703 (fax) · dbmoylan@oagguam.org · www.oagguam.org
"Guam's Toughest Law Enforcers"

A vacancy on the Board (whether created by resignation or removal) of an elected member shall be filled by selection by at least two of the remaining elected directors. An elected director filling a vacancy shall serve only until the end of the term of the director whom he replaced.

GVBA § 9106 (g) only applies to seats vacated by resignation or removal and not to expired terms. If it did apply to expired terms, there would be no need to conduct director elections, since elected directors could keep selecting directors in lieu of an election. Clearly, the right to elect directors to two-year terms rests with the membership.

Therefore, after February 5, 2023, when Directors Gatewood and Bell's terms ended by expiration, their expired terms would have to be filled by election by the contributing membership, pursuant to GVBA §§ 9112(a)(f) and 9106(a). Thus, the selection of Mr. Akihiro Tani and Mr. George Chiu would be invalid.

2. Are corporate resolutions binding on a corporation's board of directors until revoked by a subsequent resolution?

In short, yes. The corporate resolution is a document recording the decisions made by the board members regarding actions a company will take. A corporate resolution is *binding* on the corporate directors until rescinded by another resolution. See <https://www.investopedia.com/terms/c/corporateresolution.asp>

3. Recognizing that the GVB Board of Directors during their last meeting in May of 2022 suspended all meetings until the agency's bylaws could be revised, whether the Board has the authority to schedule any future meeting without having first resolved issues with the bylaws that triggered the suspension?

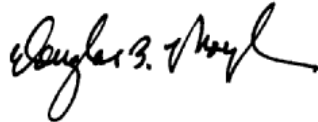
In short, yes they can. Your question raises the underlying question, "[C]an corporations operate without bylaws? The law supports our positions that,

If the corporation fails to adopt bylaws, the authority to perform any of the acts that normally would be controlled by the bylaws will be vested in the board of directors and any of its committees. [Canal Oil Co. v. National Oil Co., 19 Cal. App. 2d 524, 66 P.2d 197 (3d Dist. 1937)].

Thus, the Board can act in the absence of bylaws. The Board has the authority to schedule future meetings without having first resolved issues with the bylaws that triggered the suspension, inasmuch as the Board can act in the absence of bylaws.

Please do not hesitate to contact this Office if further opinions are required. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "Douglas B. Moylan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Douglas B. Moylan
Attorney General of Guam