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Op. 56-100



TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

September 24, 1956

Board of Harbor Commissioners
Territory of Hawaii
Honolulu, Hawaii

Re: Legal liability of Board of Harbor Commis-
sioners for real property taxes

Gentlemen:

This is by way of complying with your request of September 17, 1956, your file number HB 538, for an opinion on the subject matter.

Section 106 of the Organic Act authorizes the Board of Harbor Commissioners, "subject to applicable provisions of law", to fix rates and charges for the proper use of real property under the control and jurisdiction of the Board.

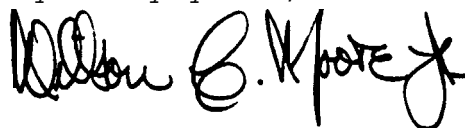
Section 5154 of the Revised Laws of Hawaii 1945, as amended, provides in part that "real property belonging to the Territory or . . . the United States and in the possession use and control of the Territory," which is under the lease for one year or more to private lessees shall be taxed to the lessees "on the fee simple value thereof", and that such private persons "shall pay the taxes thereon and shall be deemed the 'owners' thereof, for the purposes of this chapter . . ."

It might have been argued, in the case of a lease providing for mutual cancellation of the term of the lease by either party upon the occurrence of a stipulated event or events or at the will of parties, that this section would not apply inasmuch as such cancellation proviso could conceivably terminate the lease in less than one year and hence such a lease would not be within the definition of the "lease for one year or more" within the meaning of Section 5154. However, by Act 151, SLH 1951, the Legislature so amended this section as to obviate use of that argument, and the amendment made by Act 238, Laws of 1955, also obviates use of that argument.

Consequently, the law as it now stands provides that the lessees of territorial property, for whatever term, even though the lease be subject to cancellation, shall pay any and all real property taxes assessed; and also that for this tax purpose such lessees are to be considered the real owners of the property. As was stated in a letter opinion by Miss Rhoda V. Lewis, Deputy Attorney General, to Mr. B. F. Rush dated September 18, 1951 (RVL:dh, 58:15,45), this is legislative policy and is binding upon the harbor board. I can only conclude that the board lacks the legal capacity not only to contract to pay the assessed real property taxes on behalf of the lessee, but also is without authority to enter into an agreement with the lessee adopting a "gross rental" method or computing rent under which the board is to pay the real property taxes assessed.


With regard to the latter, I understand that such an agreement was entered into in 1947 with respect to the harbor board lease with the Hilo bulk sugar facility, and while, as stated before, such an agreement might possibly have been justified prior to 1951, legislative action of that year leaves the board without the authority or capacity to pay the realty taxes for the lessee. It is well settled law that the imposition of a tax takes legal precedence over and constitutionally supersedes a private contractual obligation.

Very truly yours,



WILLSON C. MOORE, JR.
Deputy Attorney General

APPROVED:



EDWARD N. SYLVA
Attorney General