

March 29, 1930.

OPINION No. 1556.

TAXATION; PROPERTY TAXES;
WHAT CONSTITUTES DEFICIENCIES FOR PREVIOUS YEAR TO BE ADDED TO CURRENT YEAR'S TAX RATE:

Under Sections 1315 and 1380, R. L. 1925, as amended, the questions as to the existence and amount of deficiency for the next preceeding calendar year in satisfying the requirements of a county or city and county for such year for the purpose of calculating the tax rate for such county or city and county for the current calendar year, are to be determined by the state of facts existing on December 31st of such preceding year, and are not affected by events transpiring thereafter, such as the collection of delinquent taxes prior to the fixing of such tax rate for the current year.

STATUTES; SECTIONS 1315 AND 1380, R. L. 1925, AS AMENDED, CONSTRUED.

Honorable E. S. Smith,
Treasurer of the Territory of Hawaii,
Honolulu, T. H.

Sir:

Your letter of March 28th to the Attorney General sets forth the following facts: By reason of short collection of property taxes in the City and County of Honolulu for the year 1929 up to and including December 31st of that year, the Territorial Treasurer was unable to meet the requirements of the City and County of Honolulu as set forth in the tax rate calculations for said city and county for said year, in an amount of approximately \$11,000.00. During the months of January and

February, 1930, collections of delinquent taxes in excess of said amount were made. The opinion of this office is requested as to whether the Territorial Treasurer is required to add the amount of said deficiency to the 1930 property tax rate for said city and county, or whether he may make payment to the city and county of the amount of said deficit out of the delinquent tax collections made in January and February, 1930, thus satisfying in full the city and county requirements for 1929, and may disregard said deficit in making up the tax rate for 1930 for said city and county.

The pertinent statutory provisions are that portion of Section 1315 of the Revised Laws of Hawaii 1925, appearing on pages 548 to 549 of said Revised Laws, reading as follows:

“In estimating said tax rate there shall also be considered any deficiency in the payments made by the Territorial Treasurer to the treasurer of any county or the city and county for the last preceding taxation year on account of the requirements of said county or the city and county as set forth in the tax rate for the last preceding year caused by reason of the non-payments of taxes for the last preceding taxation year only and an increase shall be accordingly made in the said tax rate for the current year for said subdivisions 1 and 2 for the county or the city and county affected thereby. In this behalf the joint statement of such deficiency which shall be made as provided by section 1380 by the territorial auditor and the territorial treasurer to the treasurer of each county or city and country in January of the current year as of December 31, of the last preceding year, shall govern.”

And the last paragraph of Section 1380 of the Revised Laws of Hawaii, 1925, as amended by Section 17 of Act 192, S. L. 1925, reading as follows:

“In January of each year the territorial auditor and territorial treasurer shall prepare and transmit to the treasurer of each county and city and county a joint statement showing the amount of (1) unpaid taxes of the last preceding year only; (2) taxes collected during the last preceding year of taxes delinquent for any year except the last preceding year; and (3) taxes collected during the last preceding year by virtue of the settlement of tax appeals taken during (a) the last preceding year and (b) all other years. The territorial treasurer shall retain all funds collected on account of real and personal property taxes from any county or city and country during any calendar year in excess of the amounts to satisfy the requirements

of such respective counties or city and county for any calendar year as set forth in the tax rate calculations for such calendar year and apply the same to satisfy the requirements of such county or city and county for the next following year and thereby reduce the tax rate of such county or city and county for said next following year. Should any deficiency be found caused by non-collection of taxes in any one calendar year in satisfying such requirement, an additional amount shall be added to the calculations of the tax rate for the said next following year to cover such deficiency by the method set forth in Section 1315.”

Under the latter of these provisions (Sec. 1380, as amended) it will be noted that the Territorial Auditor and Territorial Treasurer are required, in January of each year to prepare and transmit to the Treasurer of each county or city and county a statement showing, in general, collections of property taxes made during the preceding calendar year up to December 31 of such preceding year. Any deficiency which may be shown by this statement “caused by non-collection of taxes *in any one calendar year*” in satisfying the requirements of any particular county or city and county is required to be added to the calculations of the tax rate for the following year “*by the method set forth in Section 1315*”.

Looking at Section 1315 above quoted, to determine what such method is, we find that the deficiency is to be added to the tax rate calculations for subdivisions 1 and 2 of Section 1315, and that “the joint statement of such deficiency which shall be made as provided by Section 1380 by the Territorial Auditor and the Territorial Treasurer to the Treasurer of each county or city and county *in January of the current year as of December 31, of the last preceding year shall govern*”.

These provisions leave no doubt that the Territorial Treasurer in determining the amount of deficiency caused by non-collection of taxes for the preceding calendar year for the purpose of adding to the tax rate of the current calendar year for county or city and county purposes is limited to the state of facts existing on December 31st of such preceding calendar year and can-

not take into consideration the events transpiring subsequent to December 31st.

You are therefore advised that, in the opinion of this office, under the state of facts disclosed by your letter above mentioned, the Territorial Treasurer is required to add the amount of the deficiency existing as of December 31, 1929, to the 1930 tax rate calculations for subdivisions 1 and 2 of Section 1315, R. L. 1925, for the City and County of Honolulu, regardless of the collections made in said city and county in January and February of the year 1930.

Respectfully,

C. NILS TAVARES,
Second Deputy Attorney General.

APPROVED:

H. R. HEWITT,
Attorney General.