Political Offices: State Legislature: Subject Files: Land: Sand Island and railroad lands

TO: [redacted]L

[redacted] In re OR &L

Stg Comm Rep

Checker: YN

REMARKS:

ORL

Date 3/16/62

Attached are observations and questions which came to mind in reviewing the agreement and upon discussion had with Jon Chinen. They are not intended to be all-inclusive, nor are answers supplied to all questions. I pass this on to you to show you that "I am working on it." I suppose you could add additional questions, such as "What is the effect of the agreement on the condemnation suits", "What about the land on which the OR&L pier sits", etc.

Jot down any questions (useful or useless) which may have a bearing on the matter. I'll start looking for answers beginning next week...if I can find them.

Jon had nothing to do with the negotiations. To use his term, he was "excluded" from the conferences. He worked only on the question of the legality or validity of the reverter clause in Grant 3475. However, through his work with state land matters in the past, he has some vague recollections of some of the items noted in the attached sheet.

IN RE OR&L 3/16/62

1. For legal opinions on legality of reverter clause of Grant 3475, see those drafted by:

   a. Rhoda Lewis (This opinion stopped the state from quitclaiming land to OR&L)

   b.

   c. Jon Chinen (Chinen's opinion cites cases supporting the view that where property is given subject to a reversion, the reversionary clause becomes obsolete with passage of time. However, these cases did not invovle grants by government; they involved grants by private citizens to other citizens for a valuable consideration. In the OR&L case, no consideration flowed from OR&L.)

   *** All of the foregoing opinions are on file in the Office of the Attorney-General.

   d. Tom Okino. (Okino was appointed Examiner in Land Court Application No. 1815. He reported favorably for OR&L. In a somewhat strained reasoning process, he concluded that OR&L had good title to land described in Grant 3475, on the grounds that the reverter clause was inoperative inasmuch as there is no monarchy to which the land can revert.)

2. Work done by the following in OR&L matter:

   a. Kazuyoshi Akita

   b. James Dunn, Survey office

   c. Gilbert E. Cox, Carlsmith & Carlsmith: memorandum filed with the office of Attorney-General.

   d. Arthru G. Smith, Smith, Wild, Beebe & Cades: memorandum filed with the office of Attorney-General.

   e. PUC: Docket 1155, "In the Matter of the Investigation of the Rail Operations of OR&L Co." Anderson, Wrenn & Jenks, Smith, Wild, Beebe & Cades, and Carlsmith & Cox, for OR&L; Richard K. Sharpless, Deputy Attorney General, for Commission.

   Decision No. 138, rendered 7/16/52.

INITIAL QUESTIONS

1. Are some of the lands mentioned in the agreement as being quitclaimed to the state, lands which reverted or will revert in any event?

2. Are some of the lands and rights mentioned as being quitclaimed to the state, lands and rights to which OR&L was never entitled?

   NOTE: The fisheries rights of way may be rights of way involving railroad bridges across a pond. There is no document showing any such right in OR&L. Agreement does not mention the source of these rights. It is believed that OR&L did receive a right by instrument for a right-of-way around the pond.

3. Are there parcels of land held by OR&L (rightfully or wrongfully) not mentioned in agreement?

   NOTE: a. OR&L deeded certain lands in Lualualei area to the Navy. It is seriously questioned whether OR&L had any right or authority to so convey. Is the state using this as a "club" in its suit against the navy to recover lands?

   b. It is said that OR&L deeded certain lands in Waimea(?) area to a plantation. Plantation questioned the right of OR&L to deed such land, and the plantation subsequently deeded it back to the state.

   c. OR&L perhaps owns in fee simple, the land lying between Middle street and Pearl Harbor.

   d. In most cases, those lands lying Waikiki of Middle street are held or were held by OR&L by grants or easements, and not in full fee simple.

   e. There are certain parcels not mentioned in the agreement which OR&L ostensibly abandoned by ripping out the railroad track. Are these assumed to have reverted back to the state? Even in the light of those cases mentioned in Chinen's opinion? Was there any understanding reached by the state and OR&L?

3½. Why is Grant No. 8041, a parcel of land situated on Dillingham Boulevard, 17,373 square feet, expressly excluded from the agreement? (Par. 20, p.10) "Nothing herein shall be construed to be an admission or denial that OR&L is or is not complying with the terms and conditions of said grant, or to waive or support the claim of the State that title to said parcel has reverted and that the State is entitled to recover damages from OR&L for its unlawful detention from December 31, 1947."

Easements--

4. Which easements granted to OR&L under the agreement, are easements which existed in favor of OR&l before?

5. Which easements granted to OR&L under the agreement, are easements which did not exist before by grants or other documents, but were nonetheless used by OR&L prior to the agreement?

