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July 8, 2016

The Honorable Jobie M. K. Masagatani
Chairman
Hawaiian Homes Commission
91-5420 Kapolei Parkway
Kapolei, Hawaii 96707

Re: United States Consent to Act 173, 2014 Hawaii Session Laws

Dear Chairman Masagatani:

At the request of the United States Department of the Interior, you have asked us to supplement our August 4, 2014 opinion that Act 173, 2014 Hawaii Sessions Laws (“Act 173”) does not require the consent of the United States to be effective. Act 173 amends section 204(a)(2) of the Hawaiian Homes Commission Act, 1920 (“HHCA”) by authorizing the Department of Hawaiian Home Lands (“DHHL”) to lease improvements located on Hawaiian Home Lands through direct negotiation, if those lands are not needed for homestead leasing to native Hawaiians under HHCA § 207(a). As discussed below, we continue to believe that Act 173 amends the HHCA in a manner “relating to administration,” and does not require consent of the United States under the Admission Act to be effective. Further, Act 173 does not allow other State officers to encumber Hawaiian home lands. Nor does Act 173 impair or reduce the Hawaiian home loan fund, Hawaiian home operating fund, or Hawaiian home development fund.

Section 4 of the Admission Act allows the State to amend the HHCA without consent of the United States if, *inter alia*, the State legislation amends “sections 202, 213, 219, 220, 222, 224, and 225 and *other provisions relating to administration.*” *Id.* (emphasis added). The term “administration” must be interpreted according to its plain meaning. *See Campbell v. Allied Van Lines Inc.*, 410 F.3d 618, 622 (9th Cir. 2005) (“We have long held that there is a strong presumption that the plain language of [a] statute expresses congressional intent, rebutted only in rare and exceptional circumstances, when a contrary legislative intent is clearly expressed.”).

The term, “administration” in this context therefore means “[t]he management or performance of the executive duties of a government, institution, or business; collectively, all the actions that are involved in managing the work of an organization;” or “[i]n public law, the practical management and direction of the executive department and its agencies.” *Black’s Law Dictionary* 2014 (10th ed). The term, “[m]anage is a lesser included term of administer.” *Trustees for Alaska v. Watt*, 524 F. Supp. 1303, 1308 (D. Alaska 1981).

Section 204(a)(2) of the HHCA relates to administration by providing that lands not needed for homestead leasing to native Hawaiians “may be *retained for management* by [DHHL].” (emphasis added). The HHCA further establishes the “Hawaiian home *administration* account,” in part, to hold the “entire receipts derived from any leasing or other disposition of the available lands pursuant to section [204(a)(2)].” HHCA § 213(f) (brackets in statutory text).

DHHL’s management of lands not required for homesteading may involve disposing of the land to the public under the same criteria used for disposing of other State lands under Haw. Rev. Stat. chapter 171 (“HRS”). *See* HHCA § 204(a)(2). This includes leasing via public auction, leasing for alternative energy projects, and leasing to eleemosynary organizations, among other possible dispositions. *See, e.g.*, HRS §§ 171-14, -43.1, -95. Similarly, Act 173 authorizes DHHL to issue leases for improvements on non-homestead lands without need for public auction, and therefore involves the same kinds of procedural requirements contained in HRS chapter 171.¹ As such, Act 173 also involves the management of lands not needed for homesteading, and provides DHHL with additional operational flexibility in its administration of the HHCA.

Further, Act 173 does not increase the “encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of the [HHCA],” as proscribed by section 4 of the Admission Act.

Finally, because all receipts from the leases issued under HHCA § 204(a)(2) – including those authorized by Act 173 – must be deposited into the Hawaiian home administration account, Act 173 does not impair or reduce the Hawaiian home loan fund, Hawaiian home operating fund, or Hawaiian home development fund.

¹ We note that the Legislature could have amended HRS chapter 171 to exempt leases of improvements from the public auction requirement, without triggering review by the Department of the Interior.

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For the foregoing reasons, we believe that § 4 of the Admission Act does not require the consent of the United States for the amendments set forth in Act 173 to be effective.

Sincerely,



Craig Y. Iha
Deputy Attorney General

APPROVED:



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