

January 8, 1919.

OPINION No. 781.

TAXATION OF GENERAL LEASES
OF PUBLIC LANDS:

General leases of public lands are taxable under the provisions of Section 385, R.L.H. 1915.

SAME: Section 6 of Act 222, S. L. 1917 being an amendment only of Section 1242, R.L.H. 1915, does not operate as an amendment of Section 385, R.L.H. 1915.

SAME: Section 385, R.L.H. 1915, being a part of the Land Laws of the Territory in force on the date of the passage of the Organic Act (the local Legislature is without authority to amend, alter, or repeal the same.

Honorable Delbert E. Metzger,
Treasurer, Territory of Hawaii,
Honolulu, Hawaii.

Dear Sir: I beg to acknowledge the receipt of your communication of the 7th inst. in which you ask the advice of this office relative to the effect of Section 6, Act 222, S. L. 1917 upon Section 385, R. L. H. 1915. Reduced to its specific terms your inquiry is: Does Section 6 of Act 222, S. L. 1917, release the holders of general leases of public lands granted under part 5, chapter 30, R. L. H. 1915 from their obligation to pay taxes upon the fee value of the lands held under any such general lease?

This inquiry must be answered in the negative upon two grounds: *First*, Section 1242, R. L. H. 1915, as to which Section 6, Act 222 is an amendment, does not in any way effect the provisions of Section 385, R. L. H. 1915. This latter section is the law relative to taxation of general leases, notwithstanding the provisions of Section 1242. Section 6, Act 222, does not purport to be anything more than

an amendment to Section 1242 and in the absence of an express provision to the contrary relates only to those matters contemplated by said Section 1242. In other words, as Section 1242 does not affect the taxation of general leases under the provisions of Section 385, neither does the amendment of that Section in any way affect Section 385.

Second: Section 385 R. L. H. 1915 constitutes a part of the public land laws of the Territory which were in force on the date of the passage of the Organic Act. Section 73 of the Organic Act provides that “the laws of Hawaii relating to public lands . . . except as changed by this Act shall continue in force until Congress shall otherwise provide.”

Section 385 being a very substantial and important part of the public land laws in force at that time, it comes within the operation of the above quoted portion of the Organic Act and therefore cannot be changed except by Congress.

This particular question was referred to but not passed upon by the Supreme Court of the Territory in “In Re Taxes Waiohino Agriculture Company, 23 Haw. 621-622-624 where the Court said:

“Section 1242 of the Revised Laws provides *inter alia* that the interest of any tenant or lessee of any land that is exempt from taxation or the owner of which is exempt from taxation, shall be assessed to such tenant or lessee *in respect of the value of his interests therein*. But Section 385 provides that for the purpose of taxation the value of general leases (of Government land) shall be the *value of the fee* of the real estate demised and the lessee shall be assessed thereon accordingly.” (p. 622). “The legislative power of the Territory, *if not restricted*, would include the right to prescribe the terms and conditions under which public lands may be leased. Here, as we have seen, the pre-existing laws relating to public lands including presumably *the provisions relating to the taxation of general leases*, were expressly continued in force by the Organic Act.”

I have no doubt but that if the Supreme Court should

have occasion to pass directly upon this subject it would hold that the local Legislature is without authority to amend or alter the provisions of Section 385.

It is my opinion, therefore, and I so advise you, that general leases of public lands are taxable on their fee value notwithstanding the provisions of Section 6, Act 222, S. L. 1917. I am,

Yours very truly,

HARRY IRWIN,
Attorney General.
