

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

v.

JOHN P. DE JONGH, JR.,

Defendant.

Case No. ST-15-CR-309

Hon. Michael C. Dunston
Presiding Judge

**DEFENDANT'S MOTION TO DISMISS THE INFORMATION
PURSUANT TO FED. R. CRIM. P. 12(b)(3)(B)(iv)**

Defendant, Gov. John P. de Jongh, Jr., respectfully moves this Honorable Court pursuant to Fed. R. Crim. P. 12(a)(3)(B)(iv) and Super. Ct. R. 7 for an order dismissing the Information dated September 2, 2015. (Exhibit A).¹

INTRODUCTION

The fact that the People's entire case against Gov. de Jongh hinges on a matter of remedial English punctuation makes one thing perfectly clear: this case is not legitimately about the criminal law. Instead, it appears to be a politically-driven and poorly conceived vendetta initiated by the current Governor, whom Gov. de Jongh defeated handily in his last reelection campaign in 2010. This sham prosecution is a disgrace both upon the Virgin Islands Department of Justice and the Governor's Office.

The current Administration accuses Gov. de Jongh of stealing approximately \$490,000.00 from the public fisc and using the money to add value to his private home. Ironically, in the short time the *current* Governor has been in office he has apparently already

¹ The instant motion is in addition to Gov. de Jongh's motion to dismiss the charges against him as time-barred, filed on September 3, 2015. The People filed no opposition to that motion, and it is far too late to do so now.

spent such an obscene amount of Virgin Islands taxpayer money on so-called "living expenses" – a \$12,500.00 per month residential lease now superseded by the daily cost of a suite at the Virgin Islands' most expensive hotel, the Ritz-Carlton St. Thomas;² \$16,000.00 for limousine and car service on a recent trip to New York City;³ \$18,000.00 for air travel in connection with said trip;⁴ \$5,300.00 for sheets and bedclothes;⁵ and \$65,000.00 per year for the Governor's "personal chef,"⁶ to name but a few – that it will quickly dwarf the amount at issue here, which consists of security costs for *the entire eight years that Gov. de Jongh was in office* – and even then, much of which Gov. de Jongh had long ago offered to repay.⁷

² See *Virgin Islands Daily News*, Villa Mapp Controversy (June 24, 2015); see also <http://viconsortium.com/featured/governor-mapp-is-living-out-of-a-suitcase-at-the-ritz-carlton-when-in-st-thomas-2/>

³ See *Virgin Islands Daily News*, Mapp. Party Run Up \$16,000 in Limo, Car Service Charges (September 22, 2015).

⁴ See *Virgin Islands Daily News*, Mapp Uses Government Card for Beer, Hotels, Tickets (September 21, 2015).

⁵ See *id.*; see also *St. Croix Source*, Mapp Flying High on Taxpayers' Dime (Sept. 10, 2015) (describing \$87,000.00 in travel expenses linked to use of private jet service).

⁶ See *Virgin Islands Daily News*, Mapp Has \$65K-a-Year Chef on Taxpayer's Dime (July 6, 2015).

⁷ There has been no abatement in this apparent pattern of abuse. It was reported that the current Administration leased a St. Thomas condominium for the personal use of our new Lieutenant Governor – who already resides on St. Thomas – paid for with public funds and blessed by the present Governor, who reportedly signed the lease. In a remarkable bit of hubris, the current Governor acted over the advice of his own Chief Legal Counsel that doing so was illegal. *Virgin Islands Daily News*, Potter Told in March Public Funds Not For Condo (Oct. 28, 2015). And most recently, a lawsuit was filed against the Governor and others by his own Deputy Legal Counsel alleging she was wrongfully terminated after responding to a request for public records reflecting the Governor's inappropriate spending habits. *Virgin Islands Daily News*, Attorney Sues Mapp Over Spending Records Fallout (Oct. 30, 2015). To the undersigned's knowledge, neither the Governor nor Lieutenant Governor has yet been charged with any criminal conduct.

Just writing these words is infuriating. Doing so in defense of spurious criminal charges leveled against a good man who devoted eight years of his life to high public service pushes tolerance well beyond its reasonable limit.

For the reasons set forth below, the Information does not state a crime against Governor de Jongh. The charges must be dismissed. Punishment of the individuals behind this sham prosecution must await another day.

FACTS

As explained in Gov. de Jongh's September 3, 2015, motion to dismiss the Information as time-barred pursuant to V.I. Code Ann. tit. 5, § 3541(a)(2), Gov. de Jongh is charged with one count each of violating V.I. Code Ann. tit. 14, § 1662(1) and V.I. Code Ann. tit. 14, § 1663(1). The allegations are based on events that took place in 2007-2008, that transpired entirely in the public eye, and that were widely reported in the *Virgin Islands Daily News* and other local media outlets.

Shortly before he took office, Governor de Jongh decided to reside at his St. Thomas home instead of Government House or Estate Catherineberg, neither of which had been the residence of the Governor of the Virgin Islands for many years. He did so in large part because the former was no longer configured as a house and the latter would require the expenditure of millions of dollars in security and other improvements before it could be habitable by the de Jongh family. Security improvements to the de Jongh residence, on the other hand, could be constructed at a fraction of that cost.

In early January 2007, when Gov. de Jongh made his housing plans public, the V.I. Department of Public Works solicited an opinion from Acting Attorney General Elliot "Mac"

Davis questioning whether it was appropriate to expend public money on construction at Gov. de Jongh's personal residence to maintain an appropriate level of security and protection for the Governor and his family. Davis concluded that it was.⁸

On January 30, 2007, Robert L. Moorehead, Acting Commissioner of the V.I. Department of Public Works, wrote a letter to Gov. de Jongh in his capacity as Board Chairman of the V.I. Public Finance Authority. (Exhibit C.) Moorehead specified six construction projects that required funding and the estimated cost of each, including the de Jongh security project and the construction of vaults at the Eastern Cemetery in Red Hook. Moorehead requested that Act No. 6427 be amended to permit spending on these projects. Notably, Act No. 6427 itself had reprogrammed funds originally pledged to the Savan Gut Project (which was not "road" construction) for use on the Nadir Bridge Flood Control Project, Mon Bijou Flood Control Project and Blue Lightning/HIDTA Project – none of which involved the building or repair of "roads." 2001 V.I. Session Laws, Act No. 6427, Section 22, at 148-149. Copied on the letter was then-Senator Carlton Dowe, among others.

On March 21, 2007, Omnibus Bill No. 27-0039 was put to a vote in the Senate. The bill containing the proposed amendment to Act No. 6427, designated Section 17, was sponsored by Sen. Dowe. The text reads:

SECTION 17. The sum of \$1,305,000.00 is appropriated for the fiscal year ending September 30, 2007, from the General Fund to the Department of Public Works *for engineering designs, construction, repairs or the resurfacing or roads.* The sum remains available until expended.

⁸ A copy of the January 2, 2007, opinion letter (the "Davis Opinion") is attached hereto as Exhibit B.

(Exhibit D (copy of Bill No. 27-0039 with "roll call" Senate voting record) (bold and italics added).)

Most relevant for the Court's purpose here is the structure of the highlighted portion: –
No comma is placed between the noun "repairs" and the conjunction "or."

Although any Senator present could have asked for debate before voting on Act No. 6917, none did. Bill No. 27-0039 was passed unanimously by voice vote. (*Id.*)

As enacted into law, Act No. 6917 mirrors the language of Bill No. 27-0039:

The sum of \$1,305,000 is appropriated in the fiscal year ending September 30, 2007, from the savings realized in SECTION 16 to the Department of Public Works *for engineering designs, construction, repairs or the resurfacing of roads*. The sum remains available until expended.

2007 V.I. Session Laws Act No. 6917, at 17 (bold and italics added). Unsurprisingly, the statute mirrors the bill in its punctuation: again, no comma is placed between the noun "repairs" and the conjunction "or."

On April 25, 2007, after Act No. 6427 was amended, Commissioner Designate Darryl A. Smalls wrote to Julito Francis, Director of the V.I. Public Finance Authority, requesting that Francis notify Commissioner Lynn Millin of the V.I. Department of Property and Procurement that Act No. 6917 funds were available for use on the six projects previously identified by Moorehead. (Exhibit E.)

Finally, on April 30, 2007, Director Francis wrote to Commissioner Millin that funding for the six projects was available and the Department of Property and Procurement was required to forward contracts, vendor certifications and the like per established procedure. (Exhibit F.)
Once these were approved, the Department of Public Works could submit vendor invoices for

payment along with all appropriate certifications.

The inclusion of "construction" and "engineering designs" in Act No. 6917 permitted the V.I. Department of Public Works to draw upon the \$1,305,000.00 to pay for a variety of public projects, including vaults at the Eastern Cemetery and drainage improvements both on St. Thomas and St. Croix. As reported by local media at least as far back as 2009, approximately \$490,000.00 of Act No. 6917 funds were used to construct the security improvements at the de Jongh residence. *See Virgin Islands Daily News, Governor Points to Legal Review that OK'd Security Improvements at Mafolie Home* (July 7, 2009).

Realizing that the nature of some of the improvements were permanent and would last beyond his term of office, Gov. de Jongh publicly announced that he would pay the Government of the Virgin Islands the value of whatever remained permanently affixed to his property – *i.e.*, the relocated and widened driveway and the perimeter fencing. *See St. Croix Source, Gov. de Jongh Condemns IG Report, Says Security Spending was Proper* (February 16, 2010).⁹

Soon thereafter, then-Senator Adlah "Foncie" Donastorg, Jr., an especially strident political opponent of Gov. de Jongh, initiated Senate hearings purportedly to investigate what the media colorfully coined "Mafoliegate."

At the October 20, 2009, hearing in the Legislature, the Senate heard testimony from Nicole Turner-Wilkinson, Chief Engineer for the V.I. Department of Public Works, which had

⁹ Gov. de Jongh had made this same announcement as far back as November 2009. *See Virgin Islands Daily News, De Jongh Mends Fences* (Nov. 7, 2009) ("I will also be instructing the attorney general to prepare a legal and binding agreement that sets forth my commitment to do the following: at the end of my term in office and the removal of whatever physical improvements and equipment are removed, an appraisal of the value of what remains shall be provided to me and my wife as the owners of the real property upon which the improvements were made." (quoting Gov. de Jongh)).

put the work up for competitive bidding.¹⁰ Ms. Turner-Wilkinson explained that of the three options for housing Gov. de Jongh and his family, only one was economical: installing security measures at the de Jongh residence. The first option, Government House, was not viable, as it had been reconfigured into offices and meeting spaces and had limited space. The second, the WICO mansion, Estate Catherineberg, had fallen into disrepair. The remedial and security work necessary to house the de Jongh family there would have exceeded \$2,000,000.00 in public funds and taken between twelve (12) to fifteen (15) months to complete – during which period the de Jongh family would have insufficient security. Improving the de Jongh property with a guardhouse, perimeter fencing and an expanded driveway was expected to cost far less than the Catherineberg project and the First Family would be able to reside there through the construction process. Finally, Turner-Wilkinson testified that all aspects of the project had been the subject of a competitive bidding process.

The hearings did not result in the censure of Gov. de Jongh, let alone a call for his arrest and prosecution.

Donastorg then called upon the Office of the Inspector General (“OIG”), a branch of the U.S. Department of the Interior, to audit the facts behind “Mafoligate.” What the public did *not* know at the time was that Hannibal M. Ware, OIG’s Regional Manager, is Donastorg’s cousin, and Ware was instrumental in the OIG’s decision to take up the matter and “fast track” the audit.

In January 2010, the OIG issued its report, titled *Security Improvements at Governor of the Virgin Islands Private Residence* (hereinafter “OIG Report”).¹¹

First, the OIG Report acknowledged that “security is a necessity for any sitting

¹⁰ A copy of Ms. Turner-Wilkinson’s testimony is attached hereto as Exhibit G.

Governor.” OIG Report (cover letter from Acting Inspector General Mary L. Kendall); *see also id.* at 5 (“We recognize that security is a necessity for any sitting Governor. In fact, past Virgin Islands governors have had some level of security at their private residences regardless of where they officially resided while in office.”).

Second, the OIG Report took note of the Davis Opinion (written not at the request of Gov. de Jongh but that of Othniel Vanterpool, Director of Operations at the Department of Public Works). Acting Attorney General Davis had opined that “the cost of security related improvements to the Governor’s residence may be properly incurred by the Government.” Davis Opinion at 1. Of course, the Davis Opinion predated all of the construction performed at the de Jongh residence. (*See* OIG Report at 2.)

Under the heading “Public Funds Used Improperly,” the OIG Report addressed what would become the critical issue in this case: whether the Virgin Islands Legislature had authorized the expenditure of public funds for the de Jongh security project. OIG Report at 2-3.

The OIG Report correctly notes that the funds had been reprogrammed by Act No. 6917. Inexplicably, the OIG Report then *misquotes* the statute, part of an omnibus appropriations bill, as follows:

In April 2007, the Legislature passed Act No. 6917, reprogramming the \$1.3 million [originally appropriated for the Nadir Flood Control Project] for the specific purpose of ***engineering design, construction, repair, or resurfacing of roads.***

OIG Report at 2 (bold and italics in original).

On this, the most crucial issue in the case now before the Court, the OIG Report gets this rather simple sentence materially wrong, resulting in an erroneous interpretation of its meaning:

¹¹ A copy of the OIG Report is attached hereto as Exhibit H.

– that the \$1,305,000.00 could be used *only for roads*, to the exclusion of any other type of construction project.¹²

As explained below, the addition in the OIG Report of a comma after the noun “repair” and before the conjunction “or” is highly material to the charges against Gov. de Jongh – and most regrettably, simply flat-out wrong. As the Court can see, Act No. 6917 itself inserts *no comma* after “repairs” (the plural form used in Act No. 6917, erroneously quoted in the singular in the OIG Report).

In the context of this case, the significance of the OIG Report’s error cannot be overstated.

The OIG Report goes on to discuss the alleged “legislative process” behind Act No. 6917 as relayed to the OIG by six unidentified “senators.” (OIG Report at 2.) These anonymous senators reportedly claimed that “the funds [reprogrammed by Act No. 6917] were intended for the purpose of Virgin Islands road improvements[,]” particularly on St. Croix. *Id.* From its erroneous reading of Act No. 6917’s text and the *post hoc* comments of the anonymous legislators, the OIG Report concludes: “Clearly, *no part of the \$1.3 million was to be used for security improvements at the Governor’s private residence – or for any other purpose.*” *Id.* (bold and italics added).

