

February 6, 1942

OPINION NO. 1800

TAXATION, REAL PROPERTY; QUEEN'S
HOSPITAL:

Exemptions

Subsection 2 of Section 1977,
R. L. 1935, does not require the
Queen's Hospital to maintain a
ward of eight free beds in order
to qualify for a tax exemption.

STATUTES:

Construction and Operation

The rule that qualifying words
apply to the phrase immediately
preceding, considered.

Honorable Wm. Borthwick
Tax Commissioner
Auhau Building
Honolulu, T. H.

S i r :

You have requested our opinion as to the right
of the Queen's Hospital to tax exemption under subsection 2
of Section 1977, R. L. 1935, as amended by Act 249 (Series
A-40) L. 1939. Your specific question is: Did the Legis-
lature intend that the exemption of the Queen's Hospital
should depend upon maintenance by it of a free ward of not

less than eight free beds? I am of the opinion that maintenance of such a free ward was not intended by the Legislature to be required for this exemption.

This subsection, as amended in 1939, reads as follows:

"Sec. 1977. Specific property exempt. The following real property shall be exempt from real property taxes; real property belonging to and actually used by:
* * *

2. The Queen's Hospital, Kapiolani Maternity and Gynecological Hospital, the Leahi Home, or any hospital which maintains a free ward of not less than eight (8) free beds; the property of all hospitals exempted from taxation being limited to that actually in use for hospital purposes;"

It is stated as a rule of statutory construction that qualifying words are to be applied only to the phrase immediately preceding. 59 C. J. 985; 2 Lewis' Sutherland Statutory Construction (2d Ed.) Sec. 420, p. 811. Although this rule is recognized to be of no value if there is anything to indicate that the qualifying words have a general application, in the present matter the requirement of a free ward of eight beds is not phrased in such terms as to be applicable to a hospital designated by name. The naming of the hospital indicates that the Legislature has found it qualified for tax exemption, and if the intent were that the Tax Commissioner should pass upon the right to exemption there would be no purpose in naming the hospital. If the Legislature

intended the qualifying words as a control for the future, so that the exemption would be lost if conditions changed, the appropriate expression would have been "so long as it maintains a free ward of not less than eight free beds". So far as appears from your letter and from the surveys made by this office, below cited, the Queen's Hospital did not have a designated free ward of eight beds in 1939 any more than it has today. Then, as now, it followed the policy of collecting from patients able to pay, devoting the moneys so obtained to those unable to pay. The naming of the Queen's Hospital therefore would have been futile had the Legislature intended that the condition as to the free ward of eight beds should apply to it, and I am of the opinion the Legislature did not so intend.

The Legislature evidently intended to make a differentiation between the three named hospitals, which are specifically exempted, and hospitals in general. The three named hospitals are all charitable institutions for which appropriations of public money have been made and sustained. See, as to Queen's and Kapiolani, In re the Queen's Hospital, 15 Haw. 663; Opinion Letter from the Attorney General to the Senate, April 5, 1939, File C-4743, No. 535; Op. Let. Att'y Gen. (Oct. 20, 1941) F. 59; as to Leahi Home see Section 3022,

R. L. 1935, and Ops. Att'y Gen. (1904) No. 34 which sustained an appropriation for Leahi Home even before the decision in the Queen's Hospital case extended the same rule to the other two hospitals. Since these are charitable institutions for which appropriations have been made in the past the desire of the Legislature to specifically exempt them from taxes, as distinguished from hospitals in general, is readily explained. Moreover, where all the profits derived from the hospital are devoted to the care of those unable to pay the requirement that a free ward be maintained as such is unnecessary. As to hospitals which are profit making institutions the requirement of maintenance of a free ward of at least eight beds serves a useful purpose--it demonstrates that the institution is in part devoted to charity. Whether or not there are non profit hospitals not specifically exempted, and what the effect of that situation would be, are matters not before this office; your request relates to the construction of the statute.

It should be noted that the same Legislature which amended subsection 2 of Section 1977 as above set forth also amended subsection 47 so as to specifically exempt property of the G. N. Wilcox Memorial Hospital, without qualification

as to maintenance of a free ward. Act 249 (Series A-40) L. 1939. It should not be presumed that the Legislature imposed a condition on Queen's Hospital, Kapiolani Maternity and Gynecological Hospital, and Leahi Home, not imposed on the Wilcox institution. See also subsection 19, relating to the St. Francis Hospital.

Respectfully

/s/ RHODA V. LEWIS

Rhoda V. Lewis
Deputy Attorney General

APPROVED:

/s/ J. V. HODGSON

Attorney General