



TERRITORY OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

OL C 45
December 8, 1939.

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Honorable William Borthwick, Tax
Commissioner of Hawaii, Honolulu,
Hawaii.

Attention: Mr. Frank Rosehill,
Deputy Tax Commissioner,

Mr. Earl Fase, Deputy Tax
Commissioner.

Dear Sir:

In reply to Mr. Rosehill's oral inquiry as to whether fees received and retained by a sheriff or his deputy are liable to gross income tax please be advised that in my opinion such fees are exempt under Section 4, subsection (2) (s) of the Act, exempting: "Amounts received as salaries or wages for services rendered by an employee to an employer." That a sheriff or his deputy is an "employee" of the Territory within the meaning of the Act cannot be doubted, and the services rendered by the sheriff, though at the behest of a private individual, nevertheless are services rendered to the Territory. A sheriff cannot be considered an independent contractor.

That the fees received are "salaries or wages" is more questionable. However, these words sometimes are construed as including compensation in the form of fees. Reynolds v. Reynolds, 58 Pac. 2d (Cal. Ap.) 660. Since the evident purpose of this provision was to exempt compensation subject to Unemployment Relief Tax, the words "salaries or wages" should be given that construction here.

It further appears that such fees are subject to Unemployment Relief Tax. As the Auditor's return does not cover these fees the sheriff or deputy should make returns under the rules adopted July 3, 1939.

Respectfully,

Rhoda V. Lewis

Rhoda V. Lewis
Deputy Attorney General

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