As demonstrated below, the highlighted text shows either the depth of the OIG’s misunderstanding of Act No. 6917, or that the OIG Report was published illegitimately, as deliberately inaccurate propaganda.

After reiterating that ensuring the safety of Gov. de Jongh and his family is a legitimate

¹² The OIG Report also erroneously uses the singular for “design” and “repair” instead of Act

public concern, the OIG Report ends by proclaiming “[t]he Executive Branch of Government ... cannot independently determine the purpose for which public funds are used. Only the Legislature has the authority to appropriate public funds to pay for security improvements for any governor.” (OIG Report at 5.)

The OIG Report does *not* recommend that criminal charges be brought against Gov. de Jongh, nor even that Gov. de Jongh *personally* pay the cost of the security to the Government – rather, that responsibility is attributed to the “Executive Branch.” (*Id.*)

In the four years that followed the issuance of the OIG Report, the parties connected to “Mafoliegate” remained silent, save then-gubernatorial candidate Kenneth Mapp. Mapp repeatedly referred to the “Mafoliegate” controversy during his 2010 campaign.

The voters of the Virgin Islands were unimpressed. In November 2010, Gov. de Jongh defeated Mapp and was elected to a second four-year term.

After the election Mapp reportedly told Gov. de Jongh that “the voters have spoken” and had clearly rejected “Mafoliegate” as a basis for denying Gov. de Jongh a second term, and that he considered the matter closed.

In July 2014, the Senate passed a Resolution criticizing Gov. de Jongh for the security measures constructed at his residence and “urging and requesting” that he pay all of the original cost of the security improvements at his residence, including approximately \$50,000.00 for electronic security equipment that the V.I.P.D. Department of Executive Safety would remove from the de Jongh property as soon as his second term expired. Committee on Rules and

No. 6917’s use of the plural form in both cases.

Judiciary Bill No. 30-0042 (July 21, 2014).¹³ The Resolution did not suggest that the Attorney General bring criminal charges against Gov. de Jongh.

In November 2014, Mapp was elected Governor of the Virgin Islands over the Democratic Party nominee Donna Christensen.

In April 2015, his governorship over, Gov. de Jongh drew a check in favor of the Government of the Virgin Islands in the amount of \$202,831.60 to fulfill the pledge he had made. The check was delivered to Government House along with an analysis of how the number was arrived at, which included three separate appraisals by local real estate companies as to the then-present value the construction added to the de Jongh property.

In May 21, 2015, then-Acting Attorney General Terri Griffiths, Esq.¹⁴ called a press conference announcing that her office was investigating criminal charges against Gov. de Jongh based on the security improvements at the de Jongh residence and that the \$202,831.60 check had been returned as "rejected."

In late May 2015, Griffiths stepped down (or, according to some sources, was forced out) as Acting Attorney General. Gov. Mapp then nominated former Superior Court Judge James S. Carroll III to the position.

Judge Carroll and Gov. de Jongh's counsel spoke by telephone concerning Griffiths' press conference. Counsel reminded Judge Carroll that Gov. de Jongh had always intended and

¹³ A copy of the Resolution is attached hereto as Exhibit I.

¹⁴ Griffiths took the post after Gov. Mapp's first choice, Soraya Diase-Coffelt, abruptly resigned in January 2015. The nomination of Griffiths resulted in what has been described as an "open revolt" by the VIDOJ staff. See <http://viconsortium.com/featured/virgin-islands-doj-in-open-revolt-after-mapp-appoints-terri-griffiths-as-acting-attorney-general/>.

publically stated his intention to pay the Government the present value of the structures that remained on his property after he was out of office. Counsel asked Judge Carroll to examine the case file and to consider recommending to Gov. Mapp that the check be accepted and the matter dropped. Judge Carroll assured counsel he would look into the matter.

Counsel never heard back from Judge Carroll.

Instead, in early August 2015, Gov. Mapp asked Carroll to step down. The timing strongly suggests that Mapp did so because Judge Carroll had concluded that "Mafoliegate" was not a criminal matter. Mapp then nominated Attorney Claude Walker for the position of Acting Attorney General. *St. Croix Source*, Attorney General: Another One Bites the Dust (August 1, 2015).

It appears that in Walker, Gov. Mapp found the right person to do his bidding. On August 18, 2015, Gov. de Jongh was arrested for purportedly violating V.I. Code Ann. tit. 14, § 1662(1) and V.I. Code Ann. tit. 14, § 1663(1).

ARGUMENT

A. Rule 12 Standard

Simply put, the alleged facts contained in the Information drawn up at the leisure of the Attorney General must set forth all of the elements of the offense charged or the Information must be dismissed. *See* Fed. R. Crim. P. 12(a)(3)(B)(iv); *United States v. Enmons*, 410 U.S. 396, 400 (1973) (upholding dismissal of indictment alleging Hobbs Act violation where the defendant's conduct alleged by the government was not "wrongful" as defined by the statute); *United States v. Schmidt*, 2004 U.S. Dist. LEXIS 24628, *5-6 (D.S.D. Nov. 2, 2004) ("To convict Defendant under § 3146(a)(1), the Government must prove that: 1. He had been released

on bail pending trial; 2. He was required to appear before a court; and 3. He knowingly failed to appear. Neither 18 U.S.C. § 3141, *et. seq.* nor the Federal Rules of Criminal Procedure, *see* Fed. R. Crim. P. 46, authorize the United States Marshal's Service to grant bail or release a criminal defendant on conditions pending trial. Defendant is therefore correct that the Marshal's Service is not a 'court' under § 3146(a)(1). Inasmuch as the Marshal's Service is not a 'court', failure to appear before it, as ordered by this Court, does not violate § 3146(a)(1)." (citations omitted)). If the allegations do not support each and every element of the crime charged, the Information must be dismissed. *See United States v. Brownfield*, 130 F. Supp. 2d 1177, 1184 (C.D. Cal. 2001) (indictment under to 18 U.S.C. § 876 and 1 U.S.C. § 1 for sending letter to FBI via U.S. Mail containing threat to another person dismissed as "the text and legislative history of both section 876 and section 1, relevant case law, and the longstanding principles of statutory interpretation support prosecution under section 876 only when the threatening communication is addressed to a person and not an agency of the federal government.").

As explained below, the allegations against Gov. de Jongh do not constitute a crime.

B. The Relevant Statutes

In this case, there are three statutes that must be examined.

Count One charges Gov. de Jongh with violating Section 1662(1) of Title 14 of the Virgin Islands Code, which reads in relevant part:

Whoever, being a public officer or person charged with the receipts, safekeeping, transfer or disbursement of public monies – (1) appropriates the same, or any portion thereof to his own use or the use of another, *without authority of law*; ... shall be fined not more than ten thousand (\$10,000) dollars or imprisoned not more than ten (10) years, or both, and shall be disqualified from holding any public office.

V.I. Code Ann. tit. 14, § 1662(1) (bold and italics added).

Count Two charges Gov. de Jongh with violating Section 1663(1) of Title 14 of the Virgin Islands Code, which reads in relevant part:

Whoever – (1) being an officer charged with the receipt, safekeeping, or disbursement of public money, neglects or fails to keep and pay over the same *in the manner prescribed by law*; ... shall be fined not more than ten thousand (\$10,000) dollars or imprisoned not more than ten (10) years, or both, and shall be disqualified from holding any public office.

V.I. Code Ann. tit. 14, § 1663(1) (bold and italics added).

Both statutes were adopted in the original 1921 Virgin Islands Code and have changed very little over the years except for the punishments for violation, which have been increased by amendment.¹⁵

The third statute, of course, is Act No. 6917, which specifically provides that \$1,305,000.00 in public funds are available to be spent “for engineering designs, construction, repairs or the resurfacing of roads.”

C. The Rules of Statutory Construction

It is axiomatic that a statute must be enforced as written, because its plain language is most relevant in determining legislative intent:

In interpreting a statute, we commence with the plain language of the statute. If the language is clear and unambiguous, there is no need to resort to any other rule or statutory construction. *Dodd v. United States*, 545 U.S. 353, 359, 125 S. Ct. 2478, 162 L. Ed. 2d 343 (2005) (holding that when the statute's language is plain, the sole function of the Court, at least where the disposition required by the text is not absurd, is to enforce it according to its terms.) *Accord Gilbert v. People*, 52 V.I. 350, 356 (V.I. 2009). *See also In re Adoption of Sherman*, 49 V.I. 452, 468 (V.I. 2008) (“In

¹⁵ A copy of Chapter 9 of the 1921 Code is attached hereto as Exhibit J.

interpreting a statute, the court looks first to the statute's plain meaning and, if statutory language is facially unambiguous, its inquiry comes to an end") (internal quotation marks and citations omitted).

The United States Court of Appeals for the Third Circuit has held consistently that legislative intent is presumably expressed through ordinary meaning of the words it chose to use, and if the statutory language is unambiguous, the plain meaning of words is ordinarily regarded as conclusive.

Shoy v. People, 55 V.I. 919, 926-927 (V.I. 2011). *Accord James v. de Jongh*, 52 V.I. 202, 208 (Super. Ct. 2009) ("Courts must presume that a legislature says in a statute what it means and means in a statute what it says there. Consequently, the first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." (citations and internal quotations omitted).

"The plain meaning of a statute will typically heed the commands of its punctuation." *Pawn 1st LLC v. City of Phoenix*, 294 P.3d 147, 149 (Ariz. Ct. App. 2013) (internal quotation omitted). Analyzing a statute for its plain meaning, then, requires an examination of its punctuation. *See In re Lehman Bros. Mortgage-Backed Securities Litig.*, 650 F.3d 167, 176 (2d Cir. 2011) (to interpret the statute at issue, "we begin, as we must, with the statute's text, considering the ordinary meaning of Congress's chosen language as informed by its punctuation.").

The grammatical rule known as the "doctrine of last antecedent" is the concept most germane to this Court's analysis. "Under that principle, qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to and including others more remote." *Elliot Coal Mining Co., Inc. v. Director, Office*

of Workers Compensation Programs, 17 F.3d 616, 629 (3d Cir. 1994) (internal quotation omitted). “Under the normal rules of English punctuation for words in a series, it is the absence of a comma or other punctuation before the coordinate conjunction ‘or’ that would indicate it and its modifier, the limiting adjective clause, are to be treated separately rather than as part of the whole series. Conversely, the presence of a comma before the last clause in the statute suggests that the limiting clause applies to the entire series.” *Id.* at 630 (citation and internal quotation omitted). *Accord* *State v. Kluessner*, 389 N.W.2d 370, 371-372 (Iowa 1986) (“Ordinarily, qualifying words and phrases refer only to the immediately preceding antecedent. The absence of a comma following ‘special verdict’ also suggests that the phrase ‘upon which a judgment of conviction is rendered’ was intended to modify only ‘special verdict’ and was not intended to travel further forward in the sentence to modify ‘plea of guilty’ or ‘verdict of guilty.’” (citation omitted)); *State v. Harm*, 340 P.3d 1110, 1115 (Ariz. Ct. App. 2015) (“Here, the enhancer applies to ‘any felony offense [committed] *with the intent to promote, further or assist any criminal conduct by a criminal street gang.*’ A.R.S. § 13-714 (emphasis added). In contrast, the offense Harm was acquitted of penalizes commission of ‘any felony offense, whether completed or preparatory for the benefit of, *at the direction of or in association with any criminal street gang.*’ A.R.S. § 13-2321(B) (emphasis added). In the absence of a comma separating ‘preparatory’ from “for the benefit of,” we must read the singular, unitary provision, ‘preparatory for the benefit of,’ as a non-restrictive clause modifying ‘any felony offense.’”); *Pawn 1st LLC*, 294 P.3d at 311-312 (“Among the rules of punctuation we consider is the ‘last antecedent rule.’ As applied in Arizona, the last antecedent rule requires that a qualifying phrase be applied to the word or phrase immediately preceding as long as there is no contrary intent indicated.” (citation

and internal quotation omitted).

The Supreme Court of the Virgin Islands applied the doctrine of last antecedent in *Fontaine v. People*, 59 V.I. 1004 (V.I. 2013). In *Fontaine*, the Office of the Territorial Defender (“OTD”) moved the trial court for permission to withdraw from representation of an indigent defendant. The motion was denied. On appeal, OTD argued that it had the right to unilaterally withdraw under Virgin Islands Code Ann. tit. 5, § 3524 (“Section 3524”), which provides: “When representing an indigent client in a criminal proceeding before the Superior Court, the Public Defender shall counsel and defend such client at every stage of the proceedings against him, and at any appeals or other remedies before or after conviction that he considers to be in the interest of justice.” *Id.* at 1009. Affirming the court below, our Supreme Court relied on the doctrine of last antecedent to interpret Section 3524:

Although not directly stating so, it appears that Onyejekwe believes that the language “that he considers to be in the interest of justice” modifies all language that precedes it.

We disagree. When interpreting a statute, courts should consider the grammatical “rule of the last antecedent,” under which “a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.” *Barnhart v. Thomas*, 540 U.S. 20, 26, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003). “The last antecedent is the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.” *Waid v. State ex rel. Dep’t of Transportation*, 996 P.2d 18, 23 (Wyo. 2000) (quoting 2A *Sutherland Statutory Construction* § 47.33 at 270 (5th ed. 1992)) (internal quotation marks omitted); accord *Newberry Station Homeowners Ass’n v. Board of Supervisors*, 285 Va. 604, 740 S.E.2d 548, 554 (2013). Applying the rule of the last antecedent, the language in section 3524 Onyejekwe relies on — “that he considers to be in the interest of justice” — would only modify “other remedies before or after conviction,” and not “appeals” or “every stage of the proceedings against him.”

Fontaine, 59 V.I. at 1009-1010.

Applying the doctrine of last antecedent in the matter at bar must lead to a dismissal of the Information.

