

January 7, 1927.

OPINION No. 1406.

TAXATION; INHERITANCE TAXES:

Property passing by deed intended to take effect in possession or enjoyment after death is subject to the inheritance tax laws of the Territory of Hawaii.

Honorable E. S. Smith,
Registrar of Public Accounts,
Honolulu, T. H.

Dear Sir:

Recently you requested the opinion of this Department as to whether or not Marcus R. Monsarratt, son and grantee of Elizabeth Monsarratt, was liable to the payment of an inheritance tax for the property obtained by him through such conveyance. The facts, as I understand them, are as follows:

In April, 1926, Elizabeth Monsarratt made, executed and delivered a conveyance to her son, Marcus R. Monsarratt, for the consideration of one dollar, and love and affection, by which she conveyed two pieces of real property in Honolulu and stocks in local corporations.

Shortly after the execution of this instrument, Mrs. Monsarratt left for the Mainland, and in December, 1926, became suddenly ill with pneumonia, and died at Spartanburg. Two days after her death the conveyance referred to above was duly recorded in the Bureau of Conveyances.

After the execution of the instrument Mrs. Monsarratt continued to receive the dividends. The stock certificates representing a portion of the property transferred by the conveyance were never endorsed by Mrs. Monsarratt.

In our Opinion No. 1365 it was held that-

"Sec. 1400, R. L. 1925 (Inheritance tax law) applies when property (1) passes by will or by the intestate laws of the Territory; (2) by gift, deed, grant or sale made in contemplation of death; (3) by gift, deed, or sale intended to take effect in possession or enjoyment after death."

The property did not pass by will or by intestate laws of the Territory, and did not pass by gift made in contemplation of death, as I understand from the correspondence submitted with your request, and from a conference with Mr. Monsarratt that Mrs. Monsarratt was always in good health and that her last illness came upon her suddenly and death was unexpected.

If the property is subject at all to the inheritance tax laws, it must come within the third class, that is, property passing by gift, deed or sale intended to take effect in possession or enjoyment after death.

Mrs. Monsarratt never endorsed the certificates to complete the gift, and she received the benefits from the property up to the time of her death. Our Supreme Court, in the case of *Brown vs. Conkling*, 20 Haw. 41, construed that portion of the statute which provides that property which passes by deed, grant, sale or gift intended to take effect in possession or enjoyment after such death, is liable to the tax. The Brown case involved the question of whether or not stocks conveyed in trust to a trustee to apply the income to the donor until his death and upon his death to deliver the stocks to the beneficiaries named in said trust deed, was subject to the inheritance laws of the Territory. The Court, in disposing of the question, said:

"The Act is not open to construction and does not, by any way of looking at it, without ignoring its clearly expressed provisions, require that only such property be taxed as passes by will or descent or by transfer from one dying, seized or possessed of it. The transfer made by the owner in this case, which secured to him the enjoy-

ment of the property until his death, is strictly within the plain meaning of the Act.”

It is true that there was no trust deed nor was there any transfer of possession from the donor to the beneficiary. This fact, I feel, clearly shows the intent of the donor not to have the gift take effect until after her death. Furthermore, the fact that she enjoyed the income from the property convinces me that the conveyance was a gift intended to take effect in possession or enjoyment after the death of Mrs. Monsarratt.

It is the opinion of this Department, and you are so advised, that the property passing to Marcus R. Monsarratt by the deed of Elizabeth Monsarratt, executed in April, 1926, is subject to the inheritance tax laws of the Territory of Hawaii.

I am returning herewith documents submitted with your request.

Very truly yours,

CHARLES B. DWIGHT,
Third Deputy “Attorney General.

APPROVED:

MARGUERITE K. ASHFORD,
Acting Attorney General.