

TWENTY-EIGHTH DAY

Monday, March 5, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Regular Session of 1984, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by Mr. Richard Wood of the First Church of Christ Scientist, after which the Roll was called showing all Senators present.

The Chair announced that he had read and approved the Journal of the Twenty-Seventh Day.

Senator Kuroda made the following introduction to the members of the Senate:

"Mr. President, it gives me great pleasure this morning to introduce to this honorable body a visitor from the almost-next-door jurisdiction of Guam, U.S.A.

"We have with us Mr. Steven Ungpingco, legal counsel to the Honorable Ricardo Bordallo, Governor of Guam. Mr. Ungpingco is in Honolulu on his way back to Guam after attending a United Nations meeting in Samoa.

"Mr. President, accompanying Steve are two individuals who shared a residence with Mr. Ungpingco when they were all struggling law students at the University of San Francisco, our own Majority researcher, Oren Iwanaga, and our former Ways and Means chief clerk, now Director of Governmental Affairs, the Chamber of Commerce of Hawaii, Al Konishi."

At this time, the Chair introduced Councilman George Akahane and Mr. Albert Jeremiah, Jr., his senior advisor, who were sitting in the gallery.

MESSAGE FROM THE GOVERNOR

A message from the Governor (Gov. Msg. No. 214), informing the Senate of the withdrawal of the nomination of Bruce Fujimoto to the Advisory Council for Children and Youth, term to expire December 31, 1987, under Gov. Msg. No. 169, was read by the Clerk and placed on file.

In compliance with Gov. Msg. No. 214, the nomination listed under Gov. Msg. No. 169 was returned.

DEPARTMENTAL COMMUNICATION

A communication from the Hawaii Public Employment Relations Board (Dept. Com. No. 24) transmitting copies of HPERB Informational Bulletin No. 21, showing the number of public employees in each of the 13 collective bargaining units established by Section 89-6(a), HRS, was read by the Clerk and was referred to the Committee on Human Resources.

HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 40 to 46) were read by the Clerk and were disposed of as follows:

A communication from the House (Hse. Com. No. 40), transmitting House Bill No. 797, which passed Third Reading in the House of Representatives on March 2, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 797, entitled: "A BILL FOR AN ACT RELATING TO THE FAMILY COURT," passed First Reading by title and was referred to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 41), transmitting House Bill No. 1752-84, which passed Third Reading in the House of Representatives on March 2, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1752-84, entitled: "A BILL FOR AN ACT RELATING TO THE HAWAII OCCUPATIONAL SAFETY AND HEALTH LAW," passed First Reading by title and was referred to the Committee on Human Resources, then to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 42), transmitting House Bill No. 1815-84, which passed Third Reading in the House of Representatives on March 2, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1815-84, entitled: "A BILL FOR AN ACT RELATING TO DENTISTRY," passed First Reading by title and was referred to the

Committee on Consumer Protection and Commerce.

A communication from the House (Hse. Com. No. 43), transmitting House Bill No. 1819-84, which passed Third Reading in the House of Representatives on March 2, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1819-84, entitled: "A BILL FOR AN ACT RELATING TO MEDICINE," passed First Reading by title and was referred to the Committee on Consumer Protection and Commerce.

A communication from the House (Hse. Com. No. 44), transmitting House Bill No. 1846-84, which passed Third Reading in the House of Representatives on March 2, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1846-84, entitled: "A BILL FOR AN ACT RELATING TO COMMUNITY PROPERTY," passed First Reading by title and was referred to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 45), transmitting House Bill No. 2053-84, which passed Third Reading in the House of Representatives on March 2, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 2053-84, entitled: "A BILL FOR AN ACT RELATING TO THE REAL ESTATE RECOVERY FUND," passed First Reading by title and was referred to the Committee on Consumer Protection and Commerce.

A communication from the House (Hse. Com. No. 46), transmitting House Bill No. 2093-84, which passed Third Reading in the House of Representatives on March 2, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 2093-84, entitled: "A BILL FOR AN ACT RELATING TO ABANDONED VEHICLES," passed First Reading by title and was referred to the Committee on Government Operations and County Relations.

SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions

(S.C.R. Nos. 36 to 40) were read by the Clerk and were disposed of as follows:

A concurrent resolution (S.C.R. No. 36), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES NAVY TO MAKE AVAILABLE A SMALL PART OF THE INNER HARBOR AND LAND OF MIDWAY ISLAND TO THE STATE OF HAWAII FOR USE AS A CIVILIAN FISHING BASE," was offered by Senators Carpenter, Toguchi, Yamasaki, Hagino, Young, Henderson, Solomon, Holt, Cayetano, Kuroda, Fernandes Salling, Kawasaki, Aki, Ajifu and A. Kobayashi.

