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Senate Finds Bryan Administration's Use of $45 Million Without Legislative Approval Carries Jail Time Penalty, $10,000 Fine

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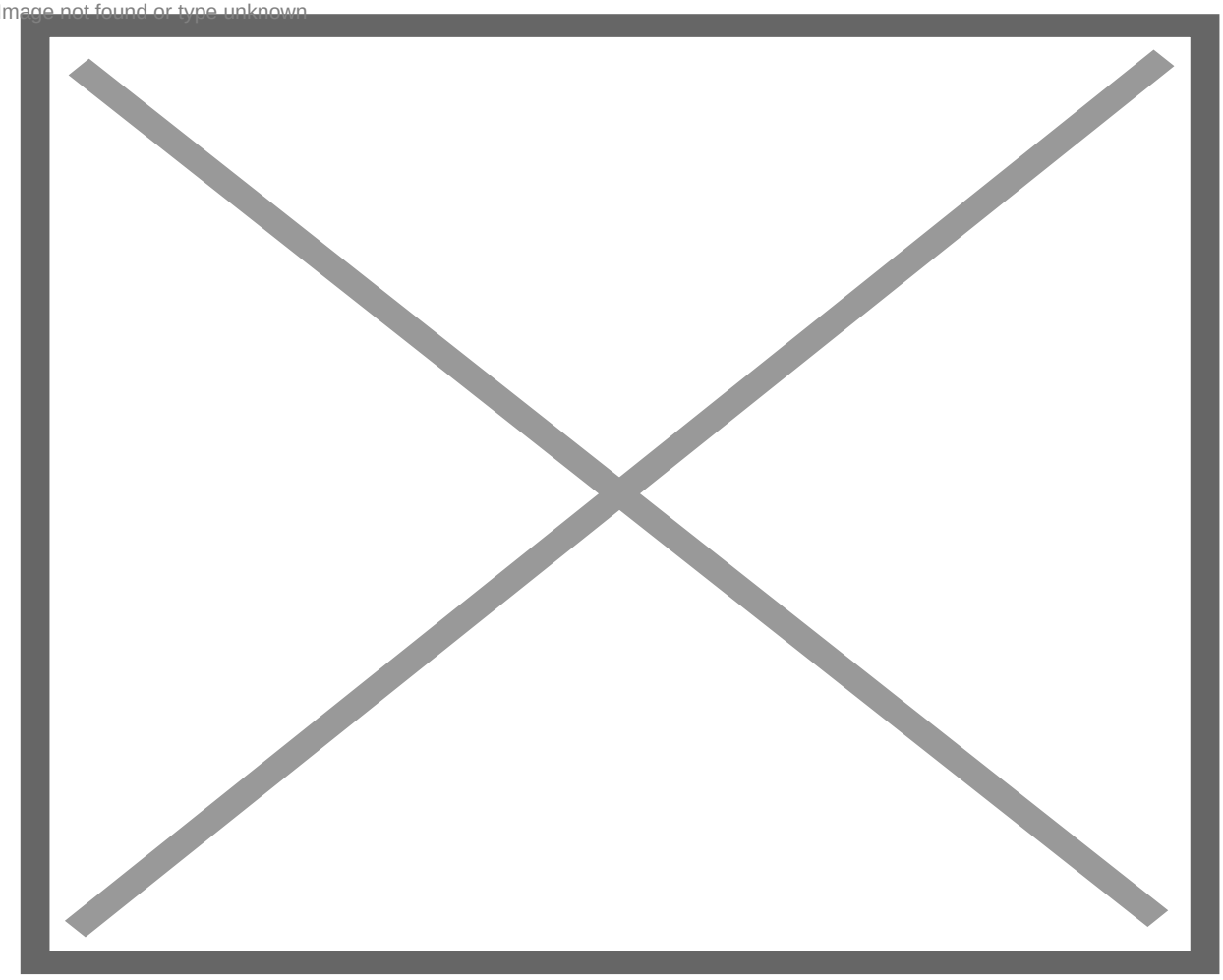

Governor Albert Bryan Jr. **By. V.I. LEGISLATURE**

The legal opinion sought by lawmakers about the executive branch's decision to transfer millions of dollars out of the territory's general fund without legislative approval is now in.