6. Which easements have been changed from temporary to permanent, and which permanent to temporary?

7. Why are railroad track easements temporary, and roadways permanent?

8. Are all of the easements "necessary"? What are the purposes?

9. What is meant by "so long as OR&L operates as a common carrier by rail"? When does OR&L cease to "operate as a common carrier by rail"?

10. What is mean by OR&L "is now operating as a common carrier by rail"? See easement granted to OR&L over that portion of Grant 3475 quitclaimed to the state, p. 2, par. 2a of the agreement.

VALUE AND LOCATION

11. What are the values of the various parcels mentioned in the agreement?

22. What are the locations, shapes and sizes of the various parcels? How important were they in determining which parcels should be for the state, and which for OR&L?

Railroad Land Ownership Exam

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announced that it would acquire ... buses in 1929. A few years late... came ... announcement ... truck... and in 1940 the railroad announced plans to discontinue ... service on ... and ... ...gasoline buses to outlying districts.

The company's ... bus ... tension was suspended ... President ... in 1946 announced ... abandonment of the railroad and plans to form a truck ... corpora... tion to haul sugar from ... to waterfront terminals. The plan ... was approved by stockholders ... October of 1946.

The railroad sought ... permis...

ROUGH DRAFT

H.R.No.)_____

RESOLUTION
RELATING TO THE DEVELOPMENT OF HONOLULU HARBOR.

WHEREAS, the future growth of Honolulu, and of the state of Hawaii, is closely bound to the careful and imaginative development of Honolulu Harbor; and

WHEREAS, modern methods of handling cargo such as "containerization" and roll-on roll-off places a new dimension on our harbor needs, requiring modern, efficient pier facilities combined with substantial land areas near at hand for so-called break bulk storage; and

WHEREAS, the state's most modern pier facility, Pier 2, is gravely inadequate for these modern freight handling techniques because of its limited land area; and

WHEREAS, the major revenues from harbor operation come from freight handling, and there is no reason why the state should not be able to operate a profitable freight facility, particularly in view of the projected increase in shipping and population; and

WHEREAS, there appear at present to be two principle areas on or near the Harbor of Honolulu where profitable freight marshalling yards can be created, one being Sand Island and the other being in the Iwilei district on land presently held under defeasible grant from the State to the Oahu Railroad and Land Company; and

WHEREAS, the portion of Sand Island recently returned to the state has, for reasons difficult to explain, no harbor frontage, but it appears probable that if requests are made to the Federal government substantial harbor frontage will be returned to the state, thus allowing the development of an

effective harbor facility on the island; and

WHEREAS, the possession of the lands of Iwilei by the O.R.& L. has long been questioned on the basis that such lands were subject to reversion to the state when they ceased being used for railroad purposes; and

WHEREAS, it presently appears that O.R.& L., though the use of what may be a void right of condemnation, is attempting to solidify its control of these Iwilei lands by purchasing certain adjoining parcels; and

WHEREAS, reversing of these lands to the state would create an asset worth many millions of dollars to the people of Hawaii and make available needed industrial land or freight marshalling yards; now, therefore,

BE IT RESOLVED that the governor be and he is hereby requested to take the following steps:

1. Determine how much harbor frontage the federal government will return to the state on Sand Island, and whether such frontage can be so situated as to make the present land-locked 202 acres useable;
2. Commence immediate steps for the return to the people of Hawaii of the Iwilei lands presently held under railway grant and investigate the propriety of the alleged use of the condemnation power by the present holders;
3. Report progress to the Legislature in the regular session of 1960 within ten days after it convenes; and

BE IT FURTHER RESOLVED that certified copies of this resolution be sent to the Governor of Hawaii, the Board of Harbor Commissioners, the Attorney General, the Public Utilities Commission, each member of Hawaii's congressional delegation, and to those various citizens whose property O.R.& L. on the Iwilei railroad lands presently used by OR&L as the Speaker may designate.

3-Way Battle Breaks Out Over Use of Sand Island

A three-cornered controversy over the return of 202 acres of Sand Island broke out yesterday on a 5,000 mile front.

At one end of the battle line was the Pentagon in Washington, D. C., where an inquiry was launched.

At the other end, here in Hawaii, Governor Quinn defended the selection of the 202 acres which the Federal government returned to local control.

* * *

SHARP - SHOOTING away at the Governor's flank was the Democratic-dominated House Lands Committee. Rep. David C. McClung (D-Oahu), its chairman, claimed the Governor had deliberately disregarded the best interests of the State in choosing a landlocked portion of the manmade island.

United Press International reported from Washington that the Defense Department would conduct an inquiry into all military land holdings in Hawaii, including the 202 acres of Sand Island.

