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Op. No. 62-14

STATE OF HAWAII

Department of the Attorney General

HONOLULU

March 22, 1962

Mr. Yoshito Tanaka  
County Attorney  
County of Hawaii  
Hilo, Hawaii

Dear Mr. Tanaka:

This is in reply to your letters requesting our opinion on the following matters:

1. Whether Section 9-46, R.L.H. 1955, requiring a tax clearance under certain circumstances, when applied to Section 9-21, R.L.H. 1955, includes personal service contracts not admitting of competition as well as contracts let on a competitive basis. You are advised that both types of contracts are subject to the requirements of a tax clearance.

2. Whether Redevelopment Agencies subject to chapter 143, R.L.H., as amended, (Hawaii Urban Renewal Law) are "political subdivisions" under the interpretation of Section 9-46, R.L.H. 1955, and therefore subject to the requirements of a tax clearance. This question we answer in the negative.

We will first discuss our reasoning in arriving at a conclusion for question No. 1 above.

Section 9-46, R.L.H. 1955, reads in part as follows:

"All territorial and county officers and agents making contracts on behalf of the Territory or any political subdivision thereof shall withhold payment in the final settlement of such contracts until the receipt of a tax clearance from the tax commissioner to the effect that all delinquent taxes levied or accrued under territorial statutes against the contractor have been paid; . . ."

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Section 9-21, R.L.H. 1955, reads in part as follows:

"No expenditure of public money, except . . . for other purposes which do not admit of competition . . . where the sum to be expended shall be \$4,000 or more, shall be made, except under contract let after public advertisement for sealed tenders, in the manner provided by law. . . ."

The provisions requiring public bidding are covered between Sections 9-20 to 9-36, R.L.H. 1955. Intersectional arrangements of a statute are usually of limited value in ascertaining the extensiveness of the provision in question; however, they may be an aid in logically grouping similar subject matters. 82 CJS statutes, § 345. The penalty for the violation of the bidding provision is found in Section 9-36, R.L.H. 1955, and other penalties are included in the chapter such as for the violation of the provisions relating to materials and supplies which are found in Sections 9-43 and 9-44, R.L.H. 1955. No express penalty is found for the violation of Section 9-46, R.L.H. 1955. If Section 9-46, R.L.H. 1955 is meant to cover only those contracts requiring bidding, in the light of the separate specific penalty provisions, it would seemingly be similarly so provided by inclusion of the word "bid" before contract in the section.

We further believe that the legislative history of this section indicates that the legislature intended to cover all government contracts whether contractual employment services or public works awards. Act 213, S.L.H. 1939, of which this provision is a part, was enacted as an extensive revision of the methods of collecting taxes.

As stated by the Senate Committee on Ways and Means and the House Committee on Finance, which considered this Act, it was drafted to provide "improved methods of administering the tax laws and collecting delinquent taxes". Stand. Com. Rep. No. 254, Senate Journal 1939, p. 996; Stand. Com. Rep. No. 601, House Journal 1939, p. 1910. It would follow that one of the improved methods of collecting taxes was through the withholding of delinquent taxes of a taxpayer receiving contractual remuneration from the government, including those rendering professional and personal services which do not admit of bid.

A study of other legislation relating to tax clearances is also of assistance in determining the legislative intent here. In Section 117-42, R.L.H. 1955, relating to the General Excise Tax, almost the exact language is found, to wit:

"Section 117-42. Prerequisite for final settlement of contracts with the Territory or subdivisions thereof. All territorial and county officers and agents "making contracts on behalf of the Territory or any political subdivision thereof shall withhold payment in the final settlement of such contracts until the receipt of a certificate from the commissioner to the effect that all taxes levied or accrued under this chapter against the contract with respect to such contracts have been paid."

To construe these statutes as limiting their coverage to only "bid" contracts would seem to be most illogical. The words used therein and their meanings are clear and unambiguous. Thus intrinsic aids to construe the extensiveness of this provision seem unnecessary. 82 CJS Statutes, § 345.

The reasoning supporting our conclusion in answering question No. 2 above will now be discussed.

The question to be resolved is the meaning of the term "political subdivision" of the Territory (now State) as used in Section 9-46, *supra*. The authorities in general are not clear on just exactly what is meant by the words "political subdivision", there being several definitions depending on the various factors involved in the use of said words in the particular situation under consideration.

