April 14th, 1916.

OPINION NO. 507.

STATUTES:
Validity of retrospective.

INTEREST:
A statute providing for interest at a given rate but omitting the words "per annum" construed as providing for an annual rate.

TAXATION:
Paragraph 3 of Sec. 15 of Act 89 S. L. 1906, is not invalid. A tax collector has no power to compromise with a delinquent taxpayer by accepting less than the full amount due.

A. W. Neely, Esq.,
Deputy Tax Assessor, First Division,
Honolulu, T. H.

Dear Sir: I have had under consideration your letter of the 20th of January, wherein you call attention to the contentions made by a taxpayer that no interest can be collected at this time on taxes which became due and delinquent in 1903 for the reason that paragraph three of Section 15 of Act 89 of the Session Laws of 1905, which relates to the payment of such interest, is not good law on account of being retrospective, and that annual interest cannot be collected on delinquent taxes under the provisions of Section 15 of Act 146 of the Session Laws of 1911, which amended Section 15 aforesaid of Act 89 of the Session Laws of 1905, for the reason that the words "per annum" do not appear after the words "at the rate of ten per cent."

Answering your first query as to whether or not interest from February 1, 1906, to the date of payment may be collected upon taxes which became delinquent prior to that date, which query I take it is based upon the first contention of the taxpayer, I have to say that the law providing for the payment of such interest, namely, paragraph three

aforesaid of Section 15 of Act 89 of the Session Laws of 1905, is valid. This statute reads as follows:

"All personal and property taxes now delinquent and remaining unpaid thirty days after the passage of this Act shall bear interest from the date of the expiration of said thirty days, on the amount of said delinquent tax and penalty, at the rate of one per cent. per annum until paid, which interest shall be and become a part of such tax and shall be collected as part of such tax."

The Act in which the foregoing provisions are included was approved on the 26th day of April, 1905, but did not take effect until January lst, 1906.

There is no merit to the contention that the said provisions are retrospective and therefore void. It was distinctly provided that this statute was to operate in the future and ample time was given those who were delinquent in their taxes to pay the same in order to avoid the payment of interest.

In the case of *Dunne* v. *Mastick*, 50 Cal. 244, the court. in passing upon a statute providing for the payment of interest after the passage of such statute on obligations already due, said:

"The legislature had power to impose on all debtors interest from the date of the adoption of the Code, by way of compensation for the delay in the payment of money already due. Such a statute is not retrospective, since it operates only on the future rights of the parties. A fresh demand and refusal would be a new assertion of a right, and would impose a new liability. So in legal effect was a neglect without a demand. "

"The legislature has the power to impose on debtors the obligation of paying Interest after the passage of the Act on obligations already due and such a statute is not objectionable as being retrospective."

22 Cyc. 1481.

"But a statute cannot properly be called retrospective merely because a part of the requisites for its operation may be drawn from a time antecedent to its passage, nor because its operation may in a given case depend on an occurrence anterior to that date. Thus, for example, an act is not restrospective which establishes the death of a husband or wife as the future event on which it is to operate, although, in the particular case, the relations of husband and wife existed before the taking effect of the act. Nor can this term be applied to a statute, though it acts on past transactions, or an existing state of fact, if it gives to persons concerned an opportunity to comply with its directions before its penalties attach."

Black on Interpretation of Laws, 381, 2d. ed.

Assuming for the purpose of argument that the statute under discussion is retrospective, that does not necessarily mean that it is void. There is nothing in the Organic Act prohibiting the enactment of a retrospective law, and it is undoubtedly within the power of the legislature to repeal or disregard whatever law it may have enacted in that respect.

"But * * * the mere fact that it (referring to a retrospective law) is retrospective in its operation will not suffice to justify the courts in declaring it unconstitutional, unless all laws of that character are prohibited by the constitution of the particular state. No such prohibition is found in the Federal Constitution. If a state statute does not impair the obligation of contracts or partake of the nature of a bill of attainder or an ex post facto law, its retrospective character does not make it inconsistent with the national constitution."

Black on Interpretation of Laws, 383, 2d. ed.

In the case of *Apokaa Sugar Co. Ltd.* v. *Chas. T. Wilder, Tax Assessor,* 21 Haw 571, the Supreme Court clearly recognized the validity of a law which was made to operate retrospectively.

In regards to your second query as to whether or not ten per cent. interest per annum may be collected under Section 15 aforesaid of Act 146 of the Session Laws of 1911, I beg to advise that, notwithstanding the omission of the words "per annum" after the rate stated, such interest may be charged annually. This section, which is now Section 1290 of the Revised Laws of 1915, reads as follows:

"A penalty of ten per cent shall be added by the assessor to the amount of all delinquent taxes in excess of twenty dollars, which penalty shall be and become a part of such tax and be applied as a part thereof. All delinquent taxes shall bear interest at the rate of ten per cent. from the expiration of fifteen days from the date of delinquency until paid, which interest shall be and become a part of such tax and be collected as a part thereof."

There are numerous authorities which hold that a statute similar to the one now under review where the words "per annum" are omitted is to be construed as provided for an annual rate of interest.

Hemple v. *Raymond,* 144 Fed, Rep. 796;

Thompson v. *Hoagland,* 65 I11. 310;

Hayes v. *Hammond,* 162 Ill. 133;

Commonwealth v. *Morris,* 176 Mass. 19.

This same construction has also been placed upon promissory notes bearing interest at a certain per cent. without the words "per annum".

Fitzgerald v. *Lorenz,* 181 I11. 411.

At first glance, it would appear as if the legislature had purposely omitted the words "per annum" but an examination of the report of the Senate Judiciary Committee of the legislature which enacted this statute—resorting now to extrinsic facts for aid to construction—will disclose that the rate of interest stated in the bill which later became Act 146 aforesaid of the Session Laws of 1911 with the words "per annum" omitted, was considered an annual rate of interest. That portion of the report bearing upon this particular point which appears on page 17 of the Senate Journal of 1911, reads as follows:

"Your committee is also of the opinion that there should be no interest on delinquent taxes since it amounts up so rapidly that in a short time the amount of the tax is double and this keeps many people from paying taxes which are delinquent who would otherwise be able and willing to pay up."

In other words, there can be no basis for the idea that delinquent taxes will amount up rapidly and double in a short time unless the rate of interest although not coupled with the words "per annum" is considered as an annual rate of interest. Hence the omission of the words "per annum" in the law under discussion may reasonably be ascribed to inadvertence on the part of the legislature. To say that the legislature intended by the omission of these words to increase the penalty upon delinquent taxes would be absurd. Having specifically provided for a penalty of ten per cent. it would be unreasonable to suppose that the legislature intended by the use of indirect terms to provide an additional penalty of ten per cent. thereby making the total penalty of twenty per cent. If it had intended to charge a penalty

of twenty per cent. it would have said so in so many words Inasmuch as the matter of penalty and the matter of interest were passed upon in the same act, it must be concluded that the legislature had two distinct subjects in mind.

In regards to the question as to whether or not your office may waive the collection of interest or any portion thereof, I have to advise that such cannot be done. "A tax collector has no authority to compromise with a delinquent taxpayer by accepting less than the full amount due." 22 Cyc. 1204. In this connection, it may be noted that in the various statutes providing for the payment of interest on delinquent taxes, such interest is made a part of such taxes.

Very truly yours,

WM. H. HEEN,
Deputy Attorney General,

Approved:

INGRAM M. STAINBACK,
Attorney General.