The military still retains 174 acres of the island, which has been eyed as a possible guided missile site.

UPI said a Defense Department spokesman declined to reveal what military use was contemplated for the 174 acres.

* * *

GOVERNOR QUINN, meanwhile, said he accepted the Harbor Board's recommendations on the 202 acres for two reasons:

1. There was no immediate need for additional harbor frontage.

2. The Harbor Board is "run like a business" and it was reluctant to see Sand Island revenues go to the University of Hawaii, as the legislation provided.

QUINN SAID the Sand Island bill was drawn up in Washington after lengthy talks between the Interior and Defense Departments.

He said he had planned to seek return of additional Sand Island property when Congress passed the Statehood Bill. Quinn said he hoped that not only Sand Island lands, but other non-essential military lands in Hawaii, can be acquired soon.

* * *

McCLUNG, MEANTIME, wasn't satisfied with the Governor's explanation.

"From testimony given before my committee," he said, "it seems conclusive that the Governor could have had more land merely by asking for it."

THE SATURDAY STAR-BULLETIN, HONOLULU, HAWAII, OCTOBER 3, 1959

Witnesses Indicate Quinn Was Responsible for Choosing Sand Isle Area

By ALTON SLAGLE

John A. Burns, former delegate to Congress, told the House Lands Committee yesterday that he only asked that 202 acres of Sand Island land be returned to the former Territory of Hawaii because he thought that was all there was available.

"I didn't ask for more, because, from my information, this took in all except those lands needed by the military," he said.

"I didn't know then, and I still don't know the size of Sand Island."

C. Eric Reppun, State Land Commissioner, told the committee that the Island comprised 560 acres, of which 179 were controlled by the Federal Government.

The committee has been trying to determine why the figure 202 was chosen, and why the area selected was in the center of the Island, located in Honolulu Harbor, and not along the waterfront.

PRESUMPTION

Burns said he presumed, considering the size of the Island, that the 202 acres would include some waterfront areas.

He said he didn't check into the matter further because "that is an administrative detail, not a legislative detail."

The disposition of the Island, he said, was the business of the Chief Executive and the Legislature of Hawaii.

He made the statements under examination by Republican Representative Robert K. Fukuda.

Earlier, he told the committee that Sand Island, with the use of waterfront areas, would make an "excellent location" for a free trade zone, with a free port and an International House.

NEGATIVE REPORT

This proposal, he said, was given to the Harbor Board, which made a negative report to Governor Quinn.

Burns also said the Territory could "no doubt" have gotten more than 202 acres. The bill, he said, passed Congress unanimously.

The House committee is now studying a State bill that would ratify the transfer.

Also appearing at a star-studded hearing yesterday was former Territorial Land Commissioner Frank W. Hustace Jr.

"I am not familiar with the terms of the bill," Hustace said, "I played no part in determining what figures would be used or which acreage would be returned."

Hustace was Lands Commissioner during negotiations for the transfer. He said his role was primarily a "conveyor of information" between Quinn and the Federal Government.

Reppun, who replaced Hustace this year, said he had no knowledge of plans for the area.

He said the 202 acre figure came from an original negotiation between the Federal Government and Standard Oil, which wanted to place a refinery there. The figure carried through negotiations by the Territory after the oil company located its plant on Oahu.

DECISION

Robert F. Ellis, Quinn's administrative assistant, said the decision of area was made by Quinn, based partly on a Harbor Board recommendation.

The board didn't want waterfront property in this transfer, since by law all proceeds from sale or development or development of this parcel would go to the University of Hawaii, according to earlier testimony by Harold W. Butzine, board manager, and William M. Wachter, university administrative vice-president, and former board chairman.

Another of Quinn's cabinet members, State Planning Director Frank Lombardi, echoed testimony of Reppun and Hustace that he was not brought into the transfer matter.

STATEMENT

After the hearing, committee chairman David C. McClung, Oahu Democrat, issued the following statement:

"It appears clear that Governor Quinn has set himself above all the experts in determining which 202 acres was to be returned.

"Perhaps we should take another look at the reorganization bill and abolish offices like Planning, Land and the Harbor Board since the Governor doesn't consult them on such vital matters as which 202 acres on Sand Island would be of greatest benefit to the people of Hawaii."

Adv. 10/3

Quinn Guided by Harbor Board In Choice of Sand Island Area

By AL GOODFADER

Governor Quinn took the advice of the Board of Harbor Commissioners and didn't consult his Land Commissioner on what portion of Sand Island should be turned over to the State from Federal control, legislators were told yesterday.

* * *

PRESENT AND former Hawaii officials testified before the House Lands Committee that:

1. Hawaii has a present and future need for Sand Island waterfront property in Honolulu Harbor.

2. The military offered to consider an application for waterfront land during negotiations on what Sand Island acreage would be turned over to Hawaii.