In this case, the probable cause affidavit signed by V.I.P.D. Special Agent Kenneth Schulerbrandt Jr. dated August 17, 2015 (the "Schulerbrandt Affidavit" (Exhibit K)), was used to support the charges in the Information. The Schulerbrandt Affidavit was obviously (but without attribution) cribbed *directly* from the OIG Report.¹⁶ Schulerbrandt alleges that Gov. de Jongh acted "without authority of law" (required under V.I. Code Ann. tit. 14, § 1662(a)) and "neglect[ed] or fail[ed] to keep and pay over the same in the manner prescribed by law" (required under V.I. Code Ann. tit. 14, § 1662(a)) *solely* because the \$490,000.00 used for the de Jongh construction project was dedicated exclusively for "*territorial road projects*," and not *construction projects* like the de Jongh security construction. (Schulerbrandt Affidavit ¶ 7.) Schulerbrandt concludes that Gov. de Jongh "unlawfully diverted ... Act No. 6917 [funds] to serve his own personal interests." (*Id.* ¶ 13.)

Maddeningly, Schulerbrandt concludes by making *the exact same error made in the OIG Report*, asserting that Gov. de Jongh "willfully, knowingly and intentionally misappropriated specifically earmarked public funds that belonged to the United States Virgin Islands Government and were to be used solely for the purpose of engineering design,

¹⁶ Compare Exhibit K to Exhibit H, the OIG Report. That Schulerbrandt simply copied the OIG Report for his probable cause affidavit is obvious. It is also deeply disturbing that Schulerbrandt did not perform his own independent investigation. When the Court grants Gov. de Jongh's pending motion for a probable cause hearing, the Court can ask Schulerbrandt under oath why he gave such a rubber-stamp to a document the contents of which he plainly had no personal knowledge.

construction, *repair, or resurfacing of roads* in the United States Virgin Islands.” (*Id.* ¶ 14 (bold and italics added).)

Like the OIG Report he plagiarized for his affidavit, Schulterbrandt misspells “design” and “repair,” both of which are in plural form in Act No. 6917. More importantly, Schulterbrandt inserts a comma between the noun “repair” and the conjunction “or” *that does not appear in Act No. 6917*. As the Attorney General would have it, then, Act No. 6917 must be read as authorizing expenditure *only* on (1) engineering designs of roads; (2) construction of roads; (3) repair of roads; or (4) resurfacing of roads.

Nonsense.

First, if the Senate had intended to limit the expenditure of Act No. 6917 funds only on roads, the statute would simply have read: “The sum of \$1,305,000 is appropriated in the fiscal year ending September 30, 2007, ... to the Department of Public Works *for roads*.” The rest – engineering designs, construction and repairs – would be mere surplusage. The law abhors such a result. *See DelRio-Mocci v. Connolly Properties, Inc.*, 672 F.3d 241, 249 (3d Cir. 2010) (“It is a well known canon of statutory construction that courts should construe statutory language to avoid interpretations that would render any phrase superfluous.” (internal quotation omitted)).

As explained in detail above, the de Jongh construction project was not the only non-road “construction” paid for with Act No. 6917 funds. Hundreds of thousands of dollars were spent on vaults at Eastern Cemetery and for drainage projects on St. Croix and St. Thomas. (*See Exhibits C, E, F.*) Act No. 6917 is plainly broad in scope and does not limit use of the \$1,305,000.00 appropriated only for “roads.”

Second, the Attorney General’s recitation of Act No. 6917 (and that of Special Agent

Schulterbrandt and the OIG) fails to account for the *actual words and punctuation* of Act No. 6917.¹⁷ Indeed, the Attorney General goes beyond mere error by omission and writes into Act No. 6917 punctuation and words *that do not appear in the statute*. At best this amounts to recklessness on the part of the Attorney General; at worst, it exposes this case as a frame-up job by Gov. de Jongh's detractors.

In any event, there is no comma after "repair" and before "or" in Act No. 6917. Applying the doctrine of last antecedent, each noun – "engineering designs," "construction," "repairs," and "resurfacing" stand apart, and the qualifying phrases "of roads" solely modifies the last antecedent in the sentence – *i.e.*, "resurfacing." *See Garza v. Sun Life Assur. Co. of Canada*, 2013 U.S. Dist. LEXIS 60469, *23-24 (S.D. Tex. April 29, 2013) ("The Court can discern no reason, grammatical or otherwise, why the last antecedent rule does not apply in the case before it; the presence of a single comma between 'infirmary or disease of any kind' and 'infection unless due to an accidental cut or wound' indicates that the modifying language applies only to 'infection.'"); *Md. Dep't of the Env't v. Underwood*, 792 A.2d 1130, 1139 (Md. Ct. App. 2002) ("Section 9-276(a) imposes liability for reimbursement on the 'owner or operator of the site or any other person who caused the tires to be stored or disposed of at the site in violation of this subtitle.' Respondents' interpretation of this section would have the clause 'who caused the tires to be stored or disposed of at the site in violation of this subtitle' modify all three categories of potential responsible parties described in the statute, *i.e.* the 'owner,' the 'operator,'

¹⁷ Almost amusingly, Schulterbrandt swears that the V.I. Department of Public Works relied upon the *January 2010* OIG Report when it told the V.I. Public Finance Authority in *April 2007* that Act No. 6917 funds could be used for the de Jongh construction project. (Schulterbrandt Affidavit ¶ 7.) Clearly, the Schulterbrandt Affidavit was drafted and executed in a most slapdash fashion.

and 'any other person.' That interpretation, however, ignores the clear meaning of the structure and relationship of the words as they appear in the statute and does not acknowledge the generally recognized rule of statutory construction that a qualifying clause ordinarily is confined to the immediately preceding words or phrase - particularly in the absence of a comma before the qualifying phrase. In consideration of that principle, we are unable to adopt Respondents' interpretation." (citations omitted)); *Doe v. Michigan Dep't of Corrections*, 236 Mich. App. 801, 811, 601 N.W.2d 696 (Mich. Ct. App. 1999) (White, J., concurring) ("The absence of a comma after 'private agency' in both the PWDCRA's and CRA's definitions of 'public service' supports that the phrase 'established to provide service to the public' modifies only 'a tax exempt private agency.' Qualifying words and phrases in a statute refer solely to the last antecedent in which no contrary intention appears. In this instance, the modifying clause ('established to provide service to the public') is confined to the last antecedent ('a tax exempt private agency'). Nothing in the subject matter or dominant purpose of the statute requires a different interpretation.").

In sum, if there actually *were* a comma inserted into Act No. 6917 between the noun "repair" and the conjunction "or," the statute might be interpreted in a way that favors the Attorney General. It does not. And it is not the place of the Attorney General to rewrite Act No. 6917 to suit his fancy – or to advance someone's political or personal agenda.

The plain language of Act No. 6917 confirms that the funds at issue *were* available to spend on the construction at the de Jongh residence. Therefore, Gov. de Jongh did not act "without authority of law." Governor de Jongh's actions were completely within "the manner prescribed by law." The Information does not state an offense. The charges under V.I. Code Ann. tit. 14, §§ 1662(a) and 1663(a) must be dismissed.

Finally, Gov. de Jongh expects the Attorney General to offer in opposition statements by some or all of the six anonymous senators referred to in the OIG Report who (we assume) will attest to a contrary reading of Act No. 6917. The Court must not fall for the prosecution's tainted bait.

"The general rule is that, in determining legislative intent, the views of individual drafters are not considered as grounds upon which to construe a statute." *C-Y Devel. Co. v. City of Redlands*, 187 Cal. Rptr. 370, 374 (Cal. Ct. App. 1982). When a statute is vague, courts sometimes turn to its legislative history to aid in its interpretation, but not, as here, when the statute at issue is plain and unambiguous. *See People v. Lake*, 59 V.I. 178, 184 (Super. Ct. 2013) ("A court may "presume that the legislature expresses its legislative intent through the ordinary meaning of the words it chooses to use, and if the statutory language is clear, it is not necessary to look for congressional intent from legislative history."); accord *C-Y Devel. Co.*, 187 Cal. Rptr. at 374 ("An exception has sometimes been made where the drafters' views were clearly and prominently communicated to the legislators at the time the measure was being considered for enactment, on the theory that there was reason to believe that the other legislators were influenced in their view of the bill by the drafters' communicated views, but the exception has been largely confined to a setting in the Legislature where a limited number of legislators may clearly be expected to be so influenced. The exception is also clearly confined to views expressed while the measure was being considered, and *does not concern expressions of individual motivation made after the fact.*" (italics added)).

Act No. 6917 was not debated in the Senate. It was passed by voice vote as one section of a multiple-provision omnibus spending bill containing a plethora of amendments, each

sponsored by particular senators. Act No. 6917 was sponsored by Sen. Dowe, who was copied on correspondence between the Department of Public Works, Department of Property and Procurement, and the V.I. Public Finance Authority, all of which contained references to the de Jongh security project. (See Exhibits C, E, F.) Apart from this correspondence, there is no legislative history of record.

If the Attorney General proffers the statements of current and former senators who voted on Act No. 6917 concerning their understanding of it, the Court must reject the proffer out of hand as they are entitled to no weight. See *Barber v. Thomas*, 560 U.S. 474, 486 (2010) (“And whatever interpretive force one attaches to legislative history, the Court normally gives little weight to statements, such as those of the individual legislators, made *after* the bill in question has become law.” (italics in original)); *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 579 (1995) (“Material not available to the lawmakers is not considered, in the normal course, to be legislative history. After-the-fact statements by proponents of a broad interpretation are not a reliable indicator of what Congress intended when it passed the law, assuming extratextual sources are to any extent reliable for this purpose.”); *Veasey v. Abbott*, 796 F.3d 487, 502 (5th Cir. 2015) (“Moreover, the district court appeared to place inappropriate reliance upon the type of postenactment testimony which courts routinely disregard as unreliable.”).

The Court need not become embroiled in an unseemly debate over the credibility of senators who did not even bother to place their supposed understanding of Act No. 6917 in the legislative record. Such public servants as these have no business swearing to a purported secret “understanding” of a statute they did not bother to question before casting their votes in favor of – or in assisting the Attorney General in his quest for an illegal conviction.

Fortunately, the language of Act No. 6917 is unambiguous. It includes "construction" as one of the permitted uses of its reprogrammed funds. Since the de Jongh security project involved construction, Gov. de Jongh, the Department of Public Works, the Department of Property and Procurement and the V.I. Public Financing Authority all acted with the appropriate legal authority.

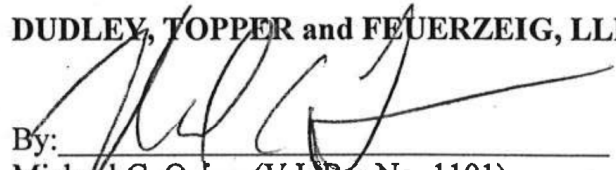
There is no reason to perpetuate the Attorney General's charade any longer. The Information must be dismissed.

WHEREFORE, the Information dated September 2, 2015, must be dismissed.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: November 3, 2015

By: 

Michael C. Quinn (V.I. Bar No. 1101)
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Telephone: (340) 774-4422
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Counsel for Defendant John P. de Jongh, Jr.

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3d day of November, 2015, a true and exact copy of the foregoing was sent via First Class U.S. Mail to:

AAG Quincy McRae
Chief, Criminal Division
AAG Daniel Huston
Department of Justice
48B-50C Kronprindsens Gade
GERS Bldg., 2nd Floor
St. Thomas, VI 00802

Attorneys for the People of the V.I.

With a copy via e-mail to:

Quincy.McRae@doj.vi.gov
Dan.Huston@doj.vi.gov



EXHIBIT A

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,)

Plaintiff,)

VS.)

JOHN P. de JONGH, JR., and
JULITO FRANCIS,)

Defendants.)

CRIMINAL NO. ST-15-CR-309

CRIMINAL NO. ST-15-CR-310

CHARGES:

2 Counts 14 V.I.C. §§ 1662(1), 11(a)

2 Counts 14 V.I.C. §§ 1663(1), 11(a)

INFORMATION

The People Of The Virgin Islands Charges That:

COUNT ONE

On or about April 2007 through January 2009, JOHN P. de JONGH, JR., while aided and abetted by Julito Francis, being a public officer or person charged with the receipt, safekeeping, transfer or disbursement of public monies, appropriated the same, or any portion thereof to his own use or the use of another, without authority of law, to wit: in his capacity as Governor of the Virgin Islands he initiated the process of the conversion of public funds to private use by the execution of contracts to convert Four Hundred Ninety Thousand Dollars and Twenty-Five Cents (\$490,000.25) of governmental highway funds to the funding of improvements to his private residence, in violation of V.I. CODE ANN. tit. 14 § 1662(1); V.I. CODE ANN. tit. 14 § 11(a). [EMBEZZLEMENT OF PUBLIC ACCOUNTS]

U.S.V.I. People v. JOHN P. de JONGH, JR. & JULITO FRANCIS
CRIMINAL Nos. ST-15-CR-309 & ST-15-CR-310
Information
Page 2

COUNT TWO

On or about April 2007 through January 2009, JOHN P. de JONGH, JR., while aided and abetted by Julito Francis, being a public officer or person charged with the receipt, safekeeping, transfer or disbursement of public monies, neglected or failed to keep and pay over the same in the manner proscribed by law, to wit: in his capacity as Governor of the Virgin Islands he participated in the conversion of public funds to private use by the execution of contracts to convert Four Hundred Ninety Thousand Dollars and Twenty-Five Cents (\$490,000.25) of governmental highway funds to the funding of improvements to his private residence without legislative authorization, in violation of V.I. CODE ANN. tit. 14 § 1663(1); V.I. CODE ANN. tit. 14 § 11(a). [EMBEZZLEMENT OF PUBLIC ACCOUNTS]

COUNT THREE

On or about April 2007 through January 2009, JULITO FRANCIS, while aided and abetted by John P. de Jongh, Jr., being a public officer or person charged with the receipt, safekeeping, transfer or disbursement of public monies, appropriated the same, or any portion thereof to his own use or the use of another, without authority of law, to wit: in his capacity as Director of the Public Finance Authority of the Virgin Islands he participated in the conversion of public funds to private use by authorizing Four Hundred Ninety Thousand Dollars and Twenty-Five Cents (\$490,000.25) of governmental highway funds to be used for improvements to Governor John P. De Jongh, Jr.'s private residence, in violation of V.I. CODE ANN. tit. 14 § 1662(1); V.I. CODE ANN. tit. 14 § 11(a). [EMBEZZLEMENT OF PUBLIC ACCOUNTS]

