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BANKS NOT LIABLE TO TAXATION

Attorney General Dole Gives Opinion in Wailuku Case.

NATIONAL BANKS ARE EXEMPT LICENSE IS NOT REQUIRED FROM THE GOVERNMENT OF TERRITORY.

Attorney-General Edmund P. Dole, at a meeting between the Governor and the heads of the Territorial departments in the Capitol yesterday morning, read an opinion answering a question from Treasurer Wright relative to a Territorial license for the National Bank of Wailuku, concluding that such a license is not required, being, in fact, disallowed by Federal law. The opinion, in full, is as follows:

Territory of Hawaii, Office of the Attorney-General, Honolulu, H. I., Jan. 16th, 1902.

Honorable Wm. H. Wright, Treasurer of the Territory of Hawaii:

Dear Sir: I am in receipt of your request for my opinion whether the First National Bank at Wailuku, Maui, should take out a banking license as required in Sections 724 and 725 of the Penal Laws of 1897.

Sections 724 and 725 are as follows: "The annual fee for a banking license shall be seven hundred and fifty dollars. The term 'banking' for the purposes of this act, shall mean the engaging in, buying or selling drafts or bills of exchange on banks or persons in other countries, or the receiving of deposits and paying of checks thereon. Any person holding a banking license may also under such license loan his own money, or collect for, or receive, or take the money of another, and loan or advance the same to another, or others, charging a higher rate of interest than is allowed to the depositor; or may loan the moneys of another, or negotiate a loan to or from another, for a commission or other compensation."

Sections 5214 and 5219 of the Revised Statutes of the United States are as follows: "In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the month of January and July, a duty of one-half of one per centum each half year upon the average amount of its notes in circulation, and a duty of one-quarter of one per centum each half year on the average amount of its capital stock, beyond the amount invested in United States bonds. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other

moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county or municipal taxes, to the same extent, according to its value, as other real property is taxed."

National banks are not liable to a privilege tax imposed by city ordinance. Chattanooga v. Mayor, etc., 8 Helsk, Tennessee 814. Nor in view of the fact that the shares alone are taxable, to any tax upon their business imposed by the municipal authorities of the city where the bank is located. Mayor of Macon v. First National Bank, 59 Ga. 548. In the case of McCulloch v. the State of Maryland, 4 Wheaton 316, it was held that Congress had the constitutional right to authorize the incorporation of banks; that a bank so incorporated had a right to establish its offices of discount and deposit within any State, and that when so established the State could not tax it. This decision was made with reference to the question whether the State of Maryland could impose a tax on a bank of the United States incorporated under an Act of Congress, April 10th, 1816. The principal therein announced has been reaffirmed and applied to the Act of Congress authorizing the incorporation of National banks in the following cases:

Van Allen v. Assessors, 3 Wall. 573; Bradley v. People, 4 Wall. 459; Lionberger v. Rouse, 9 Wall. 468; Tappan v. Bank, 19 Wall. 490; Hepburn v. School Districts, 23 Wall. 489; People v. National Bank, 69 Am. St. R. 32.

In all these cases it was held that a State could impose only such taxes as were authorized by the Act of Congress creating National banks, and that said act only authorized a tax on the shares in such bank, and not upon its capital; and that such banks derived their authority to do business in the State by virtue of a United States statute, which is supreme. Therefore, it follows that the right of such banks to do business in a State is not dependent upon a license to be obtained from the State authorities. The right of a National bank to conduct its business as a banking institution is in no way dependent on a license to be obtained either from the State or any of its municipalities. City of Carthage v. First National Bank of Carthage, 71 Mo. 508.

A National bank derives its existence and its powers from the Government of the United States. It pays a revenue to the United States in lieu of all local taxes, except such as the United States authorizes. Its shares are taxable to shareholders by the Territorial government, and its real estate, if it has any, is taxable by the Territorial government the same as other real estate, pursuant to Section 5219 of the Revised Statutes of the United States. But it is beyond the lawful power of the Territory either in the form of a license or otherwise to tax its franchise or banking privilege. I think it clear that Sections 724 and 725 of the Penal Laws of 1897 cannot be applied to the First National Bank of Wailuku, or to any other National bank in this Territory.

Very respectfully yours,
E. P. DOLE,
Attorney General.

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Get any style, shape or quality made to order to suit your build of head.

At.

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KING-STREET LINE.

Cars leave Waikiki for Town at 5:45, 6:15, 6:45 a. m., and every 15 minutes thereafter till 10:45, 11:15 and 11:45 p. m. from Waikiki go to the Punahou Stable.

Cars leave Riffe Range or Pawaia switch for Town at 5:58 a. m. and every 15 minutes thereafter till 11:08 p. m.

Cars leave Fort and King streets corner for Palama at 6:10 a. m. and every 15 minutes after till 11:25 p. m.

Cars leave for Palama only at 5 and 5:30 a. m.

Cars leave Palama for Waikiki at 5:45 a. m. and every 15 minutes till 5:45 p. m., then at 10:15 and 10:45 p. m. The 11:15 p. m. from Palama for Punahou only goes to Waikiki on Saturdays.

Cars leave Fort and King streets corner for Riffe Range at 5:20 and 5:50 a. m.

Cars leave Fort and King streets corner for Waikiki at 6:05 a. m. and every 15 minutes till 10:05 p. m. then at 10:35 and 11:05 p. m. The 11:35 p. m. goes to Waikiki on Saturdays only.

BERETANIA STREET AND NUUANU VALLEY.

Cars leave Punahou stable for Town at 5:30 and for Town and Valley at 5:40, 5:50, 6:19, 6:29, 6:40, 7 and 7:20 a. m.

Cars leave Oahu College for Town and Valley at 6:30, 6:50 and 7:10 a. m., and every 10 minutes till 10:19 p. m., except the even hour and half hour cars which run from the Stable.

Cars leave Nuuanu Valley at 6:19, 6:39, 6:59 a. m., and every 10 minutes thereafter till 10:59 p. m.

Cars leave Fort and Queen streets for Punahou College at 6:05, 6:25, 6:45 a. m., and every 10 minutes after till 9:45 p. m. After that the cars run to the Stable up to 11:05 p. m. which is the last car from Town reaching the Stable at 11:30 p. m.

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