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GOVERNOR OF HAWAII



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October 17, 2000

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 2000 Amendments to the Hawaiian Homes  
Commission Act, 1920, as Amended, Request to Review Acts 077, 107, and 119.

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 077, 107, and 119, 2000 Haw. Sess. Laws 154, 219, and 236, respectively, require the consent of the United States.

Section 4 of the Hawaii Admission Act<sup>1</sup> requires the consent of the United States for any

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<sup>1</sup> 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 shall not be reduced or impaired by any such amendment, whether

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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 relate to administration. See proviso (1) 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.

Act 077 does not amend the HHCA, and therefore does not require the consent of the United States.

Act 107 amends section 215 of the HHCA and by its own terms is effective "upon its approval by the governor of the State of Hawaii with the consent of the United States." By its own terms, therefore, Act 107 requires the consent of the United States in order to be effective.

Act 119 amends section 204(a)(2) of the HHCA to make clear that the department, in the management of lands not being used for homesteading, may dispose of not only the lands but also the improvements on the lands under the chapter 171, Hawaii Revised Statutes provisions relating to the disposition of public lands. The amendment appears to fall within a permitted exception to the consent requirement, that is, "provisions relating to administration". Section 4, proviso (1), Admission Act.

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<sup>1</sup>(...continued)

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.

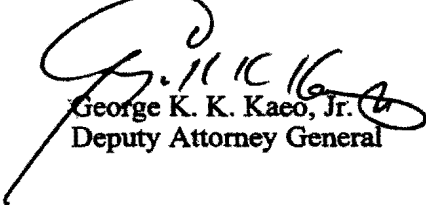
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Therefore, Acts 77 and 119, 2000 Haw. Sess. Laws 154 and 236, respectively, do not require the consent of the United States. However, Act 107, 2000 Haw. Sess. Laws 219, does require the consent of the United States.

Very truly yours,



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

APPROVED:



Earl I. Anzai  
Attorney General

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