

BENJAMINI CAYETANO
GOVERNOR
STATE OF HAWAII



RAYNARD C. SOON
CHAIRMAN
HAWAIIAN HOMES COMMISSION

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DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
P.O. BOX 1879
HONOLULU, HAWAII 96805

September 18, 2002

The Honorable Patricia Lynn Scarlett
Assistant Secretary for Policy, Management and Budget and
Secretary's Designated Officer Under the Hawaiian Homes
Commission Act, 1920, As Amended
1849 C Street, N.W.
Washington, D. C. 20240

Dear Assistant Secretary Scarlett:

Subject: Amendments to the Hawaiian Homes Commission Act, 1920,
As Amended (HHCA)

It was a pleasure meeting with you during my visit to Washington, D. C. in June. I appreciated the time you set aside to discuss the Hawaiian home lands program, the Akaka Bill, and other matters of concern to the Hawaiian people.

As you may recall, one of the topics we discussed concerned several amendments to the HHCA currently pending action by the U. S. Department of Interior (USDOI). Section 4 of the Hawaii Admission Act provides that the HHCA shall be adopted as a provision of the Constitution of the State of Hawaii. It further provides that with certain exceptions, the HHCA thereafter shall be amended by the State "only with the consent of the United States" (73 Stat. 5). Section 204 of the Hawaiian Home Lands Recovery Act (P. L. 104-42) outlines the procedure to be followed by the State of Hawaii and the USDOI for the approval of these amendments.

In accordance with this procedure, we are transmitting two amendments to the HHCA passed by the 2002 Hawaii State Legislature. It is the opinion of the Hawaii State Attorney General that these amendments do not require the consent of Congress, as they fall within one of the enumerated exceptions provided for under section 4 of the Hawaii Admission Act.

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Copies of these amendments and other supporting information are enclosed for your review.

With the transmittal of these two amendments, there are a total of thirteen (13) amendments currently pending review and action by USDOJ. As noted in our previous correspondence dated October 1, 2001, we believe only two of the amendments require the consent of Congress. In accordance with P. L. 104-42, these two amendments have been transmitted to Hawaii's congressional delegation for action.

We would appreciate your review and appropriate action on all amendments currently pending at USDOJ.

Aloha,



Raynard C. Soon, Chairman
Hawaiian Homes Commission

Enc.



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STATE OF HAWAII
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July 17, 2002

The Honorable Raynard C. Soon
Chairman, Hawaiian Homes Commission
Department of Hawaiian Home Lands
State of Hawaii
1099 Alakea Street, Suite 2000
Honolulu, Hawaii 96813

Dear Chairman Soon:

Re: Congressional Consent to 2002 Amendments to the Hawaiian Homes
Commission Act, 1920, as Amended, Request to Review Acts 12 and 117.

We are responding to your request for our review and opinion as to whether the amendments made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Acts 12 and 117, 2002 Haw. Sess. Laws ___ and ___, respectively, require the consent of the United States.

Section 4 of the Hawaii Admission Act¹ requires the consent of the United States for any

¹ Section 4, the Admission Act, (Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4), reads as follows:

As a compact with the United States relating to the management and disposition of the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund

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amendment to the HHCA, unless the amendment falls within one of several enumerated exceptions. One exception to the consent requirement permits amendments to the HHCA which increase benefits to lessees of Hawaiian home lands. See proviso (2) of Section 4. Such amendments do not require the consent of the United States and take effect upon approval of the governor, unless otherwise stated in the amending legislation. On the other hand, proviso (2) of Section 4 that refers to changes in qualifications of lessees, expressly requires the consent of the United States. The provision provides "the qualifications of lessees shall not be changed except with the consent of the United States."

Act 12 amends section 208 of the HHCA to permit a quarter Hawaiian successor to transfer his or her interest in the lease to his or her sibling who may also be a quarter Hawaiian. Under existing law a parent may transfer the interest in the lease to any child who has a blood quantum of 25% or more, and congressional approval was given. Act 12 simply allows the transfer to occur between siblings rather than directly from the parent. Because the siblings were already beneficiaries, and the law merely changes the method by which the interest is transferred, this amendment does not change the qualifications of a lessee and appears to be administrative in nature. Therefore the consent of the United States does not appear required for Act 12.

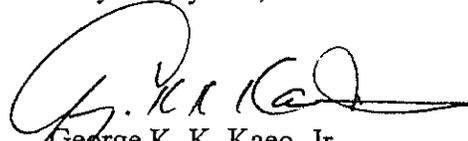
Act 117 amends section 213(i) of the HHCA relating to the use of monies in the Native Hawaiian Rehabilitation Fund by clarifying the department of Hawaiian home lands' ability to utilize moneys in the fund includes its use for native Hawaiian families and Hawaiian homestead communities. This amendment appears to relate to administration, and also arguably provides additional benefits to native Hawaiians.

shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the management and disposition of the Hawaiian home lands, the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined by said Act, shall be used only in carrying out the provisions of said Act.

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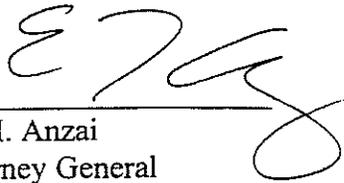
Therefore, Acts 12 and 117, 2002 Haw. Sess. Laws. ___ and ___, respectively, do not require the consent of the United States

Very truly yours,



George K. K. Kao, Jr.
Deputy Attorney General

APPROVED:



Earl I. Anzai
Attorney General

GKKK:gh