February 1, 1921.

OPINION No. 960

TAXATION: INHERITANCE TAX.

Under the facts stated it is held that no inheritance tax is due upon the shares of the estate paining to the children of Mary Ann Lemon on her death.

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

Dear Sir: I beg to acknowledge the receipt of your communication of the 31st ultimo, together with a statement dictated by Attorney Peters, both relating to a consideration of the question as to whether any inheritance tax is due from the estate of Mary Ann Lemon, deceased.

It appears from the dictated statement and from the facts set up in the opinion in the case of *Rosenbledt vs. Wodehouse et al.*, 24 Haw. 298-309, that the father of Mary Ann Lemon deeded to her and to her lawfully begotten children certain property, which deed conveyed to her a life estate in said property with remainder to her lawfully begotten children, which remainder vested immediately upon the birth of a lawfully begotten child, subject to open and let in lawfully begotten children born thereafter. See *Rosenbledt vs. Wodehouse et al.*, 25 Haw. 561-569.

Mary Ann Lemon is now deceased and you have requested my opinion as to whether under these circumstances any inheritance tax is due upon the shares of this estate which now on her death pass to her said children I am of the opinion that this inquiry must

be answered in the negative. It must be remembered that these children take, not through the mother, but by deed from the grandfather, the grandfather being the "grantor, vendor or bargainor" within the meaning of the inheritance tax statute. It must also be remembered that the transfer to the children does not at all depend upon the death of the grandfather.

Act 223, Session Laws of 1917, in defining what are taxable transfers limits its transfers to the following classes, namely: 1. All property which shall pass by will. 2. All property which shall pass by the intestate laws of this Territory. 3. All property which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, vendor or bargainor. 4. All property which shall be transferred by deed, grant, sale or gift intended to take effect in possession or enjoyment after the death of the grantor, vendor or bargainor. It is manifest that the transfer in this case does not come within classes 1, 2 or 4, and no evidence has been offered tending to show that the gift was made in contemplation of death within the meaning of the expression as used in defining transfers under Class 3. It is quite probable also that the original deed or gift was made so far in the past as to antedate entirely our inheritance tax statute.

I am of the opinion therefore, and so advise you, that no tax is due in this case.

I am,

Yours truly,

HARRY IRWIN,

Attorney General.