

December 31 of the current tax year are not required to be so deducted in such budget for such year.

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

Sir:

In your letter of March 16, 1934, you request the opinion of this office as to whether you are authorized by law, in fixing the real property tax rate for the City and County of Honolulu for the current year (1934), to deduct from the property tax rate calculations in the budget submitted by the Board of Supervisors of the City and County, estimated surplus collections of liquid fuel taxes for the year 1934 (that is to say, the surplus of such collections which you estimate will exist on December 31, 1934).

In our opinion, this question is controlled by the considerations expressed in opinion No. 1600 of this office, dated January 26, 1934, to you, and by the first subparagraph of paragraph (3) of section 12 of Act 19, First Special Session Laws of 1932, which reads as follows:

“(3) Surplus collections for any year in any such fund remaining after the payment of the charges hereinabove mentioned, 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 is true that the last two subparagraphs of said paragraph (3) seem slightly inconsistent with the first subparagraph and therefore an ambiguity appears to exist on the point under consideration. After careful

April 5, 1934.

OPINION NO. 1601

TAXATION, REAL PROPERTY; TAX
RATE CALCULATIONS, DEDUC-
TIONS FROM.

For the reasons stated in Op. Att’y Gen. (1934) No. 1600 and under the first subparagraph of paragraph (3) section 12, Act 19, 1st Sp. S. L. 1932, surplus liquid fuel tax collections in a county existing as of December 31 of the year preceding the current tax year must be deducted by the board of supervisors of such county from the estimated requirements for permanent improvements in the county property tax budget (item 9, section 21. Act 40, 2nd Sp. S. L. 1932), and surplus collections of such taxes estimated as of

study, however, this office is of the opinion that the clear language of said first subparagraph should prevail over any slight ambiguities in the other subparagraphs which relate back to and specifically depend upon the first, and that the direction of this first subparagraph to the effect that "surplus collections for any year" are to be deducted from the property tax rate collections for the "*succeeding* calendar year" for permanent improvements, should be followed.

You are therefore advised: (1) for the reasons set forth in said Opinion No. 1600, that the deductions in question should be made by the Honolulu Board of Supervisors in its budget under Section 21 of Act 40, Second Special Session Laws, 1932, and not by the Territorial Treasurer in the first instance; and (2) that only surplus liquid fuel tax collections for the City and County existing as of December 31, 1933, are required to be deducted from the City and County estimated requirements for permanent improvements (item 9 of the budget for the current year—1934) and that the amount of the surplus collections of liquid fuel taxes in the City and County which the Territorial Treasurer estimates will exist as of December 31, 1934, are not required to be deducted from the City and County's estimated requirements for permanent improvements in the property tax budget for the current year (1934).

Respectfully,

C. NILS TAVARES,
First Deputy Attorney General.

APPROVED:

H. R. HEWITT,
Attorney General.