By unanimous consent, S.C.R. No. 36 was referred to the Committee on Economic Development.

A concurrent resolution (S.C.R. No. 37), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING AN ANALYSIS OF CURRENT FISHERY POLICIES AND LONG-TERM IMPACT OF FISHING," was offered by Senators Carpenter, Toguchi, Yamasaki, Hagino, Young, Henderson, Solomon, Cayetano, Kuroda, Holt, Fernandes Salling, Kawasaki, Aki, Ajifu and A. Kobayashi.

By unanimous consent, S.C.R. No. 37 was referred to the Committee on Economic Development.

A concurrent resolution (S.C.R. No. 38), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE HAWAII MEDICAL ASSOCIATION AND THE CANCER COMMISSION TO DEVELOP GUIDELINES REGARDING TREATMENT OF TERMINALLY ILL PATIENTS," was offered by Senators Carpenter, Toguchi, Yamasaki, Hagino, Young, Henderson, Solomon, Cayetano, Kuroda, Holt, Fernandes Salling, Aki, Ajifu and A. Kobayashi.

By unanimous consent, S.C.R. No. 38 was referred to the Committee on Health.

A concurrent resolution (S.C.R. No. 39), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING A STATUS REPORT ON THE BIG ISLAND OCEAN RECREATION AND TOURISM PROJECT," was offered by Senators Carpenter, Fernandes Salling, Holt, Kawasaki, Aki, Ajifu, A. Kobayashi, Yamasaki, Toguchi, Kuroda and Cayetano.

By unanimous consent, S.C.R. No. 39 was referred to the Committee on Tourism.

A concurrent resolution (S.C.R. No. 40), entitled: "SENATE CONCURRENT RESOLUTION CONCERNING COMMERCIAL FISHING ACTIVITIES IN HAWAII," was offered by Senators Carpenter, Holt, Fernandes Salling, Kawasaki, Aki, Ajifu, Yamasaki, Kuroda, Cayetano and Toguchi.

By unanimous consent, S.C.R. No. 40 was referred to the Committee on Economic Development.

SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 42 to 47) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 42), entitled: "SENATE RESOLUTION REQUESTING THE UNITED STATES NAVY TO MAKE AVAILABLE A SMALL PART OF THE INNER HARBOR AND LAND OF MIDWAY ISLAND TO THE STATE OF HAWAII FOR USE AS A CIVILIAN FISHING BASE," was offered by Senators Carpenter, Toguchi, Yamasaki, Hagino, Young, Henderson, Solomon, Holt, Cayetano, Kuroda, Fernandes Salling, Kawasaki, Aki, Ajifu and A. Kobayashi.

By unanimous consent, S.R. No. 42 was referred to the Committee on Economic Development.

A resolution (S.R. No. 43), entitled: "SENATE RESOLUTION REQUESTING AN ANALYSIS OF CURRENT FISHERY POLICIES AND LONG-TERM IMPACT OF FISHING," was offered by Senators Carpenter, Toguchi, Yamasaki, Hagino, Young, Henderson, Solomon, Cayetano, Kuroda, Holt, Fernandes Salling, Kawasaki, Aki, Ajifu and A. Kobayashi.

By unanimous consent, S.R. No. 43 was referred to the Committee on Economic Development.

A resolution (S.R. No. 44), entitled: "SENATE RESOLUTION REQUESTING THE HAWAII MEDICAL ASSOCIATION AND THE CANCER COMMISSION TO DEVELOP GUIDELINES REGARDING TREATMENT OF TERMINALLY ILL PATIENTS," was offered by Senators Carpenter, Toguchi, Yamasaki, Hagino, Young, Henderson, Solomon, Cayetano, Kuroda, Holt, Fernandes Salling, Aki, Ajifu and A. Kobayashi.

By unanimous consent, S.R. No. 44 was referred to the Committee on Health.

A resolution (S.R. No. 45), entitled: "SENATE RESOLUTION REQUESTING A STATUS REPORT ON THE BIG ISLAND OCEAN RECREATION AND TOURISM PROJECT," was offered by Senators Carpenter, Fernandes Salling, Holt, Kawasaki, Aki, Ajifu, A. Kobayashi, Yamasaki, Toguchi, Kuroda and Cayetano.

By unanimous consent, S.R. No. 45 was referred to the Committee on Tourism.

A resolution (S.R. No. 46), entitled: "SENATE RESOLUTION CONCERNING COMMERCIAL FISHING ACTIVITIES IN HAWAII," was offered by Senators Carpenter, Fernandes Salling, Holt, Toguchi, Aki, Yamasaki, Ajifu, Kuroda and Cayetano.

