

LINDA LINGLE
GOVERNOR



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EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
HAWAII PUBLIC EMPLOYEES HEALTH FUND
OFFICE OF THE PUBLIC DEFENDER
PUBLIC UTILITIES COMMISSION

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION

May 16, 2003

FINANCE MEMORANDUM

MEMO NO. 03-04

TO: All Department Heads

FROM: Georgina K. Kawamura
Director of Finance

SUBJECT: Ceded Lands Payments to Office of Hawaiian Affairs

It has come to my attention that some departments are having difficulties meeting the requirement that moneys should be transferred to Office of Hawaiian Affairs (OHA) within ten days after the end of the quarter in which the moneys were received, as specified in the Executive Order No. 03-03, relating to Ceded Lands Payments to OHA. It is important that this deadline be met because OHA has indicated that timely receipt of ceded land revenues is critical in meeting their cash flow requirements.

Although it is recognized that some of the delays were due to departments not being aware of Executive Order No. 03-03, departments are reminded that in order to allow the Department of Accounting and General Services (DAGS) sufficient time to process the journal vouchers by the tenth day of the month, journal vouchers must be received by DAGS by the fourth day of the month. If actual amounts for the quarter are not available in time to meet the deadline, estimated amounts may be used and an adjustment to reflect the difference between the actual and estimated amounts should be made with the following quarter's transfer.

In addition, OHA has requested that backup information regarding the source of ceded lands revenues be provided with the journal vouchers.

Please take the necessary action to ensure that ceded land revenues are transferred to OHA on a timely basis. Thank you for your attention to this matter.

Attachment

c: Mr. Clyde W. Namu'o, OHA

EXECUTIVE ORDER NO. 03- 03

WHEREAS, even though the Hawaii Supreme Court declared that "[i]n the absence of the substantive definition of 'revenue' provided in the now invalid Act 304, [it] is again left with no judicially manageable standards by which to discern what specific funds OHA is entitled to received under chapter 10," and that it "cannot and will not judicially legislate a means to give effect to the constitutional rights of native Hawaiians," OHA v. State of Hawaii, 96 Haw. 388, 401 (2001), Article XII, Section 4 of the State Constitution still provides that

The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public;

Article XII, Section 6 of the State Constitution still specifies that

The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians;

Haw. Rev. Stat. § 10-13.5 continues to direct that

Twenty per cent of all funds derived from the public land trust, described in section 10-13, shall be

expended by [OHA], as defined in section 10-2, for the purposes of this chapter;

and, nothing in OHA v. State presently requires or precludes agencies from determining on a case-by-case basis whether a particular receipt for the use of land was "derived from the public land trust," and transferring twenty per cent of such receipts to the Office of Hawaiian Affairs ("OHA") to use to better the conditions of native Hawaiians;

WHEREAS, even prior to the enactment of Act 304, Haw. Sess. Laws 947 (1990), the Department of Land and Natural Resources regularly determined under Haw. Rev. Stat. § 10-13.5 as enacted by Act 273, Session Laws of Hawaii (1980), whether receipts from its leases, licenses and permits for the use of improved and unimproved lands were "derived from the public land trust" and transferred twenty per cent of such receipts to OHA;

WHEREAS, the Legislature recognized this practice in enacting Act 304 and required that "any moneys . . . received by the office from the department of land and natural resources, or any other agency, pursuant to sections 10-2 and 10-13.5 during the period of June 16, 1980 through June 30, 1991," be set off against any amount owed for the 1980-1991 period by that act, see, Section 8 of Act 304, Haw. Sess. Laws 951 (1990);

WHEREAS, pursuant to Article V, Section 5 of the State Constitution, the "governor shall be responsible for the

faithful execution of the laws," and pursuant to Article V, Section 6 of the State Constitution, "[e]ach principal department [of the state government] shall be under the supervision of the governor;"

WHEREAS, the Supreme Court expressly declared that "we would do a disservice to all parties involved if we did not acknowledge that the State's obligation to native Hawaiians is firmly established in our constitution," OHA v. State, 96 Haw. at 401;

