Honolulu, January 1lth, 1915.

OPINION No. 401.

TAXATION: MILITARY RESERVATION:

Privately owned personal property of residents of military reservations situate within the Territory of Hawaii is subject to taxation.

C. J. McCarthy, Esq.,
Treasurer, Territory of Hawaii,
Honolulu.

Dear Sir: After a careful examination of Opinion No. 187 of this office, dated August lst, 1910, relating to the taxation of privately owned automobiles housed upon military and naval reservations in this Territory, but used upon the streets of Honolulu, I cannot agree with the conclusion therein expressed that "if the automobile is owned by a person residing on the military reservation and is kept by him on such reservation on the first day of January, the automobile is not subject to the taxes imposed by Section 1203, but in case the automobile is kept by the same person without a military reservation, on January first, it then is subject to the taxes imposed by this Section."

The opinion is based upon the theory that the military reservations, though within the limits of the Territory, are exempt from territorial jurisdiction. (Citing and quoting Cooley on Taxation, page 84, 86.) The opinion fails to distinguish between cases coming within the provision of the constitution conferring exclusive jurisdiction "over all places purchased by the consent of the Legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock yards, and other needful buildings" and the cases of military reservations not purchased or acquired with the consent of the State Legislature; in

the former case, under the provision of the constitution, jurisdiction of the United States is absolute and exclusive, but in the latter, the jurisdiction of the United States Government is not exclusive except so far as it may be necessary for its use as a military post.

The quotation from Cooley cited in the former opinion shows that it refers to military reservations within a state's border over which the United States Government has obtained exclusive jurisdiction with the consent of the State, and the cases cited therein are the Massachusetts case of Commonwealth vs. Cleary, 8 Mass. 72, which holds that the State courts cannot take cognizance of offenses committed upon lands purchased by the United States as military reservations to which the consent of the State has been granted; and other cases holding that the property of Indians upon Indian reservations could not be taxed; That the United States Government has not exclusive jurisdiction over reservations never ceded by the State within whose boundary the reservation is situated, has been decided in numerous cases. See Marion vs. State, 16 Neb. 358, holding that larceny on such military reservation can be punished by the State; State vs. Godfrey, 17 Jones, 225 N. Y. holding that the State has jurisdiction to punish murder upon military reservations over which jurisdiction has never been ceded by the State.

Clay vs. State, 4 Kan. 41;
United States vs. Stahl, 1 Wolw. 192;
7 Opinion Attorney-General, 574.

There are also many cases holding that States and Territories can tax private property upon an Indian reservation where such property is not owned by the Indians and protected by treaty with the Indians. It will suffice to cite a few of the cases upon this point:

See Thomas vs. Gay, 169 U. S. 264;
Wagoner vs. Evans, 170 U. S. 588;
Catholic Mission vs. Missoula Co. 200 U. S. 118;
Cosier vs. McMillan, 22 Montana, 484;
Truscott vs. Land Co., 73 Fed. 60.

The case of Burgess against Territory, 8 Montana 57, holding that the Territory has jurisdiction to punish the crime of murder committed on United States military reservation within the Territory points out that the Territory being under the control of Congress, the question as to reservation therein is different from that as to reservation within a state.

The case of Persons, et al. vs. Territory, 26 Pacific 310, in dealing with the taxation of personal property upon Indian reservation, points out that in the absence of a treaty or other expressed exclusion, the different Indian reservations become a part of the Territory where situate, and are subject to Territorial legislative jurisdiction, subject, however, to the power of the general government to make regulations respecting the Indians, etc.

Cases dealing directly with jurisdiction over military reservation for the purpose of taxing private property thereon are Torrey vs. Baldwin, 3 Wy. 340; and Moore vs. Beason, 7 Wy. 340, both holding that private property upon such reservations can be taxed by the state or territory as the case may be. The latter case also points out that a state tax upon the property of an agent of the government is not prohibited merely because it is the property of such agent; that to prevent such a tax, its effect must be to deprive the agent of a power to serve the government as he was intended to serve it and it must in fact, hinder and delay the efficient exercise of the agent's powers; that a tax upon the agent's property has no such necessary effect. Citing numerous authorities.

The case of Fort Leavenworth Railroad Company vs. Lowe, 114 U. S. 525, held that a reservation in the cession

by Kansas to the United States of the Fort Leavenworth military reservation of the right to tax railroad and other corporations in the reservation was valid; that a cession of lands made upon such conditions as the State sees fit is valid provided such conditions are not inconsistent with the free and effective use of such lands for the purposes intended. That where the United States acquires lands within a state in any other way than by purchase with the consent of the Legislature according to the constitutional provisions, the Legislative power of the State over the places acquired will be as full and complete as over any other place within a State except when the exercise of such power would interfere with the effective use of the premises thus acquired for the purposes intended; this case is relevant to the present question as it shows that the United States Government does not necessarily have exclusive jurisdiction over military reservations.

Finally, our own Supreme Court, in the case of Territory vs. Carter, 19 Haw. 198, has decided that the Territory has jurisdiction over the United States military and naval reservations in the Territory, for offenses committed upon such reservations. The decision is based upon Section 6, of the Organic Act, containing in force the laws of Hawaii not inconsistent with the laws of the United States. This case would seem to be decisive of the view that the Territorial Courts would take upon this matter, as the organic Act (Sec. 55) provides that the Legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States locally applicable. The taxing power is part of the legislative power, and this power is supreme except where limitations are imposed. Cooley Taxation, page 137. In re Craig, 20 Haw. 483:

"This power was conferred upon local legislature with all the completeness and effectiveness with which that power is vested in and exercised by the legislature of any state."

In re Craig supra, Peacock vs. Pratt, 131 Fed. 772.

Congress, of course, can make "all needful rules and regulations respecting the Territory" including limitations upon the taxing power of jurisdiction over military reservations, but in order to exclude territorial jurisdiction some act of Congress showing such intent is necessary. No such action has been taken by Congress, the reservations having been set aside for military or naval purposes by executive orders.

In conclusion I repeat that in the absence of action by Congress, the jurisdiction of the United States as distinguished from the Territory, is not exclusive upon military pods in the Territory except so far as it may be necessary for its use as a military post, and it cannot be seriously contended that taxation of privately owned automobiles used for private purposes will interfere with such use.

Respectfully,

INGRAM M. STAINBACK,
Attorney General.