3. Governor Quinn did not consult the Territory's Land Commissioner in choosing the 202 acres Hawaii would take.

4. Quinn accepted a Board of Harbor Commissioners recommendation that Hawaii accept a landlocked parcel.

* * *

COMMITTEE CHAIRMAN David C. McClung (D-Oahu) read a memo from the then chairman of the Harbor Board, William M. Wachter, explaining the Harbor Board's choice.

The Oct. 3, 1958, memo to Quinn said the area was chosen "with the thought in mind that it should not infringe on waterfront land which will be needed in the future for Harbor Board developments.

"Although we could use certain waterfront areas along Sand Island today, it is felt that the importance of obtaining land totally under the control of the Board of Harbor Commissioners is more important than immediate possession."

* * *

REVENUES FROM the use of Sand Island are earmarked for the University of Hawaii. Wachter said yesterday this was one of two reasons why the landlocked area was chosen. The other was that the waterfront area could not be developed for use by deepwater ships for some time, he said.

The immediate use would be for unloading barges, Wachter said.

* * *

FRANK W. HUSTACE JR., former Territorial land commissioner, said Quinn never asked his views on what portion of Sand Island to choose. Hustace was used only as a pipeline to convey information to and from the military, he said.

He confirmed that the military offered to consider an application for waterfront land during the negotiations.

* * *

C. ERIC REPPUN, State land commissioner, said Hawaii's congressional delegation should try immediately to get the Federal government to turn over to Hawaii about 47 acres of Sand Island waterfront land. The land will be needed for development of Honolulu's harbor, he said.

He also offered the only clue as to why 202 acres was fixed as the amount of land to be turned over to Hawaii. He said he had been told by military people that Standard Oil Co. said it needed that much to build a refinery on Sand Island.

Robert F. Ellis, Quinn's administrative assistant, said the Governor adopted the Harbor Board's recommendations.

* * *

Burns Blames Governor

Former Delegate Burns yesterday indirectly accused Governor Quinn of being responsible for Hawaii's not getting more of Sand Island as a gift from the Federal government.

He was testifying before the House Lands Committee, which held an inquiry into why Hawaii got only 202 acres of the 525-acre Island.

"I have no doubt (Hawaii) would have gotten more" if Hawaii had asked for it, Burns said.

HE SAID THE bill providing for the turnover of 202 acres was prepared by the Department of the Interior and sent to U.S. House Speaker Sam Rayburn. Rayburn turned the bill over to Burns for introduction in the House of Representatives.

Burns said he questioned Anthony T. Lausi, director of the Interior Department's office of territories, about why the "202" figure was used.

* * *

LAUSI TOLD Burns this was all the land the Federal government could legally turn over to the Territory except for two parcels needed for military use, Burns said.

Burns told the committee this information normally would come to the Interior Department from Quinn.

"I have no question the Secretary of the Interior would have made a better representation to the military or that Congress would have (granted more land)" if they knew more was available, Burns said.

HOUSE OF REPRESENTATIVES

FIRST LEGISLATURE OF THE STATE OF HAWAII
SPECIAL SESSION OF 1959

C O M M I T T E E O N L A N D S

FRIDAY, OCTOBER 2, 1959
2:00 P.M. HOUSE CHAMBERS

Representatives: McCLUNG - Chairman, OSHIRO - Vice Chairman, BEPPU, DE LA CRUZ, FERNANDES, FUKUDA, LOO, MIRIKITANI, PULE, ROHLFING, SAKIMA, TAKAMINE and TERUYA

A G E N D A

Public Hearing on:

S.B. No. 31, SD-3 AN ACT RELATING TO SAND ISLAND.

Participants:

Honorable Daniel K. Inouye, Member of Congress

Mr. John A. Burns

Mr. Robert F. Ellis, Administrative Assistant to the Governor, State of Hawaii

Mr. Philip Chun, Deputy Attorney General, Department of the Attorney General

Mr. Harold W. Butzine, Manager & Chief Engineer, Harbor Board

Mr. Frank Lombardi, Director, State Planning Office

Mr. C. Eric Reppun, Commissioner of Public Lands, State of Hawaii

Public Hearing
C O M M I T T E E O N L A N D S

A G E N D A

Friday, October 2, 1959
2:00 P.M. House Chambers

Participants: (continued)

Representative, Harland Bartholomew & Associates,
(city planners - civil engineers)

Attorney Frank W. Hustace, Jr.

Mr. William M. Wachter, Administrative Vice President,
University of Hawaii

Mr. James M. Dunn, Surveyor, State of Hawaii Survey
Department