The Virgin Islands Consortium

Senate Counsel Says ABR Deal Does Not Protect VI Government's Interests, Attorney General Disagrees

Government / **Published On December 19, 2014 11:02 AM /**

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Just hours ahead of the 30th Legislature's vote to approve or disapprove the proposed Operating Agreement signed between Atlantic Basin Refining and the Government of the Virgin Islands for the purchase of HOVENSA, Gov. John P. de Jongh, Jr. on Thursday night submitted a copy of a legal memorandum from Attorney General Vincent Frazer rebutting claims made by the Legislature's deputy chief counsel about the pending deal.

"I am releasing the Attorney General’s legal memorandum, because it is important for the Senators to have accurate information before making their decision tomorrow — a decision that will have tremendous ramifications for the Virgin Islands and our economy in the many years to come," de Jongh said.

In her legal opinion, Yvonne Tharpes said the proposed Operating Agreement is not "legally sufficient to protect the interests of the Government of the Virgin Islands," and that it "lacks mutuality of assent, mutuality of remedies, and [is] unconscionable, severely limiting the Government's legal remedies." Furthermore, the deputy chief counsel's opinion states that "[t]ying all of [the] payment requirements to a nonrecourse mortgage gives the Government no recourse against ABRVI for breach of contract."

Frazer's legal memorandum addressed each of Tharpes's conclusions, particularly that the Operating Agreement will be fully enforceable upon closing; that it provides the Government with specific remedies in the event of a breach of contract; that the Government has the right to pursue all the remedies for breach of contract available in the common law for any failure by ABRVI to perform any of its obligations not specifically defined as a breach; that failure by ABRVI to operate the refinery at the required capacity will constitute a breach of the Agreement; that the Agreement permits ABRVI to operate the plant as a storage facility only as a means to fund the reconfiguration and restart of the refinery, or failing that, the deconstruction of the refinery and restoration of the site.

Furthermore, Frazer's rebuttal states that the Agreement's employment provisions incentivize ABRVI to employ the agreed-upon minimum of 500 full-time employees, 75 percent of whom must be Virgin Islands residents, and 100 contractors; and that the Government's interests are protected, not only by multiple levels of guarantees, but also by a security interest in the refinery that both safeguards the Government's position and permits ABRVI to obtain the financing to restart the refinery.

To read the Attorney General's memorandum, click here.

The full Senate is expected to vote on the HOVENSA-ABR deal today.