

April 21, 1922.

OPINION NO. 1017.

TAXATION: EAST KAUAI WATER
COMPANY, LIMITED.

The powers granted to the East Kauai Water Company, Limited, by its Articles of Association construed to be such as to exempt the property of that company from taxation under the provisions of Section 1250, R.L.H. 1915, as amended by Act 110, S.L. 1917.

Hon. A. Lewis, Jr.,
Treasurer, Territory of Hawaii,
Honolulu, T.H.

Dear Sir: I beg to acknowledge the receipt of your communication of the 17th inst., together with a copy of a letter addressed to you by the tax assessor of the Fourth Taxation Division requesting my opinion upon the question as to whether the property of the East Kauai Water Company, Limited, is exempt from taxation under the provisions of Section 1250, R.L.H. 1915, as amended by Act 110, S.L. 1917.

This company was organized in April, 1920, and as it "is existing or was established for the purpose of distributing water for sale to the general public for irrigation, agricultural and domestic purposes," it comes within the purview of the said Act and its property is exempt from taxation.

The Articles of Association of this Company, which you forwarded with your letter of inquiry, show that it was organized inter alia for the following purposes, namely:

"To acquire, furnish, provide for, divert, conduct, develop, store, pump, convey, carry, distribute and

transmit water for irrigation and domestic purposes on the Island of Kauai."

It would appear from this excerpt from the Articles of Association that the Company was organized for a purpose contemplated by said Section 1250, namely, for the distribution of water to the public for domestic and irrigation purposes.

This conclusion is strengthened by the analysis of the license from the government under which the company is operating, which license is referred to in the Articles of Association as containing the terms and conditions under which the powers reserved in those Articles may be exercised. The license provides inter alia that "the licensee will . . . conduct and distribute all of the water of the North Kailua, Kapaa and Anahola streams on the Island of Kauai belonging to the Territory of Hawaii and intended to be subject to this license, which is available for irrigation and domestic use."

It must be remembered that the Act under consideration does not provide that the company must be actually engaged in the distribution of water to the general public, but the exemption may be claimed when the Company "is existing or organized" for that purpose.

It seems clear to me that the Company was organized for the purpose of distributing water to the public in that vicinity for irrigation and domestic purposes, and that its property is therefore exempt from taxation.

The tax assessor in his letter refers to the case of "In re Taxes, Waihole Water Company, Limited," 21 Haw. 679, and states his opinion that the case now under consideration is governed by the decision in the Waihole case. I am of the opinion that the two cases are clearly distinguishable. An examination of the

Articles of Association of the Waihole Water Company, Limited, discloses the fact that that Company was organized *solely* for the purpose of supplying water for irrigation purposes and no other. It could not therefore bring itself within the exemption because it was not organized for the purpose of distributing water to the general public for irrigation, agricultural *and domestic purposes*.

The Supreme Court in the Waihole case held that the Waihole Water Company was under no legal obligation to furnish water to any person or corporation other than the Oahu Sugar Company and that the mere fact that it did furnish water incidentally to others for domestic uses would not bring it within the exemption clause of this statute.

I am of the opinion, therefore, and so advise you, that the property of the East Kauai Water Company, Limited, is exempt from taxation under the provisions of said Section 1250, as amended.

I return herewith the Articles of Association of the East Kauai Water Company, Limited, which you forwarded to me with your letter. I am,

Yours very truly,

HARRY IRWIN,

Attorney General.