



United States Department of the Interior

OFFICE OF THE SOLICITOR

FEB 27 2003

Bruce Albright, Esq.
Assistant General Counsel
Department of Housing and Urban Development
451 7th Street, S.W.
Room 9240
Washington, D.C. 20410

Subject: Hawaiian Homes Legislation

Dear Mr. Albright:

The Department of Housing and Urban Development (HUD) has requested our views on whether Congressional consent is required to an enactment of the State of Hawaii known as Act 17, Session Laws of Hawaii, 1999. We believe that Congressional consent to Act 17 is not required.

Background

Congress enacted the Hawaiian Homes Commission Act of 1920 (HHCA), 42 Stat. 108, as amended, to provide a homesteading program on approximately 200,000 acres of land, called the "available lands" for native Hawaiians. The HHCA defined "native Hawaiian" as "any descendant of not less than one-half part blood of the races inhabiting the Hawaiian Islands previous to 1778." 42 Stat. 108. The Hawaiian Homes program was to be administered by the then-Territory of Hawaii.

In 1959, Hawaii became a State in accordance with the Hawaii Statehood Act of 1959 (also known as the Hawaii Admission Act). P.L. 86-3, 73 Stat. 4. Section 4 of the Hawaii Statehood Act transferred administration of the HHCA from the Territory to the State of Hawaii, and required the State to adopt the HHCA as a provision of State law. 73 Stat. 5. Accordingly, the HHCA is currently administered by the Department of Hawaiian Home Lands (DHHL), an agency of the State of Hawaii.

In Section 4 of the Hawaii Statehood Act, Congress also required the consent of the United States to certain State enactments amending the (HHCA).¹ Congress has, to date, enacted three

¹Section 4 of the Hawaii Statehood Act reads:

"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

FILED COPY
Surname:
12/11/02
2/27/03
05

statutes consenting to various State enactments amending the HHCA: P.L. 97-557 of October 27, 1986, 100 Stat. 3143; P.L. 100-398 of October 6, 1992, 106 Stat. 1953; and P.L. 105-21 of June 27, 1997, 111 Stat. 235.

By Section 204 of the Hawaiian Homelands Recovery Act, P.L. 104-42 of November 2, 1995, 109 Stat. 361, Congress provided that the Department of the Interior was to determine whether state legislation amending the HHCA required Congressional consent. If the State legislation requires consent within the terms set forth in the Hawaii Statehood Act, the Department is to forward the State legislation to Congress with a recommendation on whether it should be enacted.

Discussion

Act 17, Sessions Laws of Hawaii, 1999, amended section 208 of the HHCA. It allows the lessee to make an *inter vivos* transfer of his or her homestead lease "to the following qualified relatives of the lessee who are at least one-quarter Hawaiian: husband, wife, child, or grandchild." The question is whether Act 17 changes the "qualifications of lessees" by allowing individuals of less than one-half native Hawaiian blood to acquire leaseholds. If Act 17 does so change the qualifications of lessees, Congressional consent is required. If it does not, then Congressional consent is not required.

In a letter dated September 10, 1999 to the Chairman of the DHHL (attached), the Attorney General of the State of Hawaii concluded that Congressional consent was not required for Act 17. The Attorney General reasoned that Act 17 did not change the qualifications of lessees because Congress consented in P.L. 99-257 to an earlier State enactment that allowed a spouse or children who were at least one-quarter native Hawaiian to succeed to a leasehold interest

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, section 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 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 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." (emphasis added)

upon the death of the leaseholder. Then, in P.L. 105-21, Congress consented to another State enactment that allowed grandchildren of at least one-quarter native Hawaiian descent to succeed to the leasehold interest. As a result of these two earlier enactments to which Congress had consented, the Attorney General of Hawaii concluded that Congressional consent to Act 17 was not required. Act 17 did not change the qualifications of lessees but simply allowed the *inter vivos* transfer of leases to the same class of beneficiaries that were already entitled to take leasehold interests upon the death of a leaseholder.

Because the State of Hawaii is responsible for the administration of the HHCA, the opinion of the State Attorney General is entitled to a high degree of deference. We have, however, independently reviewed the State statute and the consent requirement. We conclude that the State Attorney General correctly analyzed Act 17 and the consent requirement and that Congressional consent is not required for Act 17.

Conclusion

We believe that Congressional consent is not required for the validity of Act 17 of the 1999 Session Laws of Hawaii. Please contact Robin Friedman of my office at (202) 208-5216 if you have any questions about this matter.

Sincerely,

JSI

Hugo Teufel III
Associate Solicitor
Division of General Law

Enclosure

cc: Micah Kane
Chairman-designate, DHHL