

March 25, 1919.

OPINION No. 819.

TAXATION: MONEY IN HAND IN BANKS :

Under the provisions of Sections 1165 and 2215 of the Revised Laws of Hawaii, 1915, Territorial, county and city and county funds on deposit with banks are not taxable as moneys In hand in such banks.

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

Dear Sir: I beg to acknowledge the receipt of your communication of the 19th, requesting the opinion of this department as to whether banks in this Territory may deduct from their cash in hand at the time of making a tax return, the amount of Territorial and (or) County and City and County deposits which are deposited with such banks pursuant to the provisions of Chapter 87 of the Revised Laws of Hawaii, 1915.

I am of the opinion that this question must be answered in the affirmative. Under ordinary circumstances, and but for a peculiar provision contained in Section 1165 of that Chapter, these deposits would be no different in character from that of any other deposit. The relation of depositor and creditor undoubtedly exists between the Territory and (or) the County and City and County with regard to such deposits, and for that reason the money would have to be regarded as being "money in hand" within the meaning of Section 1240 of the Revised Laws of Hawaii, 1915, as amended.

I am of the opinion that as a matter of fact such moneys are "moneys in hand" with the bank, but because of the peculiar provisions of Section 1165 as a matter of

law, they are not "moneys in hand" with the banks but are "in the Territorial treasury".

Section 1165 provides that money deposited in accordance with the provisions of that section "shall be deemed to be in the Territorial treasury." Under this provision, it is immaterial where the money is in fact, or who has the control of it in fact, because the statute says that, notwithstanding the fact, it should be deemed to be in the Territorial treasury.

It looks as though this phraseology was used for the express purpose of rendering such deposits exempt from taxation. I can see no other reason for its insertion in this section.

Your attention is also called to the provision of Section 2215 of the Revised Laws of 1915 which extend the provisions of Chapter 87 to the several counties and to the city and county.

I am of the opinion, therefore, and so advise you, that territorial banks, acting as depositories of territorial, county or city and county funds, under the provisions of Chapters 87 and 127, may legally deduct the amount of such deposits from their cash in hand in making returns for taxation purposes. I am,

Yours very truly,

HARRY IRWIN
Attorney General