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Op. No. 68-25

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
Honolulu, Hawaii 96813
August 9, 1968

Mr. Thomas K. Hitch, Chairman
Committee on Taxation and Finance
Constitutional Convention of Hawaii of 1968

Dear Sir:

This is in response to two questions posed by you concerning Article VI, Section 1 of the Hawaii Constitution which provides:

"The power of taxation shall never be surrendered, suspended or contracted away."

You ask: ^{1/} (1) "whether the current delegation of power to the counties to set the real property tax rate is valid in view of the wording of this provision, and (2) whether proposals before the convention which would give independent taxing authority to the counties, require modification of this provision.

We answer the first question affirmatively and the second in the negative.

With respect to your first question, by enactment of Section 129-2, R.L.H. 1955, as amended, the State legislature has delegated to the board of supervisors and city council of each county the power to set the real property tax rate for the respective counties.

^{1/} We have taken the liberty of rephrasing and transposing the order of the questions submitted by you.

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Article VII, Section 3 provides as follows:

"The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions, and the legislature shall have the power to apportion state revenues among the several political subdivisions." (Emphasis added.)

It expressly authorizes the legislature to delegate the State's taxing power to the political subdivisions. Accordingly, the delegation of such power by Section 129-2 is not in contravention of Article VI, Section 1.

As to your second question, we conclude that Article VI, Section 1 need not be modified. Any grant of separate and independent taxing power to the counties must be clearly and specifically conferred on the counties by provisions of the State Constitution. It is well established that political subdivisions of a state have no inherent power of taxation.^{2/} Whatever taxing powers such bodies possess are conferred by a delegation of such power by the legislature of the state^{3/} or by virtue of constitutional provisions conferring such power directly on political subdivisions of a state.^{4/}

^{2/} Estes v. Gadsden, 94 So.2d 744 (Ala. 1957); Los Angeles v. Belridge Oil Co., 271 P.2d 5 (Calif. 1954); Chamberlain v. Bridgeport, 91 A. 380, 383 (Conn. 1914); New Britain v. Mariners' Savings Bank, 35 Atl. 505 (Conn 1896).

^{3/} Henderson Bridge Co. v. Henderson, 173 U.S. 592 (1879).

^{4/} Ardmore v. Excise Board of Carter County, 8. P.2d d (Okla. 1932); McQuillan Municipal Corporations 3d ed. (1963) v. 16 § 44.08.

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We are of the view that a constitutional provision granting independent taxing authority to the counties may be included in the State Constitution without modifying Article VI, Section 1. There would not be any inconsistency or conflict between the provisions since the special provision granting the taxing power to the counties would govern the general provision as set forth in Article VI, Section 1. ^{5/}✓

Furthermore, there are other states with the same constitutional provision as found in Article VI, Section 1 which set forth separate and additional provisions granting cities, towns, and villages the power to assess and levy taxes. ^{6/}✓

We trust the foregoing is satisfactory of your request.

Very truly yours,

/s/ Melvin K. Soong

MELVIN K. SOONG
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APPROVED:

/s/ Bert T. Kobayashi

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Attorney General

^{5/} State by Kashiwa v. Coney, 45 Haw. 650 (1962) rehearing denied 46 Haw. 50.

^{6/} Arizona Const., Art. 9. § 6; Michigan Const., Art. 7, § 21.