



TERRITORY OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

11
November 1, 1940

OPINION NO. 1749

TAXATION: EXEMPTIONS; MOTOR VEHICLE
WEIGHT TAX; PROBATION OFFICERS;
FIRE CHIEF; DEPUTY FIRE MARSHALL:

Section 2157, R. L. 1935 as amended by Act 214, L. 1937, does not entitle probation officers of the Circuit and Juvenile Courts, or the chief of a county fire department, who is also a deputy fire marshal, to exemption from motor vehicle weight tax.

TAXATION; EXEMPTIONS; MOTOR VE-
HICLE WEIGHT TAX; SPECIAL POLICE
OFFICERS:

Section 2157, R. L. 1935, as amended by Act 214, L. 1937, entitles special police officers who are making a substantial use of their motor vehicles in their special police duties to exemption from motor vehicle weight tax.

Honorable E. R. Bevins
County Attorney
County of Maui
Wailuku, Maui, T. H.

Sir:

Your request for an opinion on the construction of the exemption provisions of Section 2157, R. L. 1935, as

amended by Act 214, L. 1937, has been referred to me for answer. Specifically, you state that you desire an opinion on the question of whether or not the exemption should apply to:

- (a) Probation officers of the Circuit and Juvenile
- (b) The Chief of the Fire Department who is by law made a Deputy Fire Marshal for the County
- (c) Special Police Officers who are commissioned as such by the Chief of police but whose compensation is wholly paid by employers other than the County of Maui.

Section 2157, R. L. 1935, as so amended, imposes a weight tax on motor vehicles and exempts, among others, "all publicly owned vehicles and all motor vehicles and motorcycles owned by police officers of the Territory or of any county and actually used by them in their travel on official business". (Underscoring ours.)

As you indicate, this department has had occasion to construe this exemption provision in the past, (cf. letter to the Governor, May 9, 1939) and, in summary, it then stated:

- (1) That a liquor inspector is not a "police officer" within the statute's meaning, and that this is so in spite of the fact that Section 2577, R. L. 1935, as amended by Act 105, L. 1935, provides that "every (liquor) inspector shall, within the scope of his duties, have the powers of a police officer;" and

(2) That a special police officer is a "police officer" within the meaning of Section 2157; but that he is entitled to the exemption only if the vehicle is "actually used" by him in his travel on "official business;" and (a) that the term "actually used" requires a substantial, as distinguished from an occasional, use; and (b) that the term "official business" means his official business as a special police officer, and not business in some other official capacity.

We take this opportunity to affirm that ruling; and we shall discuss hereinafter the applicability of the principles therein mentioned to the classes of officers you enumerate.

First, as to probation officers of the Circuit and Juvenile Courts we do not believe that they do come within the common and accepted meaning of the term "police officers". There is no indication in the above exemption clause that the legislature, in its use of that terms had reference to others than those commonly denominated as such. Rather, from a perusal of various sections of the statutes relating to different types of officers who act under the "police power" of the Territory, it affirmatively appears that the legislature has consistently confined its use of the term "police officers" to those who are customarily designated as "policemen."

However, as to said probation officers, Sections 3633 and 4621, R. L. 1935, both provide the "within the scope of their duties" they "shall have the powers and privileges of a police officer." (Underscoring ours.) But it is our opinion that these two sections cannot be construed to extend the benefits of said exemption clause to probation officers. For statutory grants of exemption from taxation are to be strictly construed against the exemption. Re Taxes Henry A. White, 33 Haw. 214. And they cannot be made out by inference or implication, but must be conferred in terms too clear and plain to be mistaken, and in fact admitting of no reasonable doubt. Southwestern R. Co. v. Wrights 116 U. S. 231, 6 S. Ct. 375, 29 L. Ed. 626. And a general grant to one of the same "rights, powers and privileges" accorded another will not be construed to carry an exemption from taxation which that other enjoys. 61 C. J. 397. Also, it would appear that the legislature, in its use of the-word "privileges" in Sections 3633 and 4621, had reference to those certain immunities which the common law accords police officers, and not to any possible exemption from taxation, and this so especially when it is noted that the said two sections antedate the exemption clause in question.

Hence, for the reasons as stated above, we are of the opinion and so advise you that probation officers are

not exempted from the payment of motor vehicle weight taxes under the above quoted provision of Section 2157, R.L. 1935.

Secondly, as to the chief of the fire department, who is by law a deputy fire marshal for the county, it is also clear that he is not a "police officer" within the common and accepted meaning of that term. Hence we are of the opinion that such an officer is likewise not within the exemption provision of said Section 2157.

Thirdly, as to special police officers who are commissioned as such by the Chief of Police but whose compensation is wholly paid by employers other than the County of Maui, we refer you to our previous ruling. Said ruling dealt with a special police officer who received no governmental compensation for his services as such; and as stated above, he was held entitled to the benefits of said exemption clause provided he made a substantial, as distinguished from an occasional use, of his vehicle in performing his duties as a special policeman. It is therefore our opinion that a special police officer who fulfills the above stated requirements is entitled to the exemption, and this is so in spite of the fact that he is in receipt of income from private sources.

Respectfully,

APPROVED:

W. D. Ackerman, Jr.
Deputy Attorney General

Attorney General