U.S.V.I. People v. JOHN P. de JONGH, JR. & JULITO FRANCIS
CRIMINAL Nos. ST-15-CR-309 & ST-15-CR-310
Information
Page 3

COUNT FOUR

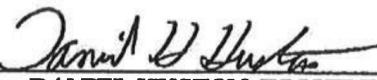
On or about April 2007 through January 2009, JULITO FRANCIS, while aided and abetted by John P. de Jongh, Jr., being a public officer or person charged with the receipts, safekeeping, transfer or disbursement of public monies, neglected or failed to keep and pay over the same in the manner proscribed by law, to wit: in his capacity as Director of the Public Finance Authority of the Virgin Islands he participated in the conversion of public funds to private use by authorizing Four Hundred Ninety Thousand Dollars and Twenty-Five Cents (\$490,000.25) of governmental highway funds to be used for improvements to Governor John P. De Jongh, Jr.'s private residence without legislative authorization, in violation of V.I. CODE ANN. tit. 14 § 1663(1); V.I. CODE ANN. tit. 14 § 11(a). [EMBEZZLEMENT OF PUBLIC ACCOUNTS]

Respectfully submitted,

CLAUDE EARL WALKER, ESQUIRE
Acting Attorney General of the U.S. Virgin Islands

DATED: September 2, 2015

BY:



DANIEL HUSTON, ESQUIRE
Assistant Attorney General
V.I. Department of Justice

EXHIBIT B



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

34-38 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, V.I. 00802
(340) 774-5666 Fax: (340) 776-3494

#6040 Estate Castle Coakley
Christiansted
St. Croix, V.I. 00820
(340) 773-0295 Fax: (340) 773-1425

Monday, January 22, 2007

VIA FACSIMILE AND HAND DELIVERY

Honorable Robert Moorehead
Acting Commissioner
Department of Public Works
8244 Sub Base
St. Thomas, Virgin Islands 00802

Re: Security related Improvements to Governor's Private Residence
A.G.O. File No. SOL-07-0154

Dear Acting Commissioner Moorehead:

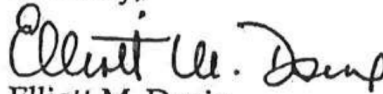
Mr. Othniel Vanterpool, Director of Operations at the Department of Public Works, recently advised this Office that Governor de Jongh intends, during his term of Office, to reside at his private residence rather than the Governor's official residence on Denmark Hill. He also advised that, as a result of the Governor's decision, security related improvements will have to be made at the Governor's private residence. Mr. Vanterpool requested advice on whether the cost of such improvements may be properly incurred by the Government. It is our opinion that the cost of security related improvements to the Governor's residence may be properly incurred by the Government.

An expenditure of public funds is permissible, even if a private individual derives a special benefit, as long as a public purpose is served and that public purpose is the primary reason for the expenditure. See, e.g., State ex rel. Corbin v. Superior Court, 767 P.2d 30 (Ariz. 1988); Duckworth v. Kansas City, 758 P.2d 201 (Kansas 1988). Also, it is well established that there is a public interest in providing security for the Governor and protecting his person. See Times Mirror Co. v. Superior Court, 813 P.2d 240, 253 (Cal. 1991); City of San Jose v. Superior Court, 88 Cal.Rptr.2d 552, 560 (Cal. 1999) (recognizing public interest in protecting Governor's physical security).

Thus, pursuant to the applicable authorities, public funds may properly be expended to pay the cost of improvements at the Governor's private residence for the purpose of protecting the Governor. Securing the protection of the Governor is recognized as a valid public purpose and would be the primary purpose in making security improvements to his private residence. Since the improvements to the Governor's private residence would serve a public purpose, it is a permissible expenditure of private funds, even if the Governor may derive a special benefit, such as appreciation of the value of his private residence. See, e.g., Corbin, supra, 767 P.2d at 33 (loan or expenditure of arbitrage earnings on proceeds of industrial development bonds may be constitutionally permissible, even if some private individual or organization thereby derives special benefit, as long as public purpose is thereby served); Nichols v. South Carolina Research Authority, 351 S.E.2d 155 (S.C. 1986) (because a private individual makes a profit as a result of legislation does not change the public purpose into a private purpose).

Should you have any questions or require additional information, please contact me or Acting Solicitor General Paul Paquin at 774-5666.

Sincerely,



Elliott M. Davis

Acting Attorney General

cc: Honorable John P. de Jongh
Governor, U.S. Virgin Islands

Othneil Vanterpool
Deputy Commissioner of Operations
Department of Public Works

EXHIBIT C



OFFICE OF
THE COMMISSIONER

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

PUBLIC WORKS DEPARTMENT
8244 SUB BASE
ST. THOMAS, V.I. 00802-5805

TEL: (340) 776-4844, EXT. 207/208
(340) 774-1301
FAX: (340) 774-5869

January 30, 2007

Honorable John P. deJongh Jr.
Governor of the Virgin Islands
Chairman of Board, Public Finance Authority
Office of the Governor, 21-22 Kongens Gade
St. Thomas, VI 00802

RE: Funding Request

Dear Honorable Governor deJongh:

The Department of Public Works is respectfully requesting your support and approval to de-obligate funds in the amount of \$1,305,000.00 from the 1992 Construction Bonds, reserved for the Nadir Bridge Project, as amended by Act 6427.

With Senate approval, the funds will aid in the financing of the projects listed below.

Construction of Security Booth & Road Improvements at Governor's Residence	STT	(Estimated Cost) \$275,000.00
Eastern Cemetery - Construction of Vaults	STT	\$350,000.00
Goat Hill Paving and Drainage Improvements	STX	\$334,545.00
Route 82 - Drainage Improvements	STX	\$135,000.00
Planning & Design Contract for Leonardo Trotman Drive	STT	\$200,000.00
Drainage Improvement of Plot #3 at Estate Princess	STX	\$121,269.50
Total		\$1,415,814.50

The Nadir Bridge Project is part three of a three-phase project. Phase one has been completed; however phase two has not yet began. It is approximated that it will be at

*Honorable Governor deJongh
Funding Request
Page 2 of 2*

minimum, three years before phase three can begin; therefore allowing significant time to obligate other monies for that project.

The above-identified needs have been communicated to the Acting Director of the Public Finance Authority.

Upon your approval, I am hereby requesting that you forward this request to the 27th Legislature requesting that Act 6427 be amended.

Thank you for your assistance and should you need any additional information pertaining to this request, do not hesitate to contact us.

Sincerely,


Robert L. Moorehead
Acting Commissioner

RLM/DMC/WDB/AN/dc

cc: Aloy Nielsen, Deputy Commissioner of Engineering
Wystan Benjamin, Highway Program Manager
Dayna Clendinen, Deputy Commissioner of Administration
Cherrie W. Cole, Acting Director Public Finance Authority
Carlton Dowe, Senator 27th Legislature

EXHIBIT D

TWENTY-SEVENTH LEGISLATURE OF THE VIRGIN ISLANDS

Territory of the Virgin Islands
REGULAR/SPECIAL SESSION 2007

ROLL CALL

Bill No:

27-0039

□□

Date:

3/21/07

An Act amending the Virgin Islands Code, title 1 Section 14 relating to the Code Revisor, title 1 Chapter 17 relating to the uniform law commission, title 2 relating to the office of the code revisor, title 3 section 406 relating to the Virgin Islands Heritage Commission, title 3 section 106(c) relating to the Reemployment of Retirees and making several appropriations and for other purposes

LEGISLATIVE HISTORY

- (a) Introduced and sent to Committee on..... Date.....
(b) Reported from Committee and sent to Rules on.....
(c) Reported from Committee on Rules.....
(d) Recalled from Committee by Special Order.....
(e) Adopted on..... Adopted
(f) Rejected on.....

MEMBERS	YEA	NAY	ABSENT	NOT VOTING
DAVIS, Liston A.	1			
WE, Carlton	2			
FIGUEROA-SERVILLE, Juan	3			
HILL, Louis Patrick	4			
JAMES, Neville	5			
JN. BAPTISTE, Norman	6			
MALONE, Shawn-Michael	7			
NELSON, Terrence	15			+
OTTLEY, Basil	8			
RICHARDS, Usie R.	9			
RUSSELL, Ronald, E.	10			
WEBER, James III	11			
WESSELHOFT, Carmen M.	12			
WHITE, Celestino A. Sr.	13			
LLIAMS, Alvin L.	14			

CERTIFIED TRUE AND CORRECT

Cluse Mahoney
150

BILL NO. 27-0239**Twenty-Seventh Legislature of the Virgin Islands
of the United States**

MARCH 21, 2007

An Act amending the Virgin Islands Code, title 1 section 14 relating to the Code Revisor, title 1 chapter 17 relating to the Uniform Law Commission, title 2 relating to the Office of the Code Revisor, title 3 section 408 relating to the Virgin Islands Heritage Commission; title 3 section 706(c) relating to the reemployment of retirees and making several appropriations and for other purposes

PROPOSED BY:

Senators Liston A. Davis, Carlton "Ital" Dowe, Juan Figueroa-Serville,
Louis Patrick Hill, Neville A. James, Norman Jn Baptiste,
Shawn-Michael Malone, Terrence "Positive" Nelson, Basil Ottley, Jr.
Usie R. Richards, Ronald E. Russell, James A. Weber III, Celestino A. White, Sr.,
Carmen M. Wesselhoft and Alvin L. Williams

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 1 Virgin Islands Code section 14, subsection (b) is amended by striking "and after the first occurrence of "Virgin Islands", by inserting after the second occurrence of "Virgin Islands" "and the Code Revisor" and after "member" by striking "or" and inserting a comma (,), and after "Governor" by inserting "the Code Revisor".

SECTION 2. Title 1 Virgin Islands Code chapter 17 is amended in the following

instances:

(a) Section 301, subsection (a) is amended by striking the introductory sentence and inserting in its place a new sentence to read as follows: "There is established in the Legislature of the Virgin Islands for budgetary reasons only, the Virgin Islands Commission on Uniform State Laws. The Commission consists of five members appointed or designated as follows:";

(b) by redesignating the second sentence in paragraph (3) as the first sentence in paragraph (b); and by adding paragraphs (4) and (5) to read as follows:

"(4) The Chief Justice of the Supreme Court or the Chief Justice's Designee;

(5) The Code Revisor or the Code Revisor's designee"

(c) Subsection (b) is amended by adding a sentence at the end of that subsection to read: "The Commission shall also submit an annual budget as provided in title 2 Virgin Islands Code chapter 2.

(b) Section 303 is amended by adding subsection (c) to read as follows:

"(c) There is appropriated each fiscal year sufficient funds to pay the Territory's membership dues to the National Conference of Commissioners of Uniform State Laws and to pay the costs for each Commission member to attend the annual meeting of the National Conference as required by subsection (a)."

SECTION 3. Title 2 Virgin Islands Code chapter 10a section 302 (h) is amended in the following instances:

"(a) by striking the language in paragraph (5) and adding new language to read as follows:

1 "Determine within the limits of appropriations, the quantities of slip laws and
2 volumes to be printed and published"; and

3 (a) by adding paragraphs (6) and (7) to read as follows:
4

5 "(6) Fix the prices at which the pamphlets and volumes provided for in this sections
6 may be sold, but the pamphlets and volumes must be distributed free of charge to the
7 three branches of the Government.

8 (7) Deposit the proceeds from the sales under paragraph (6) into an operating account
9 to be used for publication costs associated with the preparation and publication of
10

11 SECTION 4. Title 3 Virgin Islands Code chapter 22 sections 408; subsection (c)
12 is amended by striking "Office of the Governor" and inserting "Department of Planning
13 and Natural Resources" and by striking "six of whom shall be, by striking "Of the six
14 appointed members", by striking the third and fourth sentences and by adding two new
15 language to read as follows.

16 "Four members shall reside on St. Croix. Four members shall reside on St.
17 Thomas, and one member on St. John."

18 SECTION 5. Title # Virgin Islands Code, chapter 27, section 705 as amended by
19 Act No. 6905 (Bill No. 26-0351) section 5, is amended in the following instances:
20

21 (1) Subsection (d) is amended to read as follows:

22 "(d) Any member who has completed thirty years of credited service may retire
23 on a full service retirement annuity notwithstanding his age, without reduction of annuity.
24 Additionally, any member who is age fifty (50) years with ten (10) but less than thirty
25 (30) years of service may retire on a service annuity which shall be reduced by .325 of
26

one percent for each month, or fraction thereof, that the member's age is less than sixty (60) years. A policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, firefighter, including a firefighter employed by the Virgin Islands Port Authority, marshal of the Superior Court and Supreme Court, probation officer of the Superior Court, internal affairs agents, to include but not limited to the Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals or corrections officer who has completed twenty (20) years or more of credited service as a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or carcinogens, fireman, including a fireman employed by the Virgin Islands Port Authority, marshal and probation officer of the Superior Court, peace officer as defined in Title 5, section 3561, Virgin Islands Code, emergency medical technician, a radiology or x-ray technician employed by the Department of Health or the Virgin Islands Hospitals, or corrections officer, or combination thereof, may retire notwithstanding his age without reduction of annuity."

(e) Any member whose withdrawal from service occurs:

(1) prior to age sixty (60) years and after at least ten (10) years of credited service; or

(2) in the case of a policeman, eligible employee with the Virgin Islands Water and Power Authority, eligible employee working with chlorine, sewage or

1 carcinogens, fireman, including a fireman employed by the Virgin Islands Port Authority,
2 marshal of the Superior Court, internal affairs agents, to include but not limited to the
3 Director and Assistant Director and agents of the Internal Affairs Bureau of the Virgin
4 Islands Police Department, peace officer as defined in Title 5, section 3561, Virgin
5 Islands Code, emergency medical technician, a radiology or x-ray technician employed
6 by the Department of Health or the Virgin Islands Hospitals, or corrections officer, prior
7 to age fifty-five (55) years and after at least ten (10) years of credited service but not as
8 much as twenty (20) years of credited service, and who has not received a refund of
9 accumulated contributions, shall be entitled to receive a deferred service retirement
10 annuity payable upon attainment of age sixty (60) or fifty-five (55) years, as the case may
11 be.; and
12

13 (2) Section 754 (e) (Conditions for service retirement) (as amended by Act
14 6905, Section 5 and designated as §806) is amended to read:

15 "Notwithstanding his age, a police officer, firefighter, including a firefighter
16 employed by the Virgin Islands Port Authority, marshal of the Supreme Court or the
17 Superior Court, or corrections officer who has completed twenty years or more of
18 credited service may retire on a full retirement annuity."

