

January 21, 1920.

OPINION NO. 914.

TAXATION: EXEMPTION OF AUTOMOBILES FROM TAXATION WHEN IN ACTUAL USE OF CERTAIN INSTITUTIONS :

Section 1246, Revised Laws of Hawaii of 1915, as amended by Act 222, Session Laws of 1917, allows exemption from taxation of an automobile in the actual use of the eleemosynary institutions named in said section, regardless of the definition of personal property contained in Section 1240, Revised Laws of Hawaii, 1915, as amended by said Act 222.

Honorable Delbert E. Metzger,
Treasurer, Territory of Hawaii,
Honolulu, T. H.

Dear Sir: Your letter of the 19th instant, enclosing a letter of the Tax Assessor of the First Taxation Division, and also a letter of Father Valentine, dated January 15, 1920, requesting an opinion of this department as to the construction to be placed upon Section 1240 of the Revised Laws of Hawaii of 1915, as amended by Section 4 of Act 222 of the Session Laws of 1917, has been duly received.

Section 1246 of the Revised Laws of Hawaii, as amended by Act 222 of the Session Laws of 1917, provides as follows:

“The following real and personal property shall be exempt from taxation: real and personal property belonging to . . . incorporated or private schools and in the actual use of such schools . . . to the Queen’s Hospital, to the Kapiolani Maternity Home, to the Leahi Home, or to any other public hospital which maintains a free

ward, the property of all hospitals exempt from taxation being limited to that actually in use for hospital purposes; to religious societies and in actual use of such societies . . .”

Under this section it is clear that an automobile in actual use by any of the eleemosynary institutions named is exempt from taxation.

Section 1240 of the Revised Laws of Hawaii of 1915 as amended by Act 222 of the Session Laws of 1917, defines “personal property” for the purposes of the chapter, and does not include automobiles for the reason that such automobiles are subject to a specific tax.

The Section last above referred to defines the words “personal property” for the purposes of taxation; but it is clear that when the same words are used in Section 1246, they mean all classes of personal property in actual use, subject to specific or ad valorem taxes.

It is therefore the opinion of this department, and you are so advised, that automobiles in actual use of the eleemosynary institutions named in the statute, are exempt from taxation.

It will be noted that Section 1246 of the Revised Laws of Hawaii of 1915 as amended provides for exemption of real and personal property *belonging to* the institutions named. This status cannot be stretched to include property belonging to individuals in the employ of such institutions. In the case of clergymen, for instance; the law provides that clergymen are exempt from the payment of personal taxes. See Section 1243 of the Revised Laws of Hawaii of 1915 as amended by Act 222 of the Session Laws of 1917. But this act does not exempt the personal property of clergymen, even

though the same may be used in the prosecution of charitable work.

There may be persons owning automobiles not in the "actual use" of the institutions referred to, and I would respectfully suggest that before such automobiles be allowed an exemption from taxation, clear and convincing proof should be offered to the Assessor that they are convinced by and used for the purposes of the institution named and not for private business or pleasure.

Yours sincerely,

J. LIGHTFOOT,
Acting Attorney-General.