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Op. No. 68-6

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU, HAWAII 96813

April 24, 1968

The Honorable Edward J. Burns
Director of Taxation
State of Hawaii
Honolulu, Hawaii

Dear Sir:

This is in response to your request for an opinion as to the legal effect of House Resolution 78 adopted by the House of Representatives of the Fourth Legislature of the State of Hawaii, Regular Session of 1968, and whether you, as Director of Taxation, must comply with the request of the resolution. House Resolution 78 pertains to the application of Hawaii's general excise tax law to amounts received by a manager or board of directors of an association of apartment owners of a horizontal property regime (condominium) in reimbursement of sums paid for common expenses, and to amounts received by a cooperative housing corporation (co-op) from its shareholders in reimbursement of funds paid by such corporation for the expenses of operating and maintaining the cooperative land and improvements. The resolution requests that you (1) ". . . cease and desist in any action or proceeding instituted for the assessment and collection of taxes on amounts exempt under sections 117-21(p) and (s) of the Revised Laws of Hawaii 1955, as amended, notwithstanding that any such action may be for taxable years prior to the enactment of Act 297, Session Laws of Hawaii 1967 . . .", (2) ". . . observe and be guided by the legislative findings and declaration stated in this Resolution with respect to amounts exempt under sections 117-21(p) and (s) . . ." and (3) ". . . refund to persons and organizations all taxes paid by them and collected by the Director within the five-year period prior to the approval of this Resolution on account of

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amounts exempt under subsections 117-21(p) and (s) . . . " .

We reply that House Resolution 78 does not have the force and effect of law and therefore, from a legal standpoint, cannot require your compliance with the request of the resolution.

Generally, a legislative body employs a "resolution" to express its opinion or sentiment or to carry out inner administration of that legislative body. State v. Highway Patrol Bd., 372 P.2d 930 (Mont. 1962); State v. Atterbury, 300 S.W.2d 806, 817 (Mo. 1957); In re N. Y., Susquehanna & Western R.R. Co., 136 A.2d 408 (N.J. 1957): 2 Sutherland, Statutory Construction, (3d ed. 1943) § 3801. Resolutions are of three kinds: simple, concurrent, and joint. 2 Sutherland, Statutory Construction, (3d ed. 1943) § 3801. House Resolution 78 is a simple resolution, defined as a formalized motion passed by a majority of a single legislative house. A concurrent resolution is a simple resolution which is passed by both houses of the legislature. A joint resolution is a formal statement or proposition of less scope than a bill requiring the concurrence of both branches of the legislative assembly. State v. Highway Patrol Bd., supra.

It is the general rule that a legislative resolution is not law and is without legislative quality of any coercive or operational effect. 2 Sutherland, Statutory construction, (3d ed. 1943) § 3801 et seq.; 50 Am.Jur., Statutes § 4, p. 16; 82 C.J.S., Statutes, § 1, p. 19 and § 20, p. 47; see Atty.Gen.Ops. 1109 (1923), 1528 (1929), 56-114 (1956). Hence, although a legislative resolution may be duly considered, it need not be enforced by the executive department nor sustained by the judiciary. In re N.Y. Susquehanna & Western R.R. Co., 136 A.2d 408 (N.J. 1957); Boyer-Campbell Co. v. Fry, 260 N.W. 165 (Mich. 1935); 98 ALR 827; Moran v. La Guardia, 1N.E.2d 961 (N.Y. 1936); 104 ALR 1160; 2 Sutherland, Statutory Construction, (3d ed. 1943) § 3801. In some states, however, the constitution specifically permits joint resolutions to be afforded the force and effect of law when such resolutions are enacted with all of the formalities of a bill. 2 Sutherland, Statutory Construction, (3d ed. 1943) § 3801; 50 Am.Jur., Statutes, § 4.

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Resolutions cannot enact Hawaii laws for the State Constitution in Article III, Section 15, specifically provides: "No law shall be passed except by bill." The mode of enactment of a statute depends on constitutional and statutory requirements. Harris v. Shanahan, 387 P.2d 771 (Kan. 1963); 82 C.J.S., Statutes, § 18. Where a constitution requires that legislation must be by bill, such method of enactment has been considered to be mandatory, prohibitive, and conclusive. Sancho v. Acevedo, 93 F.2d 331 (1937); 50 Am.Jur., Statutes, § 4; 82 C.J.S., Statutes, § 19.

Based on the foregoing, we conclude that House Resolution 78 does not have the force and effect of law. Consequently, although House Resolution 78 expresses the opinion and sentiment of the majority of the members of the House of Representatives and such opinion and sentiment should be duly and respectfully considered, we are of the view that, from a legal standpoint, it cannot compel your compliance with the request contained therein.

Very truly yours,

/s/ Melvin K. Soong

MELVIN K. SOONG
Deputy Attorney General

APPROVED:

/s/ Bert T. Kobayashi

BERT T. KOBAYASHI
Attorney General