19 SECTION 6. Act No. 6905, Section 5, item 13 is amended by striking the
20 following amendatory language: "striking the word 'Twenty' and inserting the word
21 'Twenty-Five wherever it appears'".
22

23 SECTION 7. Title 3 Virgin Islands Code section 706 subsection (c) is amended
24 in the first sentence after "75 days" by inserting "each year".
25
26

1 SECTION 8. Title 19 Virgin Islands Code chapter 53 section 1433 is amended
2 by striking the second sentence and inserting a new sentence in its place to read as
3 follows:

4 "The Department of Health may not require a person who holds a valid annual
5 health permit for a mobile food service to obtain additional health permits for operating
6 an itinerant restaurant at multiple locations during Carnival, festivals and other public
7 events, if the person notifies the Department in writing at least five business days before
8 the event of the dates and the location of the sites at which he intends to operate".

9 SECTION 9. Title 24 Virgin Islands Code chapter 17 section 451 (b), as added
10 by Act No. 6857 (Bill No. 26-0225) is re-designated as title 5 Virgin Islands Code
11 chapter 67 section 815.
12

13 SECTION 10. Title 33 Virgin Islands Code section 3028, subsection (c) is
14 amended by striking "Chairman of the Commission" and inserting "Certifying Officer of
15 the Legislature" and by striking "Commission pursuant to Title 1, chapter 17, VIC" and
16 inserting Office of the Code Revisor provided in 2 V.I.C. §302".

17 SECTION 11. Act No. 6864 (Bill No. 26-0313), is amended at the end of
18 Section 26, by inserting the following sentence: "The sum remains available until
19 expended."

20 SECTION 12. Act No. 6864 (Bill No. 26-0313) Section 13 is amended at the
21 end of subsection (e) by inserting the following sentence at the end thereof "The sum
22 remains available until expended."

23 SECTION 13. Act No. 6839 is amended at the end of Section 57 by adding a
24 sentence to read as follows: "The sums appropriated remain available until expended
25
26

1 SECTION 14. Act No. 6820 (Bill No. 26-0196) is amended at the end of
2 SECTION 8 by adding a sentence to read as follows: "The sums remain available until
3 expended."

4 SECTION 15. Act No. 6771 is amended by adding Section 2 to read as follows:
5 "SECTION 2. The sum appropriated in section 1 remains available until expended."

6 SECTION 16. Act No. 6427 Section 22 is amended by striking "\$1,305,000".

7 SECTION 17. The sum of \$1,305,000 is appropriated in the fiscal year ending
8 September 30, 2007, from the General Fund to the Department of Public Works for
9 engineering designs, construction, repairs or the resurfacing of roads. The sum remains
10 available until expended.

11 SECTION 18. The sum of \$280,000 is appropriated for the fiscal year ending
12 September 30, 2007, from the General Fund to the Department of Human Services for
13 The Village Partners in Recovery, \$200,000 of which must be used for prior years'
14 obligations. The sum remains available until expended.

15 SECTION 19. The sum of \$50,000 is appropriated for the fiscal year ending
16 September 30, 2007, from the General Fund to the Department of Housing, Parks and
17 Recreation for Pre- Carnival and Carnival 2007 horse races. The sum remains available
18 until expended.

19 SECTION 20. The sum of \$300,000¹ is appropriated for the fiscal year ending
20 September 30, 2007, from the General Fund divided equally between the St. Croix
21 Christmas Festival Committee and the V.I. Carnival Committee to conduct their
22 respective events. The sum appropriated remains available until expended.
23
24
25
26

1 **SECTION 21.** The Sum of \$100,000 is appropriated in the fiscal year ending
2 September 30, 2007, from the General Fund to the Department of Education to defray the
3 cost of repairing the Bertha Boshulte School for accreditation. The sum remains available
4 until expended.

5 **SECTION 22.** The sum of \$40,000 is appropriated for the fiscal year ending
6 September 30, 2007, from the General Fund to the Department of Education for a sound
7 system at Eudora Kean High School to meet the criteria for accreditation. The sum
8 remains available until expended.

9 **SECTION 23.** The sum of \$250,000 is appropriated in the fiscal year ending
10 September 30, 2007, from the General Fund to the Department of Housing, Parks and
11 Recreation to demolish, abate for asbestos and reconstruct the building at No. 13-1
12 Nordsdivej. The sum remains available until expended. The sum remains available until
13 expended.

14 **SECTION 24.** The sum of \$200,000 is appropriated in the fiscal year ending
15 September 30, 2007, from the General Fund to the Board of Elections to cover the cost of
16 the 2006 run-off election. The sum remains available until expended.

17 **SECTION 25.** The sum of \$150,000 is appropriated in the fiscal year ending
18 September 30, 2007, from the General Fund to the Virgin Islands State Nurses
19 Association to host the 50TH Anniversary Conference of the Caribbean Nurses
20 Organization. The sum remains available until expended.

21 **SECTION 26.** (a) The sum of \$1,990,000 is appropriated in the fiscal year
22 ending September 30, 2007, from the St. Croix Capital Improvement Fund to the
23
24

25
26

Department of Public Works to pave and make road repairs for the following roads on St. Croix:

(1) Little La Grange	\$325,000
(2) Mount Pleasant	\$200,000
(3) Route 80-North Shore Baron Bluff-La Valle	\$310,000
(4) Route 58-Creque Dam Road to Annaly	\$330,000
(5) Two Williams (2) Roads	\$350,000
(6) Route 76-Jolly Hill-Grove Place	\$275,000
(7) Estate Mountain Road	\$200,000

(b) The sum appropriated in subsection (a) remains available until expended.

SECTION 27. The sum of \$250,000 is appropriated from the General Fund in the fiscal year ending September 30, 2007, to the Department of Public Works to pave the Ponderosa Road located in Estate Wintberg. The sum remains available until expended."

SECTION 28. The sum of \$8,000 is appropriated in the fiscal year ending September 30, 2007, from the General Fund to the Department of Tourism to provide a grant to Miss Cleantha Samuel to represent the Virgin Islands in the Miss Black America Pageant. The sum remains available until expended.

SECTION 29. The sum of \$50,000 is appropriated in the fiscal year ending September 30, 2007, to the Department of Health to purchase dress uniforms for Emergency Medical Services (EMS) personnel for such events as Emergency Medical Services Month and other appropriate events and occasions.

SECTION 30. The sum of \$75,000 is appropriated in the fiscal year ending September 30, 2007, for the British Virgin Islands/ Virgin Islands Friendship week. The sum remains available until expended.

SECTION 31. The sum of \$175,000 is appropriated in the fiscal year ending September 30, 2007, from the General Fund to the Department of Housing, Parks and Recreation to install energy-efficient lighting at the Alvin Mac Bean Ballpark.

SECTION 32. (a) There is appropriated from the General Fund in the fiscal year ending September 30, 2007, the sum of \$176,000 to the Department of Education for the Lew Muckle Elementary School to fund the following projects:

1. \$150,000 to provide and install air conditioners in the cafeteria and library;
2. \$25,000 to repair the basketball court; and
3. \$1,000 to purchase sports equipment.

(b) The sum appropriated in subsection (a) remains available until expended."

SECTION 33. The sum of \$400,000 is appropriated in the fiscal year ending September 30, 2007, from the General Fund to the Department of Public Works to pave the St. Croix Drag Racing Strip in Estate Anguilla, on St. Croix. The funds remain available until expended.

SECTION 34. The sum of \$75,000 is appropriated for the fiscal year ending September 30, 2007, from the General Fund of the Virgin Islands to the Positive Vibes Soccer Club Corporation, for the annual tournament and competitions between February and November 2007 and must be disbursed as follows:

- | | | |
|-----|-----------------------|-----------|
| (1) | Governor's Soccer Cup | \$10,000; |
|-----|-----------------------|-----------|

- (2) Summer Soccer Tournament \$10,000;
- (3) Thanksgiving Soccer Tournament \$10,000;
- (4) Black Heart Soccer Tournament \$15,000; and
- (5) CONCACAF Caribbean Soccer Tournament \$30,000.

(b) The sum appropriated in subsection (a) remains available until expended.”

SECTION 35. The sum of \$110,000 appropriated for the fiscal year ending September 30, 2006, from the General Fund to the Virgin Islands Housing Authority divided equally between the districts of St. Croix and St. Thomas/St. John for the Youth Build Program to conduct youth academic and educational activities for public housing residents remains available until expended.

SECTION 36. Act No. 6864 is amended at the end of section 23 by adding the following sentence: “The sum remains available until expended.”

SECTION 37. Section 5 of this Act takes effect retroactively to October 1, 2005.

BR-07-0621/March 16, 2007/YLT

EXHIBIT E



GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

PUBLIC WORKS DEPARTMENT

6002 Estate Anna's Hope
Christiansted, St. Croix, V.I. 00820-4428

OFFICE OF THE COMMISSIONER

Tel: (340) 773-1789
Fax: (340) 773-0670

April 25, 2007

Mr. Julio A. Francis
Director of Finance and Administration
Virgin Islands Public Finance Authority
#24 Honduras, Frenchtown 2nd Floor
Charlotte Amalie, St. Thomas 00802

RE: Reprogramming of \$1,305,000 Previously Embarked for the "Nadir
Bridge Flood Control Project (Act No. 6917)

Dear Mr. Francis:

Act No. 6917, Section 17 reprogrammed \$1,305,000 for the use by the Department of Public Works for engineering designs, construction, repairs and resurfacing of roads. I am hereby requesting that you forward a letter to Commissioner Lyrin Millin, Department of Property & Procurement, informing her that the funds in the amount of \$1,305,000 can be used from the "Nadir Bridge Flood Control Project." According to Act 6917, the reprogrammed funds are to be used for:

- Leonardo Trotman Drive Project - STT
- Security Booth & Road Improvements at the Governor's Residence - STT
- Cemetery Construction & Improvements - STX
- Route 82 - Drainage Improvements - STX
- Planning & Design Contract for Leonardo Trotman Drive - STT
- Drainage Improvement of Plot #3 at Estate Princess - STX

If you have any questions, please let me know at your earliest convenience.

Sincerely,


Darryl A. Smalls
Commissioner Designate

DAS/AN/RLM/ma

Cc Honorable Carlton Dowe - Senator
Robert Moorehead - Assistant Commissioner
Aloy Nielsen - Deputy Commissioner of Engineering
Dayna Clendinen - Deputy Commissioner of Administration
Francisco Nadal - District Engineer/Project Manager

EXHIBIT F



V · I · P · F · A
VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY

April 30, 2007

The Honorable Lynn Millin
Commissioner
Department of Property & Procurement
Sub Base
St. Thomas, VI 00802

Re: Reprogramming of \$1,305,000 Previously Embarked for the "Nadir Bridge Flood Control Project (Act No. 6917)

Dear Commissioner Millin:

Be advised that the Public Finance Authority (PFA) is currently holding \$1,305,000 pursuant to Act No. 6917, Section 17 which reprogrammed said funds for use by the Department of Public Works for engineering designs, construction, repairs and resurfacing of roads.

According to Act No. 6917, the reprogrammed funds are to be used for:

- Leonardo Trotman Drive Project – STT
- Security Booth & Road Improvements at the Governor's Residence – STT
- Cemetery Construction & Improvements
- Route 82 – Drainage Improvements – STX
- Planning & Design Contract for Leonardo Trotman Drive – STT
- Drainage Improvement of Plot #3 at Estate Princess - STX

Before the disbursements of these funds can occur, the Department of Property & Procurement must forward to the PFA, contract documents, certifications of the vendors selected, unit cost and terms of payments of the services to be performed. In addition, copies of the "Notices to Proceeds" issued to each vendor to start work must also be submitted.

Once these documents and certifications are received, the Department of Public Works (DPW) may submit vendor invoices for payments. These invoices must be accompanied with an appropriate certification of the DPW that the work has been performed and accepted and that payment is authorized. Invoices should be submitted to the Public Finance Authority at No. 24

Page -2-

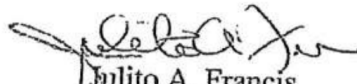
Commissioner Lynn Millin

April 30, 2007

Honduras, 2nd Floor, Frenchtown, St. Thomas, 00802. The PFA will only acknowledge, accept and pay invoices with certifications above the signature of the Commissioner of the Department of Public Works.

If you need additional information or have any questions, please contact me.

Sincerely,



Julito A. Francis

Director Finance and Administration

cc: The Honorable Darryl A. Smalls, Commissioner, Dept. Public Works
The Honorable Carlton Dowe, Senator, 27th Legislature of the VI
Robert Moorehead, Assistant Commissioner, DPW
Aloy Nielsen, Deputy Commissioner of Engineering
Dayna Clendinen, Deputy Commissioner of Administration
Francisco Nadal, District Engineer / Project Manager

EXHIBIT G

two, you said August 12th is when the bidding opened for the Guard House, because I had noticed that in my notes.

MR. GRIFFITH: April 12th.

SENATOR JAMES: April 12, 2007, correct?

MR. GRIFFITH: Yes.

SENATOR JAMES: You recognize that the Governor signed the transfer into law on April 16, 2007. So, the bidding went out before the donny had get signed over. You recognize that, sir?

MR. GRIFFITH: Yes, senator.

SENATOR JAMES: Good thing. Public Works, Ms. Wilkinson, correct?

MS. TURNER-WILKINSON: That's correct, sir.

SENATOR JAMES: Good evening. The microphone is yours. Name for the record and proceed.

MS. TURNER-WILKINSON: Good evening, sir. Good evening Senator Neville A. James, Chairman of the Committee on Financial Services, Infrastructure and Consumer Affairs, members of the Committee, other senators present, and the listening and viewing audience. I am Nicole Turner-Wilkinson, Chief Engineer of the Department of Public Works. In response to the request of the Chairman, I am here to present testimony on behalf of the Department of Public Works pursuant to the construction of a Guard House and Security Fencing, as well as the construction of an access driveway at the property of the

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GVI-000287

Governor of the Virgin Islands, John P. DeJongh, Jr. Accompanying me today is Ms. Dayna Clendinen, Deputy Commissioner of Administration.

