February 16, 1926.

OPINION No. 1319.

TAXES: CLAIMS OF EXEMPTION:
The provisions of Section 10 of Act 192, S. L. 1925 relating to claiming exemption from taxation do not apply to the Territory or any County or City and County.

Honorable C. T. Bailey,
Commissioner of Public Lands,
Honolulu, Hawaii.

Dear Sir:

You have called my attention to the fact that James M. Muir, Tax Assessor of the Third Taxation Division, has addressed a communication to you calling attention to the provisions of the second paragraph of Section 10 of Act 192 of the Session Laws of 1925 (said paraaph now known as, Section 1331-B of the Revised Laws), and notifying you that formal claims for the exemption from taxation of all property belonging to the Territory, to the Department of Public Instruction and to the (City and) County must be made in order that said property shall escape taxation. And you have requested my opinion as to whether the law has the effect as claimed by Mr. Muir, so that formal claims of exemption must be made by you, in the same manner as by the ordinary tax payer, in order that government property may escape taxation.

I beg to advise you that the section of the law referred to has no application to any department of the government.

It is a fundamental rule that the property of a state is exempt from taxation; and that this exemption exists without any express statutory authority, and even in the face of a specific statutory requirement that all the pro-

perty shall be subject to taxation. As stated by a leading authority:

> "It is a generally accepted principle that the property of a particular body politic, such as the state or a municipal corporation, whether used for public purposes or held for the income to be derived therefrom, is not taxable by the same body politic. *This exemption* exists *without any express statutory sanction, and in the face of a specific requirement of the statutes or of the constitution itself that all property be taxed.* Since the futility of the proceeding would be the came for whatever purpose the property was used, it can make no difference in cases of this character whether the property is used for public purposes or merely for revenue."

26 R. C. L., page 331, Sec. 289.

The reason for the above rule is apparent. And its logic is unassailable.

It is true that Section 1325 of the Revised Laws of Hawaii 1925 states that, among the real and personal property exempt from taxation is "real and personal property belonging to the Territory; to the Department of Public Instruction, to any county or city and county * * *." And Section 10 of Act 192, Session Laws of 1925 provides that none of the exemptions granted in Section 1325, and following sections, shall be allowed in any case "unless the claimant shall have made a return of property in the form prescribed for tax payers, and have in such return claimed exemptions from taxation."

In terms, therefore, the language of the law states that the property of the Territory, of the counties and of the City and County of Honolulu shall not be exempt unless exemption is claimed; but such property is, in the law, *always exempt,* whether or not the statutes so state and even in the face of such language as our Territorial statute has thus employed. It is against all theories of government to hold that any state or municipality should tax its own property.

I accordingly advise you that the provisions o f "Section 10 of Act 192 of the Session Laws of 1925 is not applicable to the Territory or any municipal sub-division thereof.

Very truly yours,

WILLIAM B. LYMER,

Attorney General.