January 26, 1934.

OPINION NO. 1600

TAXATION, REAL PROPERTY; DEDUCTIONS FROM TAX RATE CALCULATIONS.

Under section 21, Act 40, 2nd Sp. S. L. 1932, amending by implication section 12,

Act 19, 1st Sp. S. L. 1932, deductions from the real property tax rate calculations for a county on account of liquid fuel tax surplus or estimated collections are to be made by the county board of supervisors as deductible items under Column II of the county budget, and are not to be made by the Territorial Treasurer from the total figure set forth in item 11 under Column III of such budget.

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

Sir:

In your letter of January 18, 1934, you enclosed copy of a letter dated January 13, 1934, from Mr. Sam Alo, Auditor of the County of Maui, in which the following facts are set forth or appear:

Under Section 21 of Act 40, Second Special Session Laws, 1932, as temporarily limited in the case of the County of Maui by Joint Resolution No. 1 of the legislature approved April 22, 1933, the tax rate limit for real property taxes for that county is fixed at $700,000.00. Under Section 12 of Act 19, First Special Session Laws, 1932, it is provided that surplus gasoline tax collections for a given year are to be deducted from the property tax rate calculations for the succeeding calendar year.

Mr. Alo puts the question and his views thereon thus:

"There is some contention that the surplus gasoline tax collections must be further applied to reduce the total County Budget, that is, the County of Maui Budget for 1934 must not exceed $700,000.00 less $30,000.00, or $670,000.00.

"I understand that surplus gasoline tax collections are only applied against item 9, and reduce the amount for this item to be raised from property taxes. They do not affect the total County Budget of $700,000.00 and regardless of any circumstances, the County of Maui can under provisions of law, figure on the amount to be raised from property taxes for the calendar year 1934 to be $700,000.00 as set by law."

The opinion of this office is requested by you with respect to the above-quoted contention of the County Auditor.

Under Section 12 of said Act 19, which was drawn up in contemplation of, and to fit in with, the provisions of the then existing property tax law, or an amended or substitute property tax law along substantially the same lines, it was provided that surplus liquid fuel tax collections for any year in the fuel tax fund of a county remaining after the payment of certain charges mentioned in said section—to-wit, charges for contributions to the Territorial Highway Fund and for certain term and serial bond payments—"shall, by the treasurer, be deducted from the tax rate calculations for the succeeding calendar year for property taxes in the county concerned for permanent improvements and shall be paid to the county on account thereof, and shall be expended only for construction of highways, including cost of new land therefor, of permanent storm drains and of new bridges." It was then provided in the same section that for the year 1932 the Treasurer should estimate the amounts which would be collected during said year from liquid fuel taxes and should make certain deductions on account thereof from the property tax rate calculations for that year in each county. The *Treasurer* was required to make these deductions for the obvious reason that under the then existing property tax law the tax rate was actually fixed by the Treasurer upon the basis of figures in part submitted by the board of supervisors of each county and in part secured or furnished by the Treasurer himself.

In the last paragraph of said Section 12 the Treasurer

was required in succeeding years to make certain deductions from the property tax rate calculations for each county on account of excess liquid fuel tax collections for the previous year or estimated liquid fuel tax collections to be made during the current year. This requirement obviously was also enacted in contemplation of a property tax law which would continue substantially the same method of fixing the property tax rate for each county—that is to say, the submission of estimates of their requirements for certain items by the boards of supervisors and the deduction from such estimates by the Treasurer of moneys otherwise available on account of the same items. From the provisions of said Section 12, therefore, it would seem fairly clear that the original intent of said section was that the board of supervisors should not take into consideration the estimated liquid fuel tax collections for a given year in preparing their budgets but should submit their total requirements and then leave to the Treasurer the matter of reducing the various items of these budgets by deducting the estimated amounts of fuel tax collections available during the taxation year. However, in the course of its consideration in the legislature, the new real property tax law proposed by the Tax Board of the Territory of Hawaii in connection with its recommended tax program (which included among other things the liquid fuel tax law) was so drawn as to provide for a substantially different method of fixing the tax rate from that provided by the original property tax law. This departure created certain ambiguities or inconsistencies between said Section 12 of Act 19 and the real property tax law enacted at the Second Special Session, 1932 (Act 40). It is due to these inconsistencies that the question above mentioned has been raised. In the opinion of this office Sections 21 and 71 of said Act 40, Second Special Session Laws, 1932, are the controlling provisions in answering this question, particularly since said Act 40 was passed not

only at a later date than said Act 19, but at a later and separate session of the legislature.