As was previously stated, the Department of Public Works through the government's procurement process, facilitated by the Department of Property and Procurement, secured the services of WMK Mechanical Group, LLC for the construction of the Guard House and the Security Fencing. Similarly, through a task order contract approved through the Department of Property and Procurement, the services of Betterroads Asphalt Corporation was secured for the construction of the access driveway.

At the start of the new administration, the Department of Public Works collaborated with security personnel for the Governor of the Virgin Islands to determine the recommended specifications that needed to be incorporated into the design for the development of plans and specifications for securing the Governor and first family of the territory. Various options were reviewed to include residing in Government House, Catharineberg, and the Governor's personal property. The cost, timely transition, and the readiness of each location was a determining factor in the final decision. The option of Government House was ruled out due to the limited available space that could be converted into living quarters. As this structure is primarily utilized

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GVI-000288

for administrative and meeting spaces, a new location that could house these displaced functions would have had to have been identified. Additionally, an entirely new secure communication infrastructure would have to be duplicated at this new location.

In the review of the existing plans and specifications for Estate Catharineberg, it was revealed that the project would have had to consist of the construction of an asphalt and concrete paver driveway, new Guard House, wrought iron gate with automatic opener, landscaping, historic style street lighting, and concrete stairs with site development and utilities; and the rehabilitation and conversion of this historic carriage house into a working office building. While these plans were detailed and extensive, the primary focus did not address all of the security concerns, as well as they did not address critical items that would be required to renovate the living quarters to provide an environment that would permanently house the Governor and the first family. This would include accommodations for minor children.

For anyone who has visited this historical site, it is quite apparent that this structure bears the resemblance of a museum with its historical furniture and artifacts. The engineer's evaluation of the existing plans and specifications for the renovation of the Catharineberg residence plus the

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additional security and renovation requirements exceeded two million dollars. The project duration was estimated at 12 to 15 months. It is important to note there were additional costs to be considered if in fact the decision was made to convert this structure into a permanent place of residence which includes but is not limited to furnishings for both interior and exterior, housekeeping services, food, utilities to include electricity, water, security and other annual maintenance costs which were estimated at \$150,000 per year or \$600,000 over a four year period.

The other option for residence of the First family was their current place of residence at Estate Marolia. The Department requested and received an opinion from the Department of Justice which indicated that the Department can expend funds to secure the personal residences of the Governor. This opinion states, and I quote, "An expenditure of public funds is permissible, even if a private individual derives a special benefit, as long as a public purpose is served and that public purpose is the primary reason for the expenditure. Also, it is well established that there is a public interest in providing security for the Governor and protecting his person." As such, the Department of Public Works commenced the development of plans and specifications for the construction of a Guard House, Security Fencing and Access Driveway at the property of the governor.

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An IFB for the construction of the Guard House was advertised in April, 2007 and the successful bidder was WMK Mechanical Group, LLC at a bid price of \$82,142.80. Final construction costs totaled \$137,701.80. In October 2007, a task order was issued to Betterroads Asphalt Corporation in the amount of \$156,160 for the construction of the driveway and parking area. Betterroads was selected via the task order to perform this work. Due to their availability and their past performance with concrete road construction.

A Task Order contract is a mechanism utilized by the Department for the procurement of services relative to roadway improvement and/or construction throughout the territory. The road paving companies located in each district are contracted with the Government of the Virgin Islands. These contracts solicitation of unit price costs via the Department of Property and Procurement. This enables the Department to engineer projects at a predetermined cost, unlike that of an RFP or IFB.

Subsequently, an RFP for the construction of a security fence was advertised in April of 2008, and the successful bidder was once again WMK Mechanical Group, LLC at a bid price of \$98,829. Construction cost totaled \$122,168.75.

Comparatively, the initial estimated cost for renovating the Catharineberg residence exceeded \$2 million;

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GVI -000291

while the estimated security improvement construction cost for the Governor's property was less than \$350,000. The expenditures for the current security improvements were less than 25 percent of the estimated \$2 million it would have cost to renovate Catharineberg residence.

Allow me to provide some clarity as to the funding utilized for the security improvements at the Governor's property. Historically, the Department of Public Works has been the recipient of funds that were reprogrammed from previous projects. In 1998, Act No. 6226 provided the Department the sum of \$2.305 million for the Savan Gut project. In 2001, Act No. 6427 reprogrammed the same sum of \$2.305 million to the Nadir Gut Project in the amount of \$1.305 million, Mon Bijou Flood Mitigation Project on St. Croix in the amount of \$800,000 and the VIPD/Blue Lightening in the amount of \$200,000. In fiscal year 2007, Act No. 6917 reprogrammed the sum of \$1.305 million from the Nadir Bridge Project to the Department of Public Works for engineering designs, construction, repairs or the resurfacing of roads. Some of the projects identified for funding utilizing the \$1.305 million were on the island of St. Croix, drainage improvements to Plot #3 Estate Princess and Route 82; and on the Island of St. Thomas, the Eastern Cemetery Vault construction. Again, please note that the entire reprogrammed \$1.305 million dollars was not expended solely for security

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improvements.

On behalf of the Department of Public Works, I would like to thank you for the opportunity to outline the construction of the Guard House, Security Fencing and the Access Driveway at the property of the Governor of the Virgin Islands, John P. Davongh, Jr. In fact, I would like to make it clear, no repairs, renovations or improvements were completed utilizing public funds at the private residence of the Governor. I remain available for any questions you may have.

SENATOR JAMES: Thank you Ms. Nicole Turner-Wilkinson, correct?

MS. TURNER-WILKINSON: Correct.

SENATOR JAMES: I hope you ain't saying that because you spent four hundred plus thousand at the Governor's private residence, and that it would have cost \$2 million to renovate Catharineberg that it's all right because the government saved \$1.5 million. You're not saying that are you, Ms. Turner. Are you saying that?

MS. TURNER-WILKINSON: Can you repeat that again, I'm sorry.

SENATOR JAMES: Yes, because in your testimony you stated if you had do renovations at Catharineberg it would have cost \$2 million.

MS. TURNER-WILKINSON: Those are actually the

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minimum renovations --

SENATOR JAMES: Okay, let us use the minimum.

MS. TURNER-WILKINSON: Say that again?

SENATOR JAMES: Are you saying that it's okay since you saved the people of the Virgin Islands a million five because you didn't renovate Catharineberg and you did what you say you didn't do at the Governor's private residence. Because I'm still trying to figure out if you could sell the house without selling the kitchen or selling the yard. Because that's how all you promoting it here.

MS. TURNER-WILKINSON: It was just provided as a point of -- as a comparison.

SENATOR JAMES: Not because you had some emphasis, you said, "let me make it clear." You said that. So, be careful with your intonation, your phonation and your pitch. And I got that from "lean on me." Don't believe I create that one. That's a sample. But, oh, God man. Comparatively the initial estimated cost for renovating the Catharineberg residence exceeded \$2 million, while the estimated security improvement construction cost to the Governor's property was less than \$350,000. You're giving the public the impression that we saved money by spending money at a private residence. And to me you've got to be careful with that. Because I'm not about to let the rank and file get beat up while the up top make decisions and then force all you hand. But let me ask

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GVI-000294

this question before I go to Mr. Koenig. Mr. Koenig, can you do me a favor and relax a little bit because you're making me nervous. You're a little too straight.

MR. KOENIG: I'm sorry, say that again?

SENATOR JAMES: You're a little too straight. Can you relax a little bit because you're making me nervous. Thank you. There was a correspondence from Public Works to Mr. Koenig as it relates to the Ficus tree line. You're familiar with that correspondence?

MS. TURNER-WILKINSON: Yes, Senator.

SENATOR JAMES: Was it installed inside or outside of the fence?

MS. TURNER-WILKINSON: It was installed outside of the Ficus line. It was actually an oversight. When the plans were created the -- yes.

SENATOR JAMES: The Department disagreed with the Governor. Because Mr. Koenig said if you wanted to install the fence outside of the Ficus line, it would triple the labor cost associated with the project. The Department tell the Governor you're causing us more money. And you're telling us it still went that way, correct? That's what you're saying?

MS. TURNER-WILKINSON: That's correct, Senator.

SENATOR JAMES: Okay. All you ain't hold back on the documentation, you know. I'm going to give all you credit for that. All you saying everything. That even when all you

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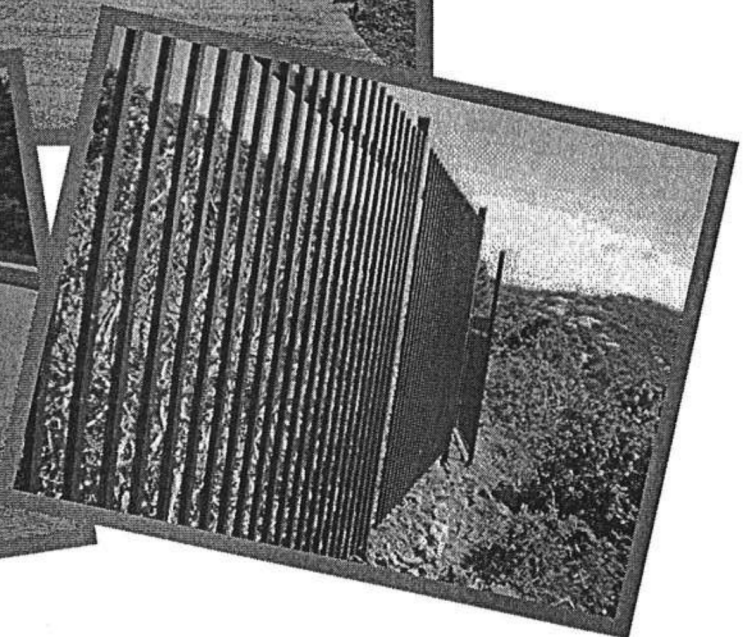
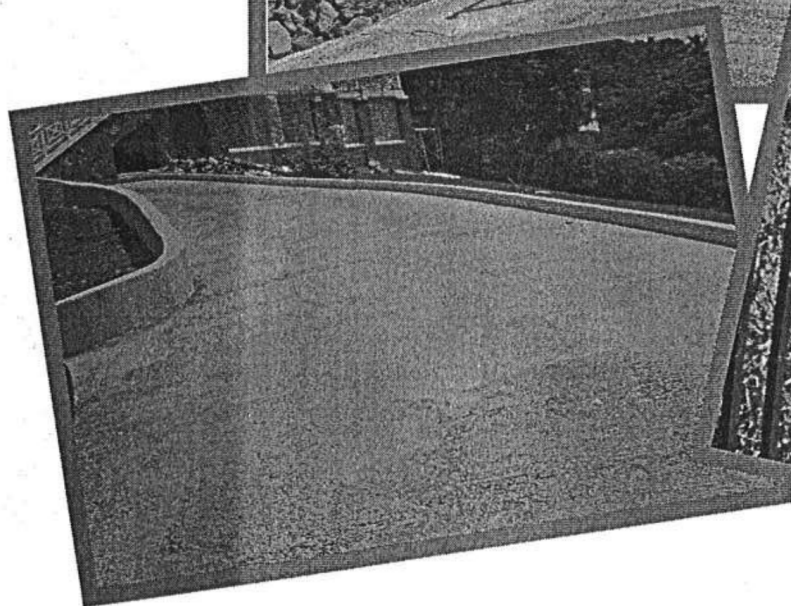
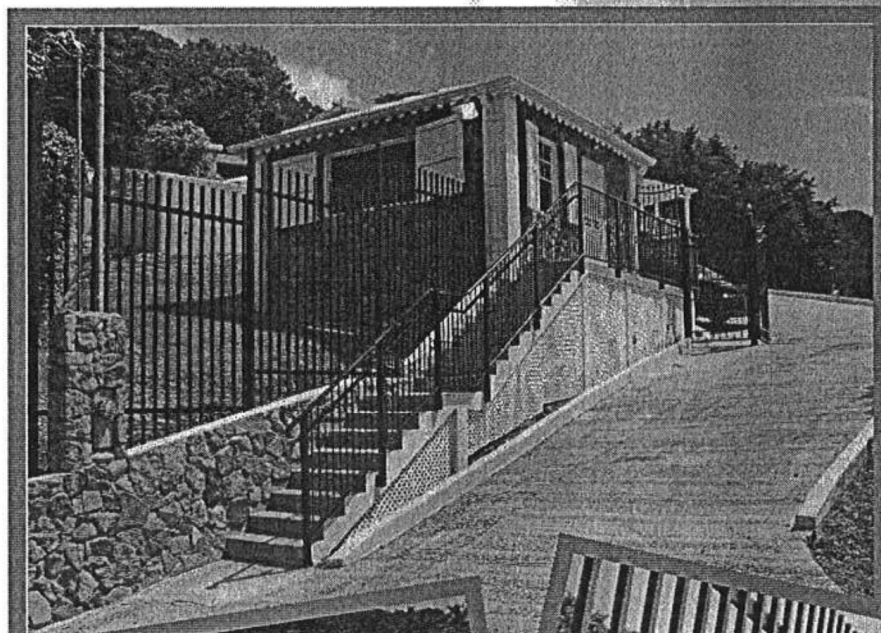
GVI-000295

EXHIBIT H



**U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF INSPECTOR GENERAL**

**SECURITY IMPROVEMENTS AT GOVERNOR OF THE
VIRGIN ISLANDS PRIVATE RESIDENCE**





United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

JAN 19 2010

The Honorable John P. deJongh, Jr.
Governor of the Virgin Islands
No. 21 Kongens Gade
St. Thomas, VI 00802

Re: Final Inspection Report *Security Improvements at the Governor's Private Residence*
(Report No. VI-IS-VIS-0004-2009)

Dear Governor deJongh:

This letter transmits the results of the subject inspection. The report addresses only whether public funds were properly expended for security improvements that were begun in June 2007 at your private residence. We do not address security entitlement per se and recognize that security is a necessity for any sitting Governor. In the past, sitting Virgin Islands governors have had some level of security at their private residences — wherever located.

