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Op. 63-19

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU
March 25, 1963

Honorable Manuel S. Henriques
Chairman, Hawaiian Homes Committee
Second Legislature, State of Hawaii
Honolulu, Hawaii

Dear Mr. Henriques:

You have requested the opinion of this department as to whether tenants of public property are exempt from paying real property tax under section 128-22, Revised Laws of Hawaii 1955, as amended. It is assumed, for the purpose of this opinion, that by "public property" is meant "real property belonging to the State of Hawaii or any county thereof."

Section 128-22, Revised Laws of Hawaii 1955, as amended, provides, inter alia, that property belonging to the State of Hawaii or any county thereof shall be taxed on the fee simple value thereof, and private persons shall pay the taxes thereon and shall be deemed "the owners" thereof, for the purposes of this section, in the following circumstances:

"(1) Such property held on January 1 of any tax year under an agreement for its conveyance by the government to private persons shall be deemed fully, taxable, the same as if such conveyance had been made;

"(2) Such property held on January 1 of any tax year under a government lease shall be entered in the assessment lists and tax rolls for that year as fully taxable for the entire year, but adjustments of the taxes so assessed may be made as provided in section 128-36, so that such tenants are required to pay only so much of the taxes as is proportionate to the portion of the tax year during which such real property is held or controlled by them;

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"(3) Such property held under a government lease commencing after January 1 of any tax year, or under an agreement for its conveyance or a conveyance by the government, made after January 1 of any tax year, shall be assessed as omitted property as provided in section 128-34, but the taxes thereon shall be prorated so as to require the payment of only so much of the taxes as is proportionate to the remainder of the tax year.

"For the purposes of paragraphs (2) and (3) of this subsection: "Lease" means any lease for a term of one year or more, or which is renewable for such period as to constitute a total term of one year or more. A lease having a stated term shall, if it otherwise comes within the meaning of the term "lease," be deemed a lease notwithstanding any right of revocation, cancellation or termination reserved therein or provided for thereby. In any case of occupancy of a building or structure by two or more tenants, or by the government and a tenant, the tenancy shall not be deemed a lease, irrespective of the term thereof. Whenever a lease is such that the highest and best use cannot be made of the property by the lessee, the measure of the tax imposed on such property pursuant to paragraphs (2) and (3) shall be its fee simple value upon consideration of the highest and best use which can be made of the property by the lessee."

You are therefore respectfully advised that, under the circumstances as above stated, tenants of real property belonging to the State of Hawaii or any county thereof are not exempt from paying real property taxes.

Of course, an entirely different situation exists where the real property involved belongs to the United States.

Respectfully,

/s/ WILFORD D. GODBOLD
WILFORD D. GODBOLD
Deputy Attorney General

APPROVED:

/s/ BERT T. KOBAYASHI
BERT T. KOBAYASHI
Attorney General