

August 31, 1929.

OPINION No. 1537.

TAXATION; TERRITORIAL BONDS:
Joint Resolution No. 5 of the regular Session of 1929 of the Territorial Legislature, approved May 1, 1929, does not "otherwise provide for" the payment of interest and sinking fund charges for Territorial bonds issued for harbor improvements within the meaning of Section 1315, R. L. 1925, as amended by Act 192, S. L. 1925, so as to forbid the levy of a property tax therefor under subdivision 4-A of said Section, as amended.

Honorable E. S. Smith,
Treasurer of the Territory of Hawaii,
Honolulu, T. H.

Dear Sir:

In your letter of July 29th you requested the opinion of this office upon the following questions:

1. Is it mandatory, under Act 192, Session Laws of 1925, that the amount necessary for interest and sinking fund on all territorial bonds issued for territorial purposes be provided for through taxes on real and personal property?
2. Joint Resolution No. 5 conflict with or supersede said Act 192 as to a portion of the above mentioned bonds?
3. If Act 192 above is the proper and legal manner of providing these amounts, what disposition may properly be made of the funds collected in compliance with Joint Resolution No. 5?

Taking up your first question, the following excerpts from Section 1315, R. L. 1925, as amended by Act 192, S. L. 1925, is relevant.

"Section 1315. General property taxes. Except as exempted or otherwise taxed, all real property and all personal property, within each taxation division, shall be subject to a tax each year of such rate per cent upon the full cash value thereof as shall be fixed and determined for that year in the following manner and generally for the following purposes:

“4A. Interest and sinking fund for all territorial bonds issued for territorial purposes:

“For subdivision 4A, the territorial treasurer in May of each year shall compute the necessary amount that calendar year for interest and sinking funds for general territorial bonds issued for territorial purposes *not otherwise* provided for, which shall be apportioned between the several counties and city and county on the basis that the value of real and personal property of each county or city and county bears to the aggregate value of real and personal property in the territory, all as assessed for the purposes of this tax, calculations made as of May 10 of the current year, excluding, however, the property mentioned in the proviso of Section 1315.”

By Joint Resolution No. 5 of the 1929 Session of the Territorial Legislature, approved May 1, 1929, the Board of Harbor Commissioners was directed to adjust, fix and enforce rates for wharfage, etc., “so as to produce therefrom net income sufficient in amount to equal the total of all bond requirements and expenses of operation for the coming biennium 1929-1931, in respect to such harbors, wharves and properties under its control and management, provided, however, that the minimum of such amount to be produced shall not be less than One Million Eight Hundred Thousand Dollars (\$1,800,000.00)”.

As I understand it, the Territory has issued certain bonds for harbor improvements such as wharves, etc., and your query is as to whether these bonds have been “otherwise provided for” within the meaning of the portion of said Section 1315, as amended, above quoted and underlined, so as to forbid the levy of a tax for the payment of interest and sinking fund charges for such bonds under subdivision 4-A of Section 1315, as amended.

It is not necessary here to state the exact meaning of the phrase “otherwise provided for” as used in said statute. It need only be said that whatever else the phrase means, it certainly requires that other funds be definitely provided for *and appropriated* for the payment of interest and sinking fund charges for a particular

issue of bonds before they will be taken out of the operation of said subdivision 4-A. Bonds are definite obligations of the Territory, payable on definite dates and the interest thereon is payable on definite dates. The Legislature clearly could not have intended that payment of any bonds should be dependent upon mere possibilities, as the possibility that there might be sufficient funds in the general fund for the payment of such bond charges when due. An examination of Joint Resolution No. 5 will disclose that, while the Harbor Board is directed to raise its rates so as to produce sufficient revenue to equal the amount of interest and sinking fund charges for harbor improvement bonds, etc., such funds are not even specifically appropriated to the payment of such bonds, and, as heretofore, go into the general fund of the Territory, with no restrictions as to the expenditure thereof. Furthermore, it is by no means certain, in spite of the mandatory character of this Joint Resolution, that sufficient funds will be raised to meet the required charges.

It is our opinion, therefore, both from a practical standpoint and from the construction of Section 1315, itself, as amended, that the Treasurer is still required to include in his tax rate calculations under subdivision 4-A of Section 1315, as amended, amounts sufficient to cover interest and sinking fund charges for Territorial bonds issued for harbor improvements.

The above answers your second query. To be specific, however, we hold that Joint Resolution No. 5 does not in any way conflict with or supersede the above mentioned provisions of Section 1315, R. L. 1925, as amended by Act 192, S. L. 1925, relating to real and personal property taxes for the payment of interest and sinking fund charges for Territorial bonds issued for Territorial purposes.

In answer to your third question, I beg to advise you that any funds collected by the Harbor Board in com-

pliance with said Joint Resolution No. 5 should go into the general fund of the Territory, as heretofore, and should be disposed of in the same manner as similar receipts have heretofore been disposed of. Surplus collections, if any, can thus be readjusted in the usual manner by applying them to wipe out any deficit that might otherwise exist, or to reduce or render unnecessary the additional levy provided for by Section 1316, R. L. 1925, as amended by Act 192, S. L. 1925, and Act 163, S. L. 1927.

Very truly yours,

C. NILS TAVARES,
Second Deputy Attorney General.

APPROVED:

H. R. HEWITT,
Attorney General.