We found that the funds used for the purpose of providing security at your private residence were set aside for road repairs in the Virgin Islands by the Legislative Branch of Government. In using those funds, the Executive Branch of Government improperly diverted roughly half-a-million dollars of specifically earmarked public funds and usurped the authority of the Legislative Branch of Government. Under Virgin Islands law, only the Legislature is authorized to determine how public funds should be spent.

We provide four recommendations that, if implemented, should resolve the current situation and prevent improper use of funds in the future. Please provide a response to this report by February 16, 2010 to our Caribbean Field Office, Ron deLugo Federal Building — Room 207, St. Thomas, VI 00802. Your response should identify plans to address the recommendations cited in this report.

If you have any questions concerning this report, you may contact me at (202) 208-5745 or Mr. Hannibal M. Ware, Assistant Regional Manager, at (340) 774-8300.

Sincerely,

Mary L. Kendall
Acting Inspector General

cc: **Louis Hill, President, Virgin Islands Legislature**
Nikolao Pula, Acting Deputy Assistant Secretary for Insular Affairs

WHY WE PERFORMED THIS INSPECTION

During the summer of 2009, we received requests to review the funding of security improvements begun in 2007 at the Virgin Islands Governor's private residence. A Virgin Islands senator and United States enforcement agencies had made a number of allegations that public funds, including federal funds, were improperly used to make the improvements. In response to these requests, we performed an inspection of the use of public funds to pay for the improvements at issue.

OVERVIEW

The Revised Organic Act of 1954 established Government House on St. Thomas, Virgin Islands, as the official residence of governors. Government House is currently used for offices, however, and is not suitable for residential living. In the past, governors have resided at Estate Catherineberg, a residence provided by the West Indian Company, although no requirement exists that governors do so.

John P. deJongh, Jr., was elected Governor of the Virgin Islands in November 2006. Upon taking office in January 2007, Governor deJongh decided to continue living at his private residence. As a result of the Governor's decision, the Department of Public Works (Public Works) asked the Virgin Islands Attorney General's Office (AGO) to provide a legal opinion on whether public funds could be used for security-related improvements at the Governor's private residence. In response, the AGO rendered a legal opinion that the Government could incur the cost and that public funds could be used for the improvements.

In April 2007, Public Works informed the Virgin Islands Public Finance Authority that \$1.3 million, which the Legislature of the Virgin Islands intended for territorial road projects, could also be used for other projects. Those other projects included the security-related improvements at the Governor's residence. The Public Finance Authority then notified the Department of Property and Procurement (Property and Procurement) that funds were available and that the procurement process could begin (see Appendix 2).

WHAT WE FOUND

The United States Virgin Islands democratic system distributes power among three branches of government, the Executive, Legislative, and Judicial Branches. This separation of power results in a system of checks and balances designed to ensure accountability and transparency and to minimize the potential for abuse of power.

We found that the Executive Branch ignored the rules of checks and balances when it circumvented the Legislative Branch by using a legal opinion to justify spending almost half-a-million dollars of legislatively obligated public funds for security improvements at the

Governor's private residence (Appendix 3). Moreover, these funds were spent without the benefit of a formal security vulnerability assessment to determine the level of security the Governor would require or the most cost effective way of providing that security.

Legal Opinion Excluded Legislative Authority

In response to the Public Works request regarding use of public funds, the AGO prepared a legal opinion based on five cases. The Acting Attorney General concludes in that opinion that "an expenditure of public funds is permissible, even if a private individual derived a special benefit, as long as a public purpose is served and that public purpose is the primary reason for the expenditure." Armed with this legal opinion, the Executive Branch initiated the process for funding and completing the security improvements at the Governor's private residence.

When we reviewed the five cited cases, we found a common thread in three of the five to be the fact that expenditure of public funds must be legislated. In fact, one of the cited cases concludes, "What is for the public good or what are public purposes for which appropriations may be made are questions which the legislature must in the first instance decide." According to Virgin Islands law, the authority to use public funds for any purpose, including improving security at the Governor's private residence, could only be obtained through legislation, not by a legal opinion from the AGO. Nevertheless, the AGO opinion remains silent regarding the requirements for legislative approval of public funds expenditures and for determination of whether public purpose is the primary reason for any given expenditure.

Public Funds Used Improperly

In 1998, the Virgin Islands Government received surplus bond funds from the Public Finance Authority that the Legislature had earmarked for public projects. In August 2001, the Virgin Islands Legislature approved Act No. 6427, appropriating \$1.3 million of those funds for the Nadir Bridge Flood Control Project in St. Thomas. In April 2007, the Legislature passed Act No. 6917, reprogramming the \$1.3 million for the specific purpose of *engineering design, construction, repair, or resurfacing of roads*.

The intention of the Legislature regarding Act No. 6917 was apparent during the legislative process, as it is now. During discussion, six senators mentioned that the funds were intended for the purpose of Virgin Islands road improvements. One senator specifically stated, "We have in this bill an appropriation of . . . one point three million dollars . . . to address road repairs in the territory, but more specifically on the island of St. Croix." Another senator noted that roads were in "terrible condition" on St. Croix. Clearly, no part of the \$1.3 million was to be used for security improvements at the Governor's private residence — or for any other purpose.

Despite the Legislature's intent, the former acting Commissioner of Public Works incorrectly notified the Public Finance Authority by letter dated April 25, 2007, that the reprogrammed funds could be used for other than road projects, to include security booth and road improvements at the Governor's residence (see Figure 1). Referencing the letter from Public Works, the Public Finance Authority notified Property and Procurement that all procurement documents needed to be in place and forwarded to the Public Finance Authority before disbursement of the funds could occur. This notice triggered expenditure of funds for the security improvements at the Governor's private residence.

**Figure 1. PROJECTS APPROVED
BY PUBLIC WORKS APRIL 2007
LETTER**

- Leonardo Trotman Dr.
- Security Booth & Road Improvements
– Governor's Residence
- Cemetery Construction &
Improvements
- Route 82 Drainage Improvements
- Planning & Design for Leonardo
Trotman Dr.
- Plot #3 Estate Princess Drainage
Improvement

After receiving the "go-ahead" from the Public Finance Authority, Property and Procurement awarded roughly \$490,000 in contracts related to security improvements at the Governor's private residence (See Table 1). These contracts were issued to erect a permanent, concrete, stone faced, security guard house; construct a new driveway and parking; and install aluminum security fencing. Surveillance equipment was also installed as part of the improvements.

According to Virgin Islands law, no officer or employee of the Government can enter into a valid contract before an appropriation is made for that specific purpose. Since the appropriated funds should never have been used to finance security improvements at the Governor's private residence, all contracts and agreements issued for that purpose are invalid. The Virgin Islands Code contains definitive penalties for Government officers or employees who violate the law. It specifically prohibits the spending of funds for reasons other than intended in a legislative appropriation and specifies penalties for violation, including fines and imprisonment.

Table 1. TOTAL COST OF SECURITY IMPROVEMENTS

Project	Contractor	Contract Cost	Change Orders	Total Costs
Guard House	WMK Mechanical Group	\$117,266.80	\$20,435.00	\$137,701.80
Security Fencing	WMK Mechanical Group	\$98,829.00	\$23,339.75	\$122,168.75
Security Fencing – Additional Work	WMK Mechanical Group			*\$25,271.70
Driveway& Parking	Betteroads Asphalt Corp.	\$156,160.00		\$156,160.00
Security System	Alert #1 International	\$48,698.00		\$48,698.00
Total				\$490,000.25

** \$25,271.70 has been obligated for additional work done on the security fence that will bring the total cost to \$490,000.25. A funding source has not yet been identified.*

By expending the funds for security improvements, the Executive Branch improperly depleted funds earmarked for much needed road repairs in the Virgin Islands. Further, the Executive Branch's actions usurped the Legislature's authority to determine how to spend public funds.

Security Vulnerability Not Documented

Personal security best practices require the conduct of a vulnerability assessment to determine necessary security requirements. Such an assessment should have been the first step in establishing the Governor's personal security program and should have:

- been tailored to the needs of the Governor based on factors such as workplace, residence, family, and domestic travel/and or international travel requirements;
- evaluated existing or perceived threat conditions and existing physical security measures and procedures; and
- provided logical recommendations, if needed, for cost effective security improvements.

None of these requirements was met.

The Executive Branch expended public funds on permanent physical improvements at the Governor's private residence without obtaining a security vulnerability assessment. The only semblance of an assessment consisted of undated, handwritten notes prepared by the Governor's Director of Security. These notes described the physical layout of the property only and did not address security vulnerabilities. While the Governor is entitled to some level

of security, the expenditure of half-a-million dollars in public funds on permanent security improvements cannot be justifiable without a proper assessment of security vulnerabilities.

Conclusion

Whether the current Governor is entitled to security at his private residence is not germane to our inspection. We recognize that security is a necessity for any sitting Governor. In fact, past Virgin Islands governors have had some level of security at their private residences regardless of where they officially resided while in office. The Executive Branch of Government, however, cannot independently determine the purpose for which public funds are used. Only the Legislature has the authority to appropriate public funds to pay for security improvements for any governor. Therefore, all public funds diverted from Act No. 6917 for the purpose of providing security at the Governor's private residence were improperly expended. Further, any determination of the level of security necessary to protect a governor should be preceded by a formal vulnerability assessment.

Recommendations

We recommend that the Executive Branch of the Virgin Islands:

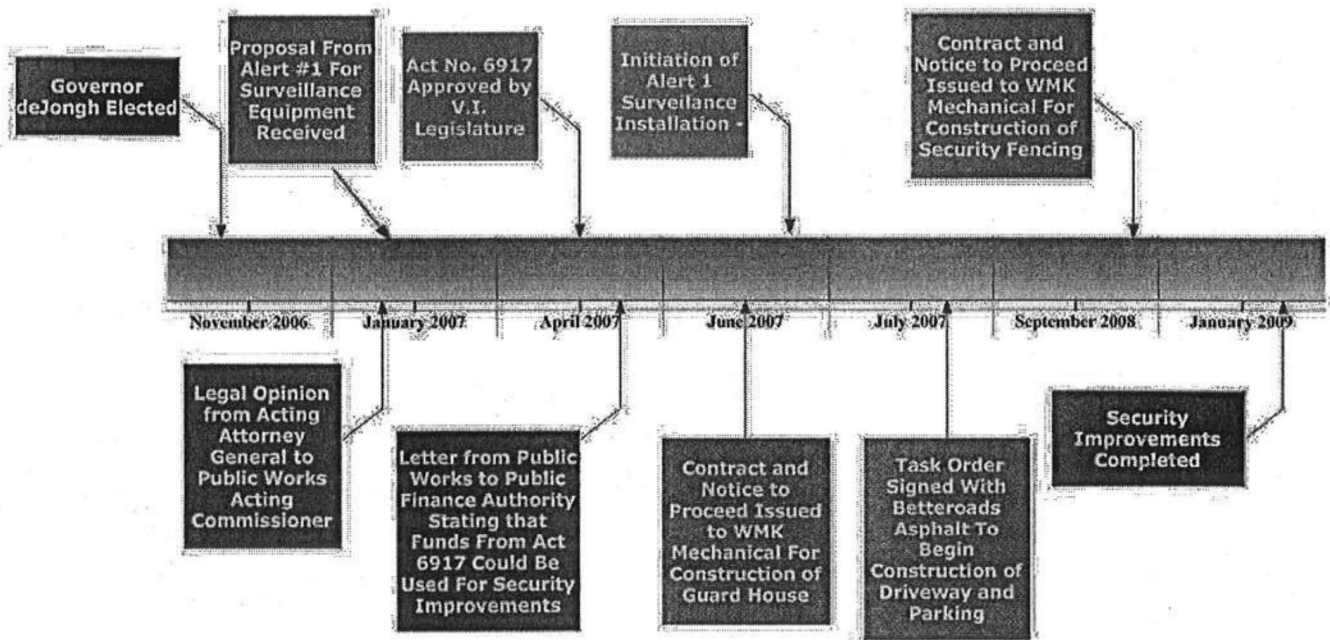
1. Determine whether Government House, as designated by the Revised Organic Act of 1954, can be made suitable to serve the residential needs of the Governor of the Virgin Islands. If so, secure the funds necessary to convert Government House from office to residential use. If not, pursue legislation that would identify alternative accommodations.
2. Adhere to existing laws regarding the use of public funds, which can only be used for purposes authorized by the Legislative Branch.
3. Ensure that funds redirected to the Department of Public Works by Act No. 6917 and improperly expended for security improvements at the Governor's private residence be returned and used as intended.
4. Ensure that an appropriate security vulnerability assessment is made in the event that any appropriation for security improvements at a governor's private residence is considered.

INSPECTION SCOPE AND METHODOLOGY

The objective of our inspection was to determine solely whether public funds were properly expended for the security enhancements made at the Governor's private residence.

We performed our work from August to November 2009 in accordance with the "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency. To accomplish our objective, we reviewed records and interviewed officials of the Departments of Justice, Public Works, and Property and Procurement and of the Public Finance Authority, the West Indian Company, and Government House. We also interviewed the Virgin Islands Governor and the former Senate President. In addition, we performed site visits of Government House, Estate Catherineberg, and the Governor's private residence, where we viewed the security improvements at issue.

