



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

August 31, 2001

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)

Section 4 of the Hawaii Admission Act provides that the Hawaiian Homes Commission Act, 1920, as amended, 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 U.S. Department of Interior (USDOI) for the approval of amendments to the HHCA.

We are transmitting for your review and appropriate attention copies of amendments to the HHCA passed by the 2001 Hawaii State Legislature and approved by the Governor. The amendments are accompanied by the following documents:

1. An opinion letter from the State Attorney General regarding whether congressional consent is required pursuant to Section 4 of the Hawaii Admission Act; and
2. Copies of relevant testimony presented before the Hawaii State Legislature during deliberations on the amendments.

The State of Hawaii approved three (3) amendments to the HHCA. Based on the review of these amendments by the State Attorney General, we believe only one of these amendments requires the consent of Congress. The remaining amendments fall within one of the enumerated exceptions under Section 4 of the Hawaii Admission Act. A summary of each amendment follows:

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1. **Act 110, 2001 Hawaii Session Laws _____**. This Act amends section 222 of the HHCA to clarify the Department of Hawaiian Home Lands' (DHHL) rulemaking authority and makes clear the annual report requirement to apply only to subleases of lands covered by general lease and not homestead leases. The Attorney General concludes that Act 110 proposes amendments that are administrative and nonsubstantive in nature, and therefore **do not require the consent of the United States**.

2. **Act 122, 2001 Hawaii Session Laws _____**. This Act amends section 209 of the HHCA by adding a sentence at the end of subsection (a) authorizing DHHL to require a successor to a homestead lease under certain circumstances to secure private financing to repay any advances made from the Hawaiian home loan fund or the Hawaiian home general loan fund. The Attorney General concludes that Act 122 proposes amendments that relate to the administration of the HHCA, and therefore **do not require the consent of the United States**.

3. **Act 302, 2001 Hawaii Session Laws _____**. This Act adds two new sections to the HHCA relating to federal reaffirmation and community governance. The legislation specifically states that **the consent of the United States is required**.

We look forward to your favorable action on these amendments. As a matter of information, a group of earlier amendments to the HHCA was transmitted to your predecessor, Mr. John Berry, in October 2000. These prior amendments are also awaiting action by USDOJ and the Congress.

Please do not hesitate to contact me or my Executive Assistant, Ben Henderson, at (808) 586-3801 should you have any questions or need additional clarification regarding the amendments and materials we have provided.

Aloha,



Raynard C. Soon, Chairman
Hawaiian Homes Commission

Enc.



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
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August 8, 2001

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DEPT. OF HAWAIIAN
HOME LANDS

The Honorable Raynard Soon
Chairman, Hawaiian Homes Commission
State of Hawaii
P.O. Box 1879
Honolulu, Hawaii 96805

Dear Mr. Soon:

RE: Request to Review Acts 110, 122, and 302, 2001 Legislative Session
OAG Ref. 2001:0713-2-S AG No. 01-01270

This responds to your letter of July 11, 2001, requesting our review and opinion as to whether the amendments made to the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"), by Acts 110, 122, and 302, 2001 Haw. Sess. Laws _____, _____ and _____, respectively, require the consent of the United States. We are of the opinion that only Act 302 requires such consent.

Section 4 of the Hawaii Admission Act ("Section 4")¹ requires the consent of the United

¹ Section 4, the Admission Act (Act of March 18, 1959, Pub. L. No. 86-3, 73 Stat. 4), reads as follows:

As a compact with the United States relating to the management and disposition of the Hawaiian home lands, 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 shall not be reduced or impaired by such amendment, whether made in the constitution or in the manner required for State legislation, and 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

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States for any amendment to the HHCA, unless the amendment falls within one of several enumerated exceptions. One exception to the consent requirement concerns amendments to the HHCA which increase benefits to lessees of Hawaiian home lands. Another exception concerns provisions relating to administration. 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.

Act 110, 2001 Haw. Sess. Laws _____, amends section 222 of the HHCA by making housecleaning changes, nonsubstantive in nature. The amendment makes stylistic changes, a spelling correction, and changes the due date and period covered in the Department of Hawaiian Home Lands' ("Department") section 222 annual report to the legislature. It clarifies (1) the Department's rulemaking authority and (2) the annual report requirement to apply only to subleases of lands covered by general leases and not homestead leases. Section 4 does not require these nonsubstantive amendments to the HHCA be subject to the lengthy process of obtaining congressional consent. More importantly, these amendments relate to the administration exception.

Act 122, 2001 Haw. Sess. Laws _____, amends section 209 of the HHCA, by adding a sentence at the end of subsection (a), authorizing the Department to require a successor to a homestead lease under certain circumstances to secure private financing to repay any advances made from the Hawaiian Home Loan Fund or the Hawaiian Home General Loan Fund. The successor was already responsible for the advances under the prior law. Act 122 merely authorized the Commission to require private financing to satisfy the successor's obligation. Act 122 relates to administration of the HHCA and expands on the authority of the Department in managing its loan funds.

For the foregoing reasons, we are of the opinion that Acts 110 and 122, 2001 Haw. Sess. Laws _____ and _____, respectively, fall within the enumerated exceptions to Section 4 of the Hawaii Admission Act and do not require the consent of the United States. The amendments to the HHCA contained in these Acts are properly made in the manner required for State legislation.

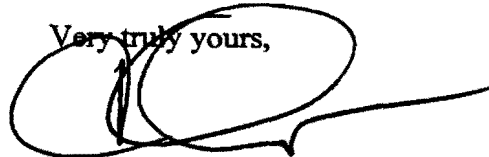
Act 302, 2001 Haw. Sess. Laws _____, adds two new sections to the HHCA, related to federal reaffirmation and community governance. This amending legislation specifically states that

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 in said Act, shall be used only in carrying out the provisions of said Act.

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it is to "take effect upon its approval and with the consent of Congress." By its own terms, Act 302 requires congressional consent .

Very truly yours,

A handwritten signature in black ink, appearing to be "Clayton Lee Crowell", written over the typed name below.

Clayton Lee Crowell
Deputy Attorney General

APPROVED:

A handwritten signature in black ink, appearing to be "Earl I. Anzai", written over the typed name below.

Earl I. Anzai
Attorney General