

June 20, 1925.

OPINION No. 1230.

TAX RATE; CHANGE OF SAME:

Under Act 119, S. L. 1925, the establishing of an additional tax rate for 1925 (to include the sum of \$70,000 for Leahi Home) being discretionary with the Board of Supervisors, and said Board failing to notify the Treasurer of its election to call for an additional tax rate until after the rate for 1925 had been lawfully and reaasonably fixed, the Treasurer is without authority to change said rate to provide for the raising of said sum.

Honorable Henry C. Hapai,
Treasurer, Territory of Hawaii,
Honolulu, Hawaii.

Dear Sir:

In reply to your request of June 17th (received by this office on June 19th) wherein you asked my opinion as to the legality of establishing at this time, an additional tax rate to raise the sum of \$70,000 for Leahi Home pursuant to Act 119, S. L. 1925, I beg to advise you that, the tax rate for 1925 having been duly and lawfully established prior to any request by the Board of Supervisors of the City and County of Honolulu that an addition to said rate be made to cover said \$70,000 item, you are without authority of law to now change said rate.

Shortly after the enactment of Act 119 of the Session Laws of 1925 you requested the opinion of this Department, as to whether, under said Act, it was mandatory for you to fix a tax rate to include the \$70,000 item above referred to. Under date of May 8th this department, by letter No. 21,894,

advised you that it was entirely discretionary with the Board of Supervisors as to whether or not said sum of \$70,000 should be paid from the general city and county funds or should be raised by a special addition to the tax rate for 1925; the law clearly having the effect that, unless said Board should advise you of their desire to increase the tax rate, you would have no authority to do so.

Under date of May 8th you wrote to the Board of Supervisors, calling their attention to the provisions of said Act 119, and requesting notice from them on this matter of a possible addition to the tax rate. In this letter you notified them that the 1925 tax rate for the City and County of Honolulu would be fixed on or about May 12th.

On May 14th, you were notified that your letter of May 8th had been referred to a committee of the Board.

Not hearing further from the Board, or its committee, and after waiting another five days you, on May 19th, sent to the Tax Assessor of the First Taxation Division a full schedule of the proposed tax rate for 1925, and on May 20th, 1925, the Tax Assessor formally adopted said schedule, with your approval; and on May 27th you notified the Territorial Auditor of the fixing of said rate.

Meanwhile the Tax Assessor for the First Taxation Division had published said rate and, prior to June 5th, a large amount of taxes had been paid in by the taxpayers.

Finally, on June 5th, the Board of Supervisors transmitted to you a copy of their resolution No. 284 requesting you to increase the tax rate to raise the said sum of \$70,000 for the purpose aforesaid.

After the exchange of certain correspondence, the Board of Supervisors, on June 16th passed a resolution requesting you to obtain from the Attorney Gen-

eral an opinion as to whether it is within your power and authority to establish at this time, an additional tax rate for the purpose of raising \$70,000 for maintenance and upkeep of Leahi Home.

A short answer to the question is that, after notifying the Board of Supervisors of the necessity of notice from them as to increasing this tax rate, and thereafter having waited a reasonable time for a reply without receiving same, you were absolutely justified in fixing the tax rate (which you did not do until May 19th or, more properly, May 20th, just thirty days before the taxes under said rate would become delinquent), and having once established this tax rate, the same cannot be changed.

The rights of the many taxpayers, who in good faith, paid their taxes after the fixing of this rate and up to the present date, cannot be prejudicially affected. The law does not provide any specific date for an additional tax rate to be established under specific legislation; it certainly contemplates the fixing of said rate within a reasonable time; and your course in waiting until only thirty days remained within which taxes were payable without becoming delinquent, was certainly reasonable and proper. I cannot well see how you could have waited longer.

This being so, the tax rate having been reasonably and properly established, the liabilities and rights of the taxpayers became fixed beyond your power to change by adding to the tax rate.

As a further reason, if the request of the municipality should now be granted, and a special tax be levied, the Treasurer and Tax Assessor would have no authorized procedure to follow. And as no procedure is authorized save the usual procedure, any divergence from that—any change, for example, in the two dates (one of which has now passed) for payment

of taxes—would be unauthorized and a matter of complete defense for all taxpayers.

I accordingly advise you that in my opinion it is not within your power or authority to establish, at this time, an additional tax rate upon general property for the purpose of raising this \$70,000 fund.

Respectfully yours,

WILLIAM B. LYMER,

Attorney General.