May 16, 1927.

OPINION No. 1435.

TREASURY: SINKING FUND; TAX RATE BASED ON RETIRING BONDS AT MATURITY DATE:

The Treasurer, in fixing the tax rate on real and personal property for 1927 (to include provision for the Sinking Fund on Territorial Bonds and to repair a shrinkage therein) should, under the provisions of Act 174, S. L. 1927, base his computation on the maturity date of the bond issue involved, rather than on the redeemable date thereof, and adopt four per centum as the basis of interest computation as provided by Act 247, S. L. 1927.

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

Dear Sir:

Under date of May 12th you have requested my opinion on the following matter:

The Treasurer anticipates redeeming $1,500,000. of 20—30 year 4% bonds, dated August 1, 1911 redeemable August 1, 1931, maturing August 1, 1941. In addition, attention is called to the fact that a present shrinkage exists in the Sinking Fund of $269,912.91, which must be repaired.

In fixing the tax rate on real and personal property for the year 1927, you ask to be advised:

(1) Whether the rate of interest at 4% provided by Act 247 of the Session Laws of 1927 shall apply; and

(2) Whether the computation shall be based on the redeemable date of the bonds (i. e. August I, 1931) or on the maturity date of same (i. e. August 1, 1941).



On the first point, our opinion No. 1434, rendered May 13, 1927, will control; and you are advised that computations for providing for, and repairing shrinkages in, the Sinking Fund should be made upon the basis of four per centum as provided by said Act 247.

To answer your second question a careful analysis of Act 174 of the Session Laws of 1927 is necessary. This Act is very poorly drafted and contains a number of awkward expressions. However, the intent of the Act is fairly clear.

Before the 1927 amendment to the law was enacted by the passage of Act 174 S. L. 1927, the original Section 4 ended with the first sentence of the present Section 4 as amended. The present Section 4 (contained in Section 2 of said Act 174) adds the following (unfortunately worded) provision:

"In each . . . year while any bonds of the Territory of Hawaii are outstanding and unpaid there shall be levied upon all taxable property . . . a tax *sufficient to pay the interest and principal of said bonts at maturity. . . .* "

In other words, in *each* year it is stated that there shall be levied a tax sufficient to pay the entire principal and interest at maturity of *all* outstanding bonds. Strictly construed, this would require *each* year a tax sufficient to retire the entire outstanding issue. Obviously this was not intended.

There follows then:

"The . . . Treasurer shall include in the annual tax levy the amount of interest maturing on all outstanding bonds of the Territory during the ensuing year . . . He shall also, each year, *estimate* the amount which, if levied annually thereafter . . . will produce an amount sufficient for the purpose of retiring all term bonds then outstanding as they recpectively become due and payable. . . ."

It does not here state that the Treasurer shall levy a tax, but simply that he shall "estimate" it. Later it says: "all such taxes *shall* be *levied,* etc.," and, although the word "estimate" has been used, the word "taxes" is twice employed, so that it seems clear that this "estimate" is intended to resolve itself into a tax levy.

Assuming that this is the correct construction (which seems clear) the question is: what is meant by an amount sufficient to retire all term bonds as they respectively became *due and payable?*

"Payable" often means that which can be paid, and it is clear that these bonds *can be* paid by the payer at any time on or after the redeemable date. "Due" often means, when used in connection with a debt, a debt that is pavable-some cases hold that "due" means nothing more nor less than "payable". These holdings are that all that is necessary is that the debt be subsisting, regardless of whether the date fixed for payment has passed or not.

However, the definitions of the words "due" and "payable" and particularly the expression "due and payable" always depend largely upon the extire context of the Act, and here it seems clear that the Legislature contemplated a bond as due and payable upon *"maturity"* —at the end of the entire term—and not on and after the redeemable date. Indeed, the same sentence follows on, after a comma, as follows:

> "and if the then amount of annual sinking fund contributions is not adequate to produce a sum sufficient to retire all term bonds *as they mature,* he shall . . . etc."

This expression is, to my mind, controlling and indicates clearly an intent to consider *only the maturity date.*

This also harmonizes with the provision of Sec. 1 of Act 247, S. L. 1927, requiring an annual transfer to the sinking fund of



> "such a sum . . . that the aggregate of such sums . . . will, compounded annually, at the rate of four per centum, amount, *at the expiraton of the term for which said bonds are issued,* to the full face value thereof."

It follows, therefore, that the Treasurer should include in his tax levy such an amount as will, annually deposited and compounded at 4%, retire the bonds at the maturity date, 1941, rather than at the redeemable date, 1931.

Very truly yours,

WILLIAM B. LYMER,
Attorney General.