March 8, 1922.

OPINION NO. 1012

TAXATION: EXEMPTION.

The amount of land surrounding a residence or home which may be included in estimating the tax exemption provided for by Act 33, S.L. 1920, is a question of fact to be determined in each case.

Hon. A. Lewis, Jr.,
Treasurer, Territory of Hawaii,
Honolulu, T.H.

Dear Sir: I beg to acknowledge the receipt of your communication of the 14th ult., together with copies of letters signed by your predecessor and by the tax assessor for the Third Taxation Division, all relating to the tax exemption provided for by Section 1261, R.L.H. 1915, as amended by Act 33 of the Special Session of 1920, and as further amended by Act 213 of the Session Laws of 1921. This communication would have been

answered before this date but for my absence for some time on the Island of Hawaii.

There seems to be some confusion in the minds of some persons relative to the previous oral ruling of this department as suggested in Mr. Metzger's letter. The only question then under consideration was whether a homesteader was entitled to claim the exemption. The extent of the exemption was not then under consideration nor has it ever received the consideration of this department before this date.

This department has previously ruled that under the land laws of this Territory and the Hawaiian Organic Act, lands undergoing homesteading under certain forms of homesteading agreements could not be exempted entirely from taxation by the local legislature, but that they had to be taxed on the same basis with other property in the Territory. When the incident which is the subject of comment in Mr. Metzger's letter arose it was represented to me, or so I was impressed, that the tax assessor in Hilo was denying this exemption to homesteaders entirely. I assumed that the tax assessor was erroneously applying the previous ruling and advised the Treasurer at that time that the homesteads were entitled to the same exemption as other property in the Territory. The question now arises as to the extent of this exemption. Concretely put, the assessor now desires to be advised as to whether the exemption in all of its phases will apply to a dwelling house and say, 20 acres of land on which the dwelling house is situated, the major portion of which land is devoted to farming operations exclusively.

I will have to confess that this question presents a case of considerable difficulty.

Since the Act applies in exactly the same way to homesteading lands, both patented and in course of homesteading, as it does to other privately owned lands, and since the two classes of homesteading hereinafter referred to are typical of all of the cases which will arise under this act, the question will be discussed from the standpoint of those two classes of homesteading, as follows:

First Class. Where the homesteader has his residence on a homestead house lot separate and apart from his main homestead lot. This class is typified by the Manowaepae Homesteads in North Hilo and by the Waiakea Homesteads in South Hilo, where the residence lots adjoin the government road and the main homestead lots are some distance away.

Second Class. Where the homesteader has his residence on and within the boundaries of his main and only homestead lot. This second class is the more common of the two, as it was only in recent years that the plan of allowing separate residence lots was put in operation.

First Class. There can be no doubt as to the application of the provisions of this Act to this class. The homesteader here is in exactly the same position as the man who has his residence in town and a farm in the country. The exemption applies only to the residence lot and not to the main homestead lot, which is devoted to farming operations exclusively.

Second Class. It is here that the difficulty arises, The extent of the exemption is defined in terms of dollars and cents only. The only other limitation in the act, so far as it relates to the question now under consideration, being that provision thereof which provides

that the exemption can be claimed only "in ease the taxpayer shall occupy said real property as his home only."

This latter quoted expression seems to be almost our only interpretative guide in our attempt to arrive at what the legislature intended to exempt. It is unfortunate that the legislature when it attempted by Act 213 S.L. 1921 to define a home did not go a little farther and definitely limit the amount of real property surrounding the actual dwelling house which could be included in the exemption.

I am convinced that the legislature did not intend to include a whole farm within the exemption. Unquestionably it was the intention to exempt residential property only. This is made clear by the provisions of said Act 213 and by the House Committee Report on H. B. 21.

Act 213 provides that where more than one room of a dwelling house is sublet or where any part of the building is used as a store, the exemption may not be claimed, thus accentuating the residential feature of the exemption. The report on House Bill 21, which is to be found in the House Journal of 1921 on page 88, states the purpose of the bill to be "to provide a graduated exemption from taxes levied on homes," and states that the committee is of the opinion that "it is deemed wise to encourage in every way practicable the building of homes.?"

The difficulty arises solely in connection with the area of land surrounding a dwelling house where that area forms a part of a larger area which is devoted to farming operations. The intention to exempt only residential property being in my opinion clear, it seems

to me then to become a question of fact to be determined in each case as to how much of any particular piece of land is occupied "as a home only." No arbitrary rule can be laid down. As above pointed out, the situation is clear in cases similar to the Waiakea and Manowaepae Homesteads. In those cases the government has specifically set apart a piece of land for home purposes only. In other cases the areas must of necessity differ. I have in the past seen homesteads with the cane growing right up to the front steps of the dwelling house. In other cases I have seen areas exceeding one acre in area, well kept and planted to flowers and to garden truck for home consumption, which could and should be regarded as a part of the home.

No authority is vested in any official to say as a matter of fact or law that a taxpayer in the establishment or the maintenance of a home must be limited to one-half acre, to one acre, or to any other particular area of land.

I am therefore of the opinion and so advise you, that in this second class the area actually occupied as a home as herein indicated must be determined in each case, and the exemption allowed accordingly. I believe that the discussion of these two classes cover every public contingency that will arise in connection with the interpretation of this law. I am,

Yours very truly,

HARRY IRWIN,

Attorney General.