Under Section 1315, as amended, of the Revised Laws of Hawaii 1925, not only did the Treasurer of the Territory finally fix the tax rate upon the basis of itemize figures submitted to him by the board of supervisors for certain items, but the tax rate limits for those items (permanent improvements and current expenses) were fixed at not more than 8/10ths of one per cent for current expenses and not more than one per cent for both current expenses and permanent improvements. The Territorial Treasurer was required to reduce the county budget submitted to him for tax rate purposes, if the figures asked for exceeded the rate prescribed, and, in addition, the Treasurer was required to deduct from the resulting figures certain excess collections, etc. Under Section 21 of said Act 40, there was substituted for the method formerly prescribed by said Section 1315 (which section was repealed by said Act 40, Section 72) a plan whereby each year the county board of supervisors would submit a complete budget for tax-rate-fixing purposes, setting forth not only their total requirements but also all deductions from those requirements prescribed by law. From the fact that liquid fuel taxes are mentioned as one such deduction in at least one item of the budget (item 2) prescribed by said Section 21 of Act 40, it would appear that gasoline tax deductions were intended by the legislature, in passing said Act 40, to be included and taken into consideration by each board of supervisors in preparing its budget, and that, therefore, that portion of said Section 12 of Act 19 requiring the *Treasurer* to make such deductions was superseded by said Section 21 of Act 40. This conclusion is borne out both (1) by the provisions of said Section 21 defining the items to be included under Column II of the budget as “any amounts which are required or authorized by law to be deducted from, or offset against” the tax rate

calculations for a particular item in Column 1, and (2) by the last paragraph of said Section 21 which provides that:

"Any information or estimates necessary to be given to any board of supervisors by any officer or officers, either county or territorial, or by any other persons, in order to enable such board to prepare said budget or any item thereof for any calendar year, shall be submitted by such officer or officers or person to said board not later than January 31 of such year, any other law to the contrary notwithstanding."

This conclusion is further strengthened by the fact that when the legislature particularly directed its attention, in said Act 40 to the question as to whether the board of supervisors or the Treasurer should make particular deductions from the tax rate calculations it specifically mentioned only excess real property tax collections as being deductible by the Treasurer, thereby apparently by implication excluding other deductions from the jurisdiction of the Treasurer. I refer to Section 71 of said Act 40, the last paragraph of which provides that any taxes collected during a given year in any county in excess of the county's requirements as set forth in its budget, "shall be retained by the treasurer and applied to meet the requirements of such county for the succeeding calendar year and shall by him be deducted from the amount which would otherwise be used by him in fixing the rate for "such county for said succeeding calendar year pursuant to said Section 21, thereby reducing such tax rate. Such excess collections shall not be taken into consideration by the board of supervisors of such county in fixing and submitting to the treasurer its budget for such succeeding calendar year pursuant to Section 21."

The provision forbidding the boards of supervisors to take into consideration such excess property tax collections in fixing their budgets, appears to fit in with the apparent intent of Section 21 that, unless otherwise specified, all deductions are to be made in the original budget submitted by the board of supervisors, an ap-

pears also to constitute by implication a requirement that all other deductions be made in the original budget.

Said Section 21 also substituted, for the tax rate limit fixed under said Section 1315 by means of a maximum *rate*, a limit of an *amount* for each county, with a further limitation, however, prescribed by said Section 71, that of all the moneys paid over to the county for current expenses and permanent improvements not more than 6/7ths should be expendable for current expenses and the balance be expendable only for permanent improvements.

These departures from the previously established method of fixing the tax rate appear by implication to have amended Section 12 of said Act 19 to the extent, at least, that the Treasurer no longer makes the required deductions of liquid fuel taxes but these are to be made in the first instance by each board of supervisors in fixing its county budget. The Treasurer is required to submit to such board, under the last sentence of said Section 21 of Act 40, on or before January 31 of each year, the figures to be used by such board in making the required deductions on account of liquid fuel taxes from their property tax rate calculations. The result of this amendment by implication is that in many cases the deduction of liquid fuel taxes from the requirements for public improvements and other items of the budget will not necessarily result in an actual reduction of the tax rate, as a pears to have been the original intent of said Act 19, but, in view of the provisions of said Act 40 and of their later enactment, we feel constrained to adopt the view that said Act 40 controls, notwithstanding the original intent of said Act 19.

You are therefore advised that in the opinion of this office the views set forth by Mr. Alo in his letter above mentioned, to the effect that the surplus gasoline tax collections in question are to be deducted from item 9 of Column I of the county budget—that is to say, are to

be included in Column II of item 9 as a deduction from the figure set forth for that item in Column I in the budget, and are not to be deducted from item 11 of Column III of the budget—are correct.

Respectfully,

C. NILS TAVARES,
First Deputy Attorney General.

APPROVED:

H. R. HEWITT,
Attorney General.