

January 11th, 1927.

OPINION No. 1408.

TAXATION:

The Treasurer of the Territory, in making up his estimated of funds necessary to meet school teachers' payroll, should take into consideration the number of teachers, the estimated increase on account of increase in enrollment—not to exceed 7.6 per cent, and the amount payable by the Territory to the Employees' Retirement System on account of members whose salaries are paid from school funds.

Honorable Henry C. Hapai,
Treasurer, Territory of Hawaii,
Honolulu, Hawaii.

Dear Sir:

By a letter of December 16th, 1926, you have asked for the opinion of this Department as to whether or not, in making up your estimates for funds necessary to be raised out of the real and personal property taxes to meet the payroll of teachers you should take into consideration, in addition to the estimated increase of not more than 7.5 per centum in the enrollment after September 1st, and consequent increase of teachers, the amount payable by the Territory of Hawaii to the Employees' Retirement System of the Territory of Hawaii on account of members whose salaries are paid from school funds.

Subdivision A, paragraph 6, Section 8 of Act 55 of the Session Laws of 1925 (Territorial Retirement System) provides:

“To cover the requirements of the System for the period prior to the first day of July, 1927, special payments shall be included in the general appropriation bill and in the amount raised by general prop-

erty tax for school purposes, which amount shall be paid into the Pension Accumulation Fund and the Expense Fund.”

It is clear from the quoted section that it was the intent of the Legislature to raise the amount necessary to be paid into the Pension Accumulation Fund on the part of the Territory, by taxation.

Paragraph 5 of Act 232 of the Session Laws of 1925 provides:

“And the Treasurer of the Territory in making up his estimates of funds necessary to be raised out of the real and personal property taxes to meet such payroll, shall take into consideration the estimated increase of not more than 7.6 per centum in the enrollment as afore said after September 1 of the current year, and the consequent increase in the number of teachers and the amount of said payroll which will be necessary, *including the amount payable by the Territory of Hawaii to the Employees’ Retirement System of the Territory of Hawaii, on account of members whose salaries are paid from school funds.*”

In fixing the tax rate the Treasurer must take into consideration, among the other items mentioned in Section 1315, school teachers’ salaries. There is no authority in said section 1315 for the Treasurer to take into consideration the amount payable by the Territory to the Employees’ Retirement System of the Territory on account of members whose salaries are paid from the school funds. There is, however, authority for the Treasurer to provide, in addition to the general rate, an additional tax for purposes specified in specific legislative acts, but that tax is what is commonly known as the “one quarter of one percent” which the Treasurer cannot apportion among the various counties;

It is a general principle of law that every clause in a legislative act must be given effect if possible. To construe the last clause authorizing the Treasurer to take out of the school fund (for teachers’ salaries) the sum payable by the Territory, to the Employees’ Retirement System, would defeat the main purpose of paragraph 5,

that purpose being, to provide a sufficient fund to pay the salaries of the teachers. By carrying out that section in the manner aforesaid a deficit would immediately occur in the fund for the payment of school teachers.

In order to give full effect to both parts of paragraph 5 of Act 232, the word “including” should read “and.” The section should therefore read, in brief, that the Treasurer, in making up his estimates of funds to be raised by taxation, should take into consideration the teachers’ payroll and consequent increase in teachers on account of the estimated increase of not more than 7.5 percent in the enrollment, and the amount payable by the Territory to the Employees’ Retirement System. In other words, the clause “including the amount payable,” etc., is in addition to what was formerly required to pay the school teachers’ salaries.

It is the opinion of this Department and you are so advised that in making up your estimates of funds necessary to be raised by taxation to meet the school teachers’ payroll you should take into consideration the present number of teachers, the possible increase that would result from an increase in the enrollment of school children not to exceed, however, 7.5 per cent, and the amount payable by the Territory of Hawaii to the Employees’ Retirement System on account of members whose salaries are paid from school funds.

Very truly yours,

CHARLES B. DWIGHT,
Third Deputy Attorney General

APPROVED:

MARGUERITE K. ASHFORD,
Acting Attorney General.