WHEREAS, pending the Legislature's policy determinations regarding how best to give long-term "effect to the right of native Hawaiians to benefit from the ceded lands trust," id., there is no good reason not to resume the practice the Department of Land and Natural Resources followed prior to the enactment of Act 304 of providing twenty per cent of receipts derived from the public land trust from its general leases, revocable permits, sale of wood, etc., licenses for use of land, sale of land, docking and parking fees, park concessions, and other rentals, to OHA; and

WHEREAS, there is likewise no good reason for other state agencies not to also resume the practice of the Department of Land and Natural Resources and again provide twenty per cent of funds derived from public land trust land to OHA;

NOW, THEREFORE, I, Linda Lingle, Governor of Hawaii, pursuant to the provisions of the State Constitution that confer me the power and responsibility to execute the State's laws, do hereby direct that all departments establish the following accounts and procedures, make the following determinations, and accumulate and transfer on a quarterly basis, twenty per cent of all receipts they derive from the public land trust, to OHA.

Effective as of the fiscal quarter ending December 31, 2002, all departments shall

1. Establish a ceded lands proceeds trust holding account for the general fund, and for all of the special funds into which receipts from the department's programs are deposited, to accumulate OHA's share of the department's public land trust receipts on a quarterly basis.

2. Determine whether a particular receipt is for the use of an improved or unimproved parcel of ceded land or land that consists in whole or in part of public land trust land. For purposes of this paragraph, "public land trust land" is land assigned "Trust Land Status" "5(b)," "5(e)" or "Pub. L. 88-233" on the Department of Land and Natural Resources' State Land Inventory Listing, or described in the agency's records as land acquired by the State through Section 5(b) or 5(e) of the Admission Act or Pub. L. 88-233, or in exchange for such a parcel.

3. If a receipt is for the use of a parcel of ceded land, determine whether any federal or state law precludes any portion of the receipt from being used to better the conditions of native Hawaiians. If no such limitation applies, establish the ceded/non-ceded fraction for the parcel by area (square feet or acres).

4. Calculate OHA's portion of the receipt by multiplying the actual receipt by the ceded/non-ceded fraction, and multiplying the result by 20%.

5. Determine whether transfer of OHA's portion of the receipt to OHA will cause the department to renege on any pre-existing pledge, rate covenant, or other pre-existing obligation to holders of revenue bonds or other indebtedness of the State or department, and if no such breach or failure will occur, deposit OHA's portion of each receipt into the ceded lands proceeds trust holding account for the general fund, or the special fund into which the receipt would otherwise be deposited, using separate Treasury Deposit Receipt slips (State Accounting Form B-13) for each fund into which deposits are made.

6. Use the following procedures to transfer all moneys accumulated in each of the department's ceded lands proceeds trust holding accounts to OHA.

a. Within ten calendar days of the close of each fiscal quarter, transfer all moneys accumulated in each of the department's ceded lands proceeds trust holding accounts during the prior quarter to OHA by journal voucher using the following accounting information: Account No. T-03-901-Z1; transaction codes 802 for OHA and 801 for your department.

b. Under the "Explanation" section of the journal voucher, note that the transfer is "to record transfer of funds derived from the public land trust to OHA per Section 10-13.5 as enacted by Act 273, Session Laws of Hawaii 1980."

c. Send a copy of each journal voucher to OHA.

d. Complete and send the attached transmittal, Attachment "A," with a copy of each of the department's journal vouchers to the Department of Budget and Finance.

7. Maintain a separate file for each fiscal year, of all Treasury Deposit Receipts (State Accounting Form B-13) and all

journal vouchers used to deposit and transfer OHA's portions of each receipt from public land trust lands to OHA.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 11th
Day of February, 2003.

LINDA LINGLE
Governor of Hawaii

APPROVED AS TO FORM:

Mark J. Bennett
Attorney General

TRANSMITTAL

DATE: _____

TO: Mr. Neal Miyahira, Administrator
Budget, Program Planning and Management Division
Department of Budget and Finance

FROM: _____

SUBJECT: Ceded Land Revenue Payments to Office of Hawaiian Affairs

- () No Ceded Land revenues were received by this department during the quarter ended _____.
- () A total of _____ journal vouchers are attached showing transfers of \$ _____ to Office of Hawaiian Affairs for the quarter ended _____.

If there are questions, please call _____

at _____.