

October 10, 1918.

OPINION NO. 748.

TAXATION OF GENERAL LEASES.

Section 6 of Act 222, S. L. 1917, does not repeal, either directly or by implication, Section 386, R.L.H. 1915.

SAME. LEGISLATIVE AUTHORITY TO CHANGE.

The Legislature of the Territory of Hawaii is without authority to repeal or amend Section 385, R.L.H. 1915, for the reason that that section constituted a part of the land laws of the republic that were in force at the time of annexation and can be changed only by Congress.

Hon. C. J. McCarthy,  
Governor of Hawaii,  
Honolulu, T. H.

Dear Sir: I beg to acknowledge the receipt from you this day of Mr. O. T. Shipman's letter dated October 7, 1918, in which he asks the opinion of this office as to whether Section 6 of Act 222, S. L. 1917, which purports to amend Section 1242, R.L.H. 1915, operates to repeal, by implication or otherwise, Section 385, R.L.H. 1915.

This inquiry must be answered in the negative. Section 385, R.L.H. 1915, was originally Section 25 of the Land Act of 1895, which Act constituted a codification of and amendments to the land laws existing prior to that time, and constituted the land laws of the republic in force at the time of annexation.

Section 25 of the Land Act of 1895 provided in language identical with Section 385, R.L.H. 1915, as follows:

“Section 25. For the purpose of taxation the value of general leases hereafter executed shall be the value of the

fee of the real estate demised, and the lessees shall be assessed thereon accordingly. Such leases shall be void upon default in the payment of taxes thereon for sixty days after such taxes have become delinquent.”

It is clear that the land laws in force at the time of annexation provided that general leases should be taxed to the lessees at their full value and that if such taxes should become delinquent and remain so for sixty days, such general leases should thereupon become *void*.

Section 73 of the Organic Act provides as follows:

“Section 73. That the laws of Hawaii *relating to public lands* . . . except as changed by this Act, shall continue in force *until Congress shall otherwise provide*.”

Section 25, as above quoted, was not changed by the Organic Act and has not since been changed by Congress, so that this particular section, viz.: Section 385, R.L.H. 1915, is still in force by virtue of the above provision of the Organic Act.

“The legislative power of the Territory, *if not restricted*, would include the right to prescribe the terms and conditions under which public lands may be leased. Here, as we have seen, the preexisting laws (i.e., previous to annexation) relating to public lands, including, presumably *the provision relating to the taxation of general leases, were expressly continued in force by the organic Act* .” Re Taxes, Waiohinu Agr. Co., 23 Haw. 621, 624.

It is unnecessary for me to call your attention further to the fact that the local legislature is without power to change or amend the land laws. It is clear, therefore, that it is unnecessary for us further to consider the intention of the Legislature in enacting Section 6 of Act 222, nor is it necessary for us to consider the effect of the language used in that Act. The provisions of the Organic Act are controlling and afford an absolute answer to Mr. Shipman’s inquiry.

Under the principles of general statutory construction other reasons might be urged in support of the negative answer to this inquiry, but I do not deem it necessary to advance such arguments in view of the plain and explicit provisions of the Organic Act.

I am of the opinion, therefore, and so advise you, that Section 385, R.L.H. 1915, is still in force and unrepealed notwithstanding the provisions of Section 6 of Act 222, S.L. 1917.

Yours very truly,

HARRY IRWIN,  
Attorney General.

---