TIMELINE OF SECURITY IMPROVEMENTS AT GOVERNOR'S PRIVATE RESIDENCE



MONETARY IMPACT

QUESTIONED COSTS	
CONTRACTS FUNDED BY ACT NO. 6917 FOR SECURITY IMPROVEMENTS AT GOVERNOR'S PRIVATE RESIDENCE	\$490,000

Report Fraud, Waste, Abuse And Mismanagement



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Washington Metro Area 703-487-5435

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Revised 06/08

EXHIBIT I

COMMITTEE ON RULES AND JUDICIARY

BILL NO. 30-0442

Thirtieth Legislature of the Virgin Islands

July 21, 2014

A Resolution urging and requesting Governor John P. deJongh, Jr., to return the monies improperly used by his administration to upgrade his private residence including a guard house and an iron fence

PROPOSED BY: Senators Terrence "Positive" Nelson, Kenneth L. Gittens, and Shawn-Michael Malone

1 WHEREAS, the Revised Organic Act of 1954 in section 11 provides that the Governor
2 shall maintain his "official residence" in the Government House on St. Thomas during his
3 incumbency; and

4 WHEREAS, Governor John P. deJongh, Jr. chose to reside in his private residence
5 during his incumbency thereby circumventing and ignoring the provisions of the Revised
6 Organic Act of 1954 Section 11; and

7 WHEREAS, the 24th Legislature passed Act No. 6427 appropriating \$1,305,000 in
8 section 22 for Nadir bridge flood control project and those monies were never expended for its
9 intended purpose; and

10 WHEREAS, the 27th Legislature realizing that the \$1,305,000 appropriated in Act 6427
11 was still available and unexpended, passed Act No. 6917 amending Act No. 6427, section 22 and

1 appropriated the unexpended \$1,305,000 to the Department of Public Works for engineering,
2 designs, construction, repair or the resurfacing of roads; and

3 WHEREAS, Governor John P. deJongh Jr. in the year 2007 began to utilize the
4 \$1,305,000 appropriated in Act 6917 to upgrade his private residence; the work being completed
5 in the year 2008; and

6 WHEREAS, after public outcry Governor John P. deJongh, Jr. publicly stated that he
7 relied on an opinion of the Virgin Islands Solicitor General Elliot Davis before utilizing the
8 funds; and

9 WHEREAS, based on a complaint filed by a member of the 28th Legislature with the
10 United States Department of Interior Office of the Inspector General and the United States
11 Attorney General's Office an investigation was initiated to determine the propriety of the
12 expenditure; and

13 WHEREAS, a report was generated by the United States Department of Interior Office
14 of the Inspector General after an on-site investigation by federal officials, which determined that
15 portions of the \$1,305,000 were improperly used for security upgrade to the private residence of
16 Governor John P. deJongh, Jr.; and

17 WHEREAS, the report determined that the legal residence of the Governor of the Virgin
18 Islands was Government House on St. Thomas and the monies should have been used to upgrade
19 the official residence of the governor if it was not suitable for habitation or change the law
20 concerning the official residence of the Governor; and

21 WHEREAS, on or about November 6, 2009 Governor John P. deJongh, Jr., by his own
22 admission, agreed to pay back a portion of the expenses upon completion of office; and

23 WHEREAS, one of the recommendations made by the United States Department of
24 Interior Office of the Inspector General was the return of the monies from Act 6917 improperly
25 used for the Governor's security improvements; and

1 WHEREAS, only the Legislature has the authority to appropriate government monies for
2 public projects and the Legislature never appropriated nor otherwise approved the use of
3 government funds for upgrade to Governor John P. deJongh, Jr.'s private residence in any
4 manner; and

5 WHEREAS, title 33 Virgin Islands Code, chapter 113, section 3101 provides that "No
6 officer or employee of the Virgin Islands shall make or authorize an expenditure from, or create
7 or authorize an obligation under any appropriation or fund in excess of the amount available
8 therein; nor shall any such officer or employee involve the government in any contract or
9 obligation for the payment of money for any purpose, in advance of appropriations made for
10 such purpose, unless such contract or obligation is authorized by law"; and

11 WHEREAS there was no advance appropriation for any contract or obligation
12 authorized by law for any upgrade to the private residence of Governor John P. deJongh, Jr.'s
13 private residence; and

14 WHEREAS, title 33 Virgin Islands Code, chapter 113 section 3112 provides that
15 "Except as otherwise provided by law, sums appropriated for the various branches of expenditure
16 in the public service shall be applied solely to the objects for which they are made, and for no
17 others; and

18 WHEREAS, the monies taken from Act 6917 and used to upgrade the private residence
19 of Governor John P. deJongh, Jr. cannot be reconciled with the provisions of section 3112 of title
20 33 of the Virgin Islands Code as those funds were appropriated by the legislature to the
21 Department of Public Works for engineering, designs, construction, repair or the resurfacing of
22 roads; Now, Therefore,

23 *Be it resolved by the Legislature of the Virgin Islands:*

24 SECTION 1. It is the consensus of the Legislature of the Virgin Islands that the portion
25 of monies utilized from Act 6917 section 17 to make security upgrades to the private residence

1 of Governor John P. deJongh, Jr. was not authorized by the Legislature and therefore the monies
2 were expended illegally.

3 **SECTION 2.** The Legislature of the Virgin Islands, on behalf of the people of the Virgin
4 Islands, respectfully petitions and requests of the Honorable John P. deJongh, Jr. to return the
5 sum of \$490,000 plus interest at the rate of 9.5 %, taken from Act 6917 section 17 to upgrade his
6 private residence and that he should do so by January 5, 2015.

7 **SECTION 3.** Copies of this resolution shall be forwarded to the Governor of the Virgin
8 Islands at Government House, St. Thomas Virgin Islands with copies sent to the United States
9 Department of Justice Office of the United States Attorney General, the United States
10 Department of Interior Office of the Inspector General and the Attorney General of the Virgin
11 Islands.

12 **BILL SUMMARY**

13 This Resolution petitions and request the return of monies used by Governor John P.
14 deJongh, Jr. to upgrade his private residence with copies sent to the President of the United
15 States, each member of Congress, the United States Department of Interior Office of the
16 Inspector General and the United States Department of Justice Office of the United States
17 Attorney General.

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20 **BRI3-0643/ June 26, 2014/AA**
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EXHIBIT J

CHAPTER NINE.

OF CRIMES AGAINST THE REVENUE.

Section 1.—Any public officer and every person charged with the receipts, safekeeping, transfer or disbursement of public moneys, who either:

(1) Without authority of law, appropriates the same, or any portion thereof to his own use or to the use of another; or

(2) Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

(3) Loans the same, or any portion thereof; or makes a profit out of, or uses the same for any purpose not authorized by law; or,

(4) Unlawfully deposits the same, or any portion thereof, in any bank, with any banker or other person; or,

(5) Changes or converts any portion thereof from coin into currency, from currency into coin or other currency, without authority of law; or,

(6) Knowingly keeps any false account, or makes any false entry or measure in any account of or relating to the same; or,

(7) Fraudulently alters, falsifies, conceals, destroys or obliterates any account, or documents relating thereto; or,

(8) Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such moneys by competent authority; or,

(9) Willfully omits to transfer the same, when such transfer is required by law; or,

(10) Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any law imposed by law so to pay over the same;

is punishable by imprisonment in the penitentiary for not exceeding five years, or by fine not exceeding two thousand dollars, or by both, and is disqualified from further holding any public office.

Section 2.—Every officer charged with the receipt, safekeeping, or disbursement of public money, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of a felony.

Section 3.—The phrase "public moneys", as used in the preceding sections, includes all bonds and evidences of indebtedness, and all moneys belonging to the Government or Municipality.

Section 4.—Any clerk, sheriff, or other officer who receives any fine or forfeiture and refuses or neglects to pay over the same according to law, is guilty of a felony.

Section 5.—Any person, agent or officer of any institution, corporation or company, who shall give or return a false or fraudulent list, schedule or statement required by any Law; or who shall willfully fail or refuse to take and subscribe to any of the oaths, affidavits or affirmations required by law, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year or by both.

Public moneys.

Appropriating funds.

Failing to keep in possession.

Loaning or making profit.

Unlawfully depositing.

Changing or converting.

Keeping false account.

Altering accounts or documents.

Refusing or omitting to pay over funds.

Omitting to transfer funds.

Refusing to pay proper officer.

Punishment.

Officer failing to keep and pay over funds.

Public moneys defined.

Refusal of officer to pay over fine, etc.

Fraudulent lists, etc.

EXHIBIT K

**TERRITORY OF THE UNITED STATES VIRGIN ISLANDS)
DIVISION OF ST. THOMAS AND ST. JOHN**

) SS: *ST-15-WR-20*

AFFIDAVIT

I, Kenneth Schulerbrandt Jr., first being duly sworn, depose and state:

1. That Affiant is a Special Agent with the United States Virgin Islands Department of Justice, White Collar Crime Division. I have more than 20 years of experience conducting and/or participating in White Collar Crime Investigations.
2. The facts and information contained in this affidavit are based upon my own personal knowledge of the investigation and observations of other witnesses involved in the investigation. All observations referenced below, not personally made by Affiant, were related to him by the persons who made such observations.
3. The following affidavit is submitted in support of an arrest warrant charging JOHN P. de JONGH, JR. of 23-8 Estate Mafolie, St. Thomas, V.I. in violation of Title 14 V.I.C. Section 1662(1), "Embezzlement or falsification of public accounts" and Title 14 V.I.C. §1663(1), "Neglecting to Pay Over Public Monies."
4. In November 2006, John P. de Jongh, Jr. [Governor de Jongh] was elected Governor of the United States Virgin Islands.
5. The Director of Executive Security advised Governor de Jongh that his private residence located at No. 23-8 Estate Mafolie, St. Thomas, V.I. did not have sufficient security and surveillance infrastructure to provide an appropriate level of security for himself and his family.
6. As a result of Governor's decision, the Department of Public Works (Public Works) asked the Virgin Islands Attorney General's Office to provide a legal opinion on whether public funds could be used for security-related improvements at Governor de Jongh's private residence. In response, the Attorney General's Office rendered a legal opinion that the Government could incur the cost and that public funds could be used for the improvements.
7. Based upon the U.S. Department of the Interior Inspector General's report, Public Works informed the Virgin Islands Public Finance Authority, in April 2007, that \$1.3 million, which the V.I. Legislature intended for territorial road projects, could also be used for other projects. Those other projects included the security-related improvements at Governor de Jongh's residence.

8. The Public Finance Authority, through Julito Francis, then notified the Department of Property and Procurement (Property and Procurement) by correspondence dated April 16, 2008, that funds were available and that the procurement process could begin.
9. After receiving the authorization to proceed from the Public Finance Authority, Property and Procurement awarded approximately Four Hundred and Ninety Thousand Dollars and Twenty-five cents (\$490,000.25) in contracts related to security improvements at Governor de Jongh's private residence. These contracts were issued to erect a permanent, concrete, stone faced, security guard house; construct a new driveway and parking; and install aluminum security fencing as well as surveillance equipment. These funds were spent without the benefit of a formal security vulnerability assessment to determine the level of security the governor would require or the most cost-effective way of providing that security. The only semblance of an assessment consisted of undated, handwritten notes prepared by Governor de Jongh's Director of Executive Security. The notes described the physical layout of the property only and did not address security vulnerabilities.
10. Virgin Islands law states that no officer or employee of the Government can enter into a valid contract before an appropriation is made for that specific purpose. The appropriated funds should never have been used to finance security improvements at Governor de Jongh's private residence, therefore all contracts and agreements entered into by the Government and signed by the Chief Executive, Governor de Jongh, for that purpose were unlawful.
11. The United States Virgin Islands democratic system distributes power among three branches of government; the Executive, Legislative, and Judicial Branches. This separation of powers results in a system of checks and balances and minimizes the potential for the abuse of power.
12. The Executive Branch and its Chief Executive, Governor de Jongh ignored the rules of checks and balances and circumvented the Legislative Branch by using a legal opinion to justify spending approximately \$490,000.25 of legislatively obligated public funds for security improvements at Governor de Jongh's private residence.

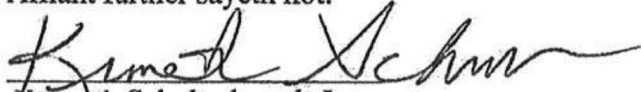
13. That JOHN P. de JONGH, JR. in his official capacity as Chief Executive of the United States Virgin Islands, knowingly, willfully, and intentionally misappropriated Government funds for use on his own private residence by entering into contracts and agreements on behalf of the Government using funds that were not approved by the Legislature for those specific purposes, but which were unlawfully diverted from Act No. 6917 to serve his own personal interests.
14. That based on the aforementioned, Affiant believes JOHN P. de JONGH, JR., in his official capacity as Governor of the United States Virgin Islands willfully, knowingly, and intentionally misappropriated specifically earmarked public funds that belonged to the United States Virgin Islands Government and were to be used solely for the purpose of engineering design, construction, repair, or resurfacing of roads in the United States Virgin Islands. Governor de Jongh as Chief Executive, the highest ranked public officer in the Government had the ultimate responsibility to ensure that public funds were safeguarded and to ensure that no portion of those funds were misappropriated to his own personal use or the use of another.
15. Further, based on the aforementioned, Affiant believes JULITO FRANCIS, in his capacity as the Director of the Public Finance Authority of the Virgin Islands willfully, knowingly, and intentionally caused the misappropriation of specifically earmarked public funds that belonged to the United States Virgin Islands Government and were to be used solely for the purpose of engineering design, construction, repair, or resurfacing of roads in the United States Virgin Islands to be converted to a use unauthorized by law.
16. JULITO FRANCIS being the Director had the duty to ensure that public funds were safeguarded and to ensure that no portion of those funds were misappropriated to use unauthorized by law.
17. Further, that upon the expiration of his term in office as Governor of the United States Virgin Islands, JOHN P. de JONGH, JR. willfully, knowingly and intentionally kept the approximately \$490,000.25, he misappropriated for his own personal use. Affiant believes that JOHN P. de JONGH should be charged in violation of Title 14 V.I.C. Section 1662(1) "Embezzlement or Falsification of Public Accounts, " Title 14 V.I.C. Section 1663(1), "Neglecting to Pay Over Public Monies" and "Principals" Title 14 V.I.C. Section 11 (a).
18. Further, Affiant believes that JULITO FRANCIS should be charged in violation of Title 14 V.I.C. Section 1662(1) "Embezzlement or Falsification of Public

Page 4

Affidavit: John P. de Jongh, Jr. & Julito Francis

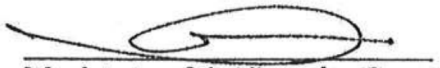
Accounts," Title 14 V.I.C. Section 1663(1), "Neglecting to Pay Over Public Monies,"
and as Principals, Title 14 V.I.C. Section 11(a).

Affiant further sayeth not.


Kenneth Schulerbrandt Jr.

SUBSCRIBED to and SWORN

Before me this 17th day of August 2015.


Magistrate of the Superior Court
JUDGE

A CERTIFIED TRUE COPY

DATE 8/17/15
ESTRELLA H. GEORGE
ACTING CLERK OF THE COURT
BY C. Salem
COURT CLERK II