

The Virgin Islands Consortium

Attorney General Gives Opinion on Recent GVI v. GERS Third Circuit Court Decision

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Attorney General Denise George was asked directly by Senator Alma Francis-Heyliger what her opinion was of the Third Circuit Court ruling in favor of the Government of the Virgin Islands (G.V.I.) in its case versus the Government Employees Retirement System (G.E.R.S).

After the ruling Moody's Rating Agency [reported](#) that the G.E.R.S would likely collapse by 2023.

In the A.G.'s testimony she said "In the G.E.R.S. lawsuit against the Government, the District Court and the Third Circuit Court of Appeals ruled in favor of the government by declining G.E.R.S.' claim that it was entitled to an award from the government of billions in "Actuarially Determined Employer Contributions to G.E.R.S." (ADEC) which G.E.R.S. claimed the Government, through the executive branch, owed under a 1984 Consent Decree. The Third Circuit appellate court noted that the "cure for G.E.R.S.'s chronic underfunding is not judicial but legislative." This could serve as a catalyst for this 34th legislature to pursue a solution to our G.E.R.S. crisis for the benefit of the retirees and entire retirement system.

While Ms. Francis-Heyliger was aware that it was a quote from the court she wanted to know specifically what Ms. George's thoughts were on the matter and if it was a fair assessment. Her response was "I think it is legislative in the sense that only the legislature has the funding power but I believe it's not only a legislative and I believe we have to work together as bodies of the different branches which is legislative as well as the executive to come up with a solution."

The senator agreed with Ms. George's evaluation on the situation but said, "this body can create laws for funding but if the executive branch does not execute those laws, for example, we had many situations where laws are already on the books to turn funding over to G.E.R.S. and it just doesn't happen and it creates that void from incoming cash flow that at times played a role in where G.E.R.S. is today. I wouldn't say that it's just legislative and I totally agree with you that the legislature in conjunction with the executive branch has to work together."

One of the examples of a situation where funds that were allocated to GERS but weren't immediately released, that Ms. Francis-Heyliger could have been alluding to, was brought up by Senator Dwayne DeGraff when he made mention of Act 8383.

He stated that because of Act 8383, \$4.4 million was supposed to be sent to G.E.R.S but the last time he spoke to the O.M.B. Director, Jenifer O'Neal said that money could not be sent over due to advisement of Ms. George when the aforementioned court case was ongoing.

"Now the court case decision has been made I think after that conversation with the O.M.B director, can that money be released to G.E.R.S. at this time?"

Ms. George's response clarified why she advised Ms. O' Neal not to release those funds but did not answer Mr. Degraff's question. "Let me just clarify during the time a request was made to me with respect to a request from G.E.R.S for release of funding, it was a general request and some of the funds were touched upon the funds that were at issue at the trial in court at the time. I then advised her, yes do not make any decision or any funds because the matter is in litigation," she said

Mr. DeGraff said "If you could refer to Act 8383, again it didn't have to do with the lawsuit and then speak with the O.M.B. director and decide if those monies could be released because it didn't have to do with a lawsuit. If you could follow up on that and you could inform the chair if those monies could be released through O.M.B." Ms. George stated that she would do that.