

September 10, 1928.

OPINION No. 1495.

TAXATION; STATUTORY CONSTRUCTION:

Where one section of a statute treats specifically and solely of a matter that section prevails in reference to that matter over other sections in which only incidental reference is made thereto.

All statutes relating to the same subject matter should be reconciled, if possible.

ASSESSORS AND DEPUTIES:

Under Chapter 102, R. L. 1925, the tax assessor, with the approval of the treasurer, may appoint as many or as few deputies as in their opinion may be required properly to perform the duties of assessing and collecting the taxes.

Honorable J. W. Lloyd, Director,
Bureau of the Budget,
Honolulu, T. H.

Dear Sir:

In your letter of August 29, 1928, you requested the opinion of this Department as to whether or not the tax assessors of the various taxation divisions would be within their rights in eliminating deputy tax assessors in the various districts, when it can be shown that the necessity of maintaining district tax offices is not apparent.

Section 1288, R. L. 1925, provides that:

"Each assessor shall appoint and at pleasure remove as many deputies as in his opinion, with the concurrence of the treasurer, may be required to properly perform the duties of assessing and collecting the taxes."

Section 1291, R. L. 1925, among other things, provides that:

"Every deputy shall, within and for the district for which he is appointed, have all the powers and authority and may do and perform all the duties of the assessor, except the appointment of a deputy or deputies * * * * he shall also be subject to the same obligations and penalties to which the assessor is subject."

and *Section 1365*, as amended by *Act 240, R. L. 1925*, among other things provides that:

"The deputy assessors in each district shall prepare from the records of taxable properties to be maintained in district offices, a list of all assessments to be made for the district * * * *."

In *Section 1288*, the legislature had before it the specific matter of the appointment of deputy tax assessors, and made no provision or requirement that there should be any certain number of deputies, nor at least one deputy at any particular place. The whole matter was left to the discretion of the assessor and the treasurer, undoubtedly with the idea that every latitude should be allowed, due to any future changes throughout the Territory. In other words, it seems to have been the legislative intent to leave the number and location of deputies to the exigencies of changing conditions. For instance, it is conceivable that the legislature, even though convinced at the time of the enactment that a deputy was necessary in some certain districts, realized, nevertheless, that conditions might so change in the future that no deputy would be necessary in those particular districts.

Sections 1291 and 1365 are reconcilable with the merely permissive or discretionary power of the assessors specified in *Section 1288* by interpreting them as designating the powers only of such deputy assessors as are appointed. *Section 1288* authorizes the appointment of deputies, and it thereupon became necessary to

specify the powers and duties of such deputies as are appointed. Section 1365 would then be reconciled with Section 1288 by interpreting it to read as follows:

“Whenever a deputy assessor is appointed for a particular district, pursuant to Section 1288, he shall prepare from the records of taxable properties to be maintained in such district office, a list of all assessments to be made for the district * * * .”

Section 1342, R. L. 1925, which was enacted as a part of the original act of 1896 containing also Section 1365, requires each assessor to make a full, true and complete assessment of all persons, companies and properties in his division liable to taxation in each district. This also bears out the above construction of Section 1365. In other words, the assessors are required to prepare an assessment list for their entire division, so that in the absence of deputies this would be done in any event, but with the assistance of deputies where any are existing.

It seems clear that the legislature did not contemplate the appointment of more than one deputy for the same district, and if this be true, Section 1288 clearly contemplated such deputy only where, in the opinion of the assessor and the treasurer, his appointment was required to properly perform the duties of assessing and collecting the taxes.

Wherever the legislature has intended the appointment of at least one officer to each district, it has so stated in no uncertain terms. In *Section 2272, R. L. 1295*, the legislature has stated,

“There shall be appointed one or more district magistrates for each judicial district of the Territory.”

In *Section 1752 of the Revised Laws of 1925*, it is provided that,

“In each and every district of the City and county, there shall be a deputy sheriff * * * .”

In *Section 1212 of the Revised Laws*, it is provided that,

“The Board (of Health) is directed to appoint a registrar of births, deaths and marriages in and for each judicial district of the Territory. The Board may, in its discretion, subdivide any district if the public convenience requires it, and appoint a registrar for each of such subdivisions.”

Some of these statutes were passed prior to, and some at the same session as, the enactment of Section 1288, indicating that the legislature at the time of the enactment of Section 1288 was well aware of the necessity of specific provision for each requirement where such was the intention.

The fact that the appointments by the assessor under Section 1288 must be with the concurrence of the Treasurer, is another fact indicating discretion and not specific requirement in the appointment of deputies. So, also, is the subsequent power of the legislature to defeat any appointment by failure to appropriate any particular district deputy's salary.

You are advised that it is my opinion that deputy tax assessors may be dispensed with where it is the opinion of the assessor, concurred in by the treasurer, that his services are not “required to properly perform the duties of assessing and collecting the taxes.” The only section which might possibly be construed to indicate a legislative intent that there be at least one deputy in each district is Section 1365 above quoted. This section, in slightly different form, was enacted as Section 55 of Act 51 of the Laws of 1896, at the same time as the original enactment of Section 1288, a fact bearing out the above construction of Section 1365.

However, due to a possible ambiguity between Sections 1365 and 1288, it might be well to call this matter to the attention of the forthcoming legislature in case it

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is now felt advisable or necessary for the appointment of
at least one deputy in each district.

Respectfully,

H. R. HEWITT,
Attorney General.