Earlier this month, members of the 35th Legislature's Committee on Budget, Appropriations and Finance were shocked and outraged to learn that Governor Albert Bryan Jr.'s finance team had taken $45 million dollars out of general fund, without Senate authorization, to pay the first tranche of a settlement negotiated by the V.I. Water and Power Authority. That money went to energy trading firm Vitol, to whom WAPA owed hundreds of millions following a propane conversion

project that ballooned in cost partially due to questionable management decisions.

According to Office of Management & Budget Director Jenifer O'Neal, the line of credit that had been approved by the Senate had not yet been established, so money in the general fund was used to meet Vitol's payment deadline. Lawmakers did not take kindly to that disclosure and vowed to find out what kind of penalties or censure could be imposed in this regard.

A memorandum dated June 21, 2023 was sent to the office of Senator Alma Francis Heyliger, one of the legislators who has been most vocal about the perceived impropriety. The question, whether Act 8701 gives the Governor, through the Commissioner of Finance, the authority to reprogram government funds without the approval of the Legislature, was answered simply by the Senate's legal office: "No."

Act 8701 is the measure introduced by the governor and considered in a special session of the Legislation, that authorized the $100 million line of credit, from which the $45 million initial payment to Vitol was to have been taken. When asked by Senator Francis Heyliger who had authorized taking the money out of the general fund, Ms. O'Neal responded "the authorization was the authorization for the line of credit, and the $45 million that was included with that." According to Ms. O'Neal's rationale at the time, "the line of credit [was] not closed. We [had] an obligation to make a payment by a certain date, and the payment was made utilizing the funding we had."

The Senate's legal minds disagree. "Act 8701 does not give the Governor, through the Commissioner of Finance, the authority to reprogram or transfer funds from the General Fund of the Treasury of the Government of the Virgin Islands previously appropriated by the Legislature," reads the 8-page memo.

When the Senate met on April 15 to consider Bill 35-0070 as sent to lawmakers by the executive branch, they gutted the legislation and rewrote it wholesale, lowering the line of credit to $100 million instead of the $150 million proposed by Governor Bryan. They also mandated the hiring of a turnaround company, among other changes.

According to the memorandum, one of those changes was to ensure the executive branch would have to seek legislative approval for any re-appropriation of funds. "The original bill that the Governor sent to the Legislature expressly included such authority," the memo reads, "but Act No. 8701 was substantially amended and removed any such ability to transfer public funds without the approval of the Legislature."

With the legal cover for such action reportedly stripped away by the Senate's amendment of the legislation, the memorandum notes that Title 2 Virgin Islands Code, Chapter 23, section 28 d) is what outlines the limits of executive power when it comes to the disposition of public funds. "No part or portion of any item of the Executive Appropriation Act, or in any other appropriation bills…shall be expended for any other purpose but that specified," the section reads. It also prohibits "any transfer between items made, without the expressed consent of the Committee on Finance of the Legislature."

The second half of Senator Francis Heyliger's inquiry, as to whether there are any penalties attached to the unauthorized use of public funds in such a matter, was answered by Senate legal counsel by a reference to Title 33 Virgin Islands Code, subtitle 3, chapter 113, section 3101, which appears to prohibit a public officer from drawing directly from the public purse or creating an obligation upon the public purse, "unless such contract or obligation is authorized by law".

Because the transfer of the $45 million out of the general fund was not requested by the executive, the legislative branch of government could not, and did not authorize the move, the Senate's legal office concluded. Administrative discipline is recommended for people who run afoul of section 3101. The penalty for knowingly and willfully violating this section of the Code? A fine of up to $10,000, and/or a jail sentence of up to five years, according to a subsequent section, 3109.

However, none of these penalties are within the Legislature's purview to impose, the memorandum advises. "Whether any administrative or criminal penalty provided for subsection a) is pursued is ultimately within the discretion of the Governor," the memorandum reads. The Legislature can demand pertinent facts along with a report of any action taken, or perhaps make a criminal referral to the Department of Justice, but even then, "the Attorney General would be under no obligation to consider the request."

The Virgin Islands Code, as currently written, evidently does not contemplate a scenario where the governor himself may have requested or ordered the redirection of public monies to alternative uses without legislative approval. Having, within the past week, closed on the $100 million line of credit, and with the $45 million dollar repayment to the general fund completed or imminent, the question of whether Governor Bryan will censure himself or his team for straying outside the rules seems to be an all but rhetorical one.