We, Therefore, must construe the particular sense in which these words are used in Section 9-46 and as they apply to a Redevelopment Agency subject to Chapter 143, R.L.H. 1955, as amended.

The term "political subdivision" has been defined as "the counties" by the Legislature in Section 74-2 of the Revised Laws of Hawaii 1955, relating to the Hawaii Housing Authority. We do not feel that a different or inconsistent meaning was intended by the usage of the term in the present situation. We consider this definition to be very significant.

The Redevelopment Agencies are not dissimilar from the Hawaii Housing authority which, as is indicated by Section 74-5, is created as "a public body and a body corporate and politic with perpetual existence."

Chapter 143 (Hawaii Urban Renewal Law) was enacted in 1949 to enable any county in the State (then Territory) to qualify for Federal financial assistance for urban redevelopment purposes by the creation of special public bodies with extraordinary powers to undertake such projects and secure Federal aid therefor. Section 110(h) of Title I, Housing Act of 1949, as amended, (42 USC 1441 et seq.) provides that "a 'local public agency' means any State, county, municipality, or other governmental entity or public body, or two or more such entities or bodies, authorized to undertake the project for which assistance is sought." While a county or municipality could have been authorized as such "local public agency" if the statute was so worded, Chapter 143 was specifically drafted to create such "governmental entity or public body" other than the county or municipality to undertake urban renewal for any county in the State of Hawaii. In other words, a county or municipality has no status or powers of a "local public agency," conversely, a redevelopment agency has no municipal or county functions or powers under our laws.

There is no argument whatever that a redevelopment agency, generally described, is a city agency or an agency organized and functioning at a county level (Sections 143-2 (a) and 143-3, R.L.H. 1955, as amended). However, this is not the same thing as saying that it is an integral unit or part of the municipality of the city and county of Honolulu or any other county because the redevelopment agency, also, is created as "a public body, corporate and politic" (Section 143-3, R.L.H. 1955, as amended,) separate and apart from the county.

The Honolulu Redevelopment Agency does not contract on behalf of the State or any of its subdivisions, but for itself. Section 143-6(a), R.L.H. 1955.

Another indication of legislative intent which is of some help is Act 143, S.L.H. 1961, amending Section 143-15, R.L.H. 1955 in certain respects, which states in part:

"In the event that any contract for federal assistance or any federal law or regulations applicable thereto shall require any

action, practice, procedure or remedy to be undertaken by the agency in any urban renewal project that is contrary to or conflicts with any State or local law, then such federal requirements or provisions shall govern and prevail over any provision of State or local law to the contrary. The foregoing provision shall be liberally applied and construed as to any case of conflicting federal and local requirements to the end that federal financial assistance for any urban renewal project shall not be hindered, impaired or jeopardized." (Emphasis added)

In Wong Nin v. City and County, 33 H. 379 (1935), the legislature had passed a private bill appropriating money and authorizing the plaintiff to bring action against the "Territory of Hawaii and/or any subdivision thereof." The action involved a claim for injuries suffered on account of the alleged wrongful diversion of water by the Board of Water supply. Act 96, S.L.H. 1929, which created the Board of Water Supply, provided that any action for damages caused by the Board shall be brought against the Board. In view of this provision, the City contended that it was not a proper party defendant. In answer thereto, the Court said:

"The legislature by express terms conferred upon the plaintiff the right to adjudicate such legal claim as he may have for the injuries in question by final judgment against the Territory of Hawaii and/or any subdivision thereof. The City and County of Honolulu is a subdivision of the Territory. The Board of Water Supply is not. Its status is that of a board or bureau and nothing more." (Emphasis added)

The Honolulu Redevelopment Agency has a definite similarity in organization and corporate powers to the Board of Water Supply.

In the case of Maricopa County Municipal Water Conservation Dist. No. 1 v. La Prade, Atty. Gen., 40 P.2d 94, 45 Ariz. 61, the Court said:

"counties, cities, towns and municipalities all belong to a class of subdivisions of the state primarily established for what

are commonly called political and governmental, as aside from business purposes. . . .

On the other hand, irrigation districts and similar public corporations, while in some senses subdivisions of the state, are in a very different class. Their function is purely business and economic, and not political and governmental . . . Probably the best definition we can give then is to say that they are corporations having a public purpose, which may be vested with so much of the attributes of sovereignty as are necessary to carry out that purpose." (Emphasis added)

Very truly yours,

/s/ Ronald B. Greig

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APPROVED:

/s/ Shiro Kashiwa

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