

August 9, 1996

Mr. Donald K. W. Lau, Chairman
Board of Directors
Housing Finance and Development
Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Dear Mr. Lau:

Re: Applicability of Section 201E-210, Hawaii Revised Statutes, to Water System Development Fees

In a letter dated November 27, 1995, Mr. David Craddick of the County of Maui Board of Water Supply questioned the use of section 201E-210, Haw. Rev. Stat., to exempt housing projects from the payment of water system development fees. According to Mr. Craddick, there are "differing legal opinions" among the counties regarding the application of section 201E-210. Subsequently, we received a request from your planning branch for our advice.

Section 201E-210, Haw. Rev. Stat., permits either the Housing Finance and Development Corporation (HFDC) or the counties (through section 46-15.1, Haw. Rev. Stat.) to obtain exemptions from various specified governmental requirements related to the development of housing on an expedited basis. The section 201E-210 exemption reads:

(a) The corporation may develop, on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon;

Certain conditions under section 201E-210 also must be met:

- (1) The project must meet minimum health and safety requirements and be consistent with the purposes of chapter 201E, Haw. Rev. Stat.;
- (2) No safety standards or tariffs for public utilities may be violated;
- (3) The project must be approved or deemed approved by the county council; and
- (4) Any boundary change must be submitted to the land use commission and either be approved or deemed approved. ([top](#))

Assuming the conditions are met, the project could be exempt from the rules of any governmental agency. A semi-autonomous board of water supply would be encompassed within the term "any governmental agency." The issue to resolve then is whether water system development fees adopted under the rules of a board of water supply are rules relating to "planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units" to which the section 201E-210 exemption applies.

Exemptions to state laws are not lightly inferred. As the Hawaii Supreme Court stated, "It is a well settled rule of statutory construction that exceptions to legislative enactments must be strictly construed" and the one "who claims the benefits of such an exception has the burden of bringing himself clearly within it." *State v. Russell*, 62 Haw. 474, 480, 617 P.2d 84, 88 (1980). Such "exceptions, generally, should be strictly, but reasonably, construed; that they extend only so far as their language warrants; and all doubts should be resolved in favor of the general provision, rather than the exception." *State v. Christensen*, 137 P.2d 512, 518 (Wash. 1943). ([top](#))

Additionally, in construing a statute, we must give effect to the legislative intent. See *In re Tax Appeal of Hawaiian Telephone Co.*, 61 Haw. 572, 577, 608 P.2d 383, 387 (1980); *Keller v. Thompson*, 56 Haw. 183, 189, 532 P.2d 664 (1975); 2A Norman J. Singer, *Sutherland Statutory Construction* 45.05 (5th ed. rev. 1992). Weight must also be given to the interpretation of the statute by the agency charged with administering the statute. See, e.g., *Noverola-Bolaina v. Immigration & Naturalization Service*, 395 F.2d 131, 136 (9th Cir. 1968); *Chun v. Employees' Retirement System*, 61 Haw. 596, 602, 607 P.2d 415, 419 (1980); 2B Norman J. Singer, *Sutherland Statutory Construction* 49.05 (5th ed. rev. 1992). ([top](#))

On its face, section 201E-210 does not exempt HFDC housing developments from rules of the county boards of water supply. The language of section 201E-210 exempting such housing developments from statutes and rules "relating to planning, zoning, construction standards for subdivisions, development and improvement of land" does not mention or include water facility fees. The words of section 201E-210 must be given their usual meaning. Section 1-4, Haw. Rev. Stat., states that the "words of a law are generally to be understood in their most known and usual signification, . . . their general or popular use or meaning." ([top](#))

While the phrase "planning, zoning and construction standards" is not defined in the statute, some guidance to its meaning may be found in legislative history. The exemptions in section 201E-210 are based on those previously found in sections 359A-4 and 359G-4.1 which arose in Act 105, 1970 Haw. Sess. Laws 190 and Act 225, 1976 Haw. Sess. Laws 556, respectively. Act 105 created the housing development program within the Hawaii Housing Authority. Act 105's preamble cited "a critical shortage of housing units for lower and middle income residents" in the State of Hawaii. Act 105 gave the Hawaii Housing Authority the power to adopt rules that "shall have the force and effect of law and shall supersede . . . all other inconsistent laws, ordinances, and rules and regulations relating to the use, zoning, planning, and development of land." 1970 Haw. Sess. Laws at 193. Act 225 authorized the development of housing projects "which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, development and improvement of land and the construction and sale of homes . . .". 1976 Haw. Sess. Laws at 563-64. ([top](#))

Water development fees are clearly not encompassed in zoning and construction standards. The term "planning" was added to the exemptions stated in section 359G-4.1(a) by Act 279, 1984 Haw. Sess. Laws 651. In reporting on the bill that was subsequently enacted as Act 279, the Committee on Conference said:

The purpose of this bill is to amend Section 359G-4.1, Hawaii Revised Statutes, to permit the Hawaii Housing Authority ("HHA"), on behalf of the State or in partnership, to develop housing projects which are exempt from development and general plans adopted by the various counties. ([top](#))

S. Conf. Comm. Rep. No. 47-84, Hawaii S.J. 926 (reg. sess. 1984); H. Conf. Comm. Rep. No. 43-84, Hawaii H.J. 739 (reg. sess. 1984). Thus the word "planning" refers to the development and general plans of the counties, and not to the rules of water boards. The purpose of this exemption is "to provide an expedited process for government-assisted housing projects." *Id.* Those exemptions expressly relate to the production, development, construction and zoning of housing. ([top](#))

By limiting the exemptions to only certain types of statutes, and not to others, the Legislature intended HFDC housing projects to be subject to and comply with other laws. It is a rule of statutory construction that the express mention of one thing in a statute implies the exclusion of what is not mentioned. See *Carter v. Gear*, 16 Haw. 242 (1904), *aff'd*, 197 U.S. 348 (1905); *Welsh v. Campbell*, 42 Haw. 490, 494 (1958).

Based on the above discussion, we conclude that section 201E-210 does not exempt housing developments of the Housing Finance and Development Corporation from compliance with the

rules of the various county water boards. We believe that legislative amendment of section 201E-210 would be required to provide such an exemption. ([top](#))

Very truly yours,

Celia L. Jacoby
Deputy Attorney General

APPROVED:

Margery S. Bronster
Attorney General

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