By unanimous consent, S.R. No. 46 was referred to the Committee on Economic Development.

A resolution (S.R. No. 47), entitled: "SENATE RESOLUTION URGING THE RELOCATION OF THE UNIVERSITY OF HAWAII'S INSTITUTE OF ASTRONOMY FROM THE MANOA CAMPUS TO THE HILO CAMPUS," was offered by Senators Carpenter, Toguchi, Hagino, Young, Henderson, Solomon, Cayetano, Kuroda, Holt, Fernandes Salling, Kawasaki, Aki and A. Kobayashi.

By unanimous consent, S.R. No. 47 was referred to the Committee on Higher Education.

STANDING COMMITTEE REPORT

Senator B. Kobayashi, for the Committee on Transportation, presented a report (Stand. Com. Rep. No. 147-84) recommending that Senate Bill No. 2049-84, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the Committee was adopted and S.B. No. 2049-84, entitled: "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE SAFETY RESPONSIBILITY ACT," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, March 7, 1984.

ORDER OF THE DAY

THIRD READING

Senate Bill No. 1532-84, S.D.1:

By unanimous consent, action on S.B. No. 1532-84, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HAWAII COMMUNITY DEVELOPMENT AUTHORITY," was deferred until Tuesday, March 6, 1984.

Senate Bill No. 1572-84:

By unanimous consent, action on S.B. No. 1572-84, entitled: "A BILL FOR AN ACT RELATING TO RESIDENTIAL LEASEHOLDS," was deferred until Tuesday, March 6, 1984.

Senate Bill No. 2087-84, S.D.1:

By unanimous consent, action on S.B. No. 2087-84, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTEREST," was deferred until Tuesday, March 6, 1984.

Senate Bill No. 1553-84, S.D.1:

On motion by Senator Cobb, seconded by Senator Carpenter and carried, S.B. No. 1553-84, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO HORIZONTAL PROPERTY REGIMES," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 22. Noes, none. Excused, 3 (Abercrombie, Kawasaki and Uwaine).

ADVISE AND CONSENT

Standing Committee Report No. 131-84 (Gov. Msg. No. 116):

Senator Chang moved that Stand. Com. Rep. No. 131-84 be received and placed on file, seconded by Senator Cayetano and carried.

Senator Chang then moved that the Senate consent to the nomination of Edwin H. Honda as Judge to the Circuit Court of the First Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Cayetano.

At this time, Senator Chang rose to speak in support of Judge Honda as follows:

"Mr. President, your Committee on Judiciary respectfully recommends that the Senate confirm the appointment of Judge Edwin H. Honda to the Circuit Court of the First Circuit.

"Judge Honda has been a member of the Hawaii Bar since 1951. He spent

the first 15 years of his legal career in private practice where he gained trial experience in civil cases. From 1968 to 1974, Judge Honda served in an administrative capacity as the Director of the Regulatory Agencies. In 1975, Edwin Honda was appointed District Court Judge.

"During the past five years, he has spent over half of his time on temporary assignment to the Circuit Court. The abundant testimonies the committee received affirm Judge Honda's integrity, conscientiousness, and professional competence throughout his lengthy career.

"We believe that Judge Honda's legal and judicial experiences have provided him with the requisite judicial temperament to serve most effectively as a Circuit Court Judge. Thank you."

At 11:45 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:49 o'clock a.m.

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 23. Noes, none. Excused, 2 (Abercrombie and Uwaine).

RE-REFERRAL OF SENATE BILL

The President made the following re-referral of a Senate Bill that was introduced on February 14, 1984:

Senate Bill Referred to:

No. 2060-84 Committee on
Tourism

At this time, Senator Carpenter rose on a point of personal privilege as follows:

"Mr. President, I just want to enter into the record of the Senate Journal that the Governor, as I understand it, is either on his way or already on the Big Island today to discuss with the community the untimely firing or forced resignation, if you will, of Mr. John Hankins who was the administrator of the Hilo Hospital. I want to put on the record that I commend the Governor for fulfilling his commitment to speak with the community, relating to their concerns, and I also want to note that as of yesterday there were some 20,000 individuals, primarily in the

community of Hilo, who have galvanized, basically, in support of a petition to reinstate Mr. Hankins.

"I think that one of the things that should be pointed out is that we have a resolution before this body, speaking to that concern, and there will be, perhaps, several others.

"One of the things that I think is very important is that, while we understand it is certainly the Governor's prerogative through his department heads to make changes in the cabinet as he may deem necessary, that in this particular case, this gentleman has distinguished himself in the very short space of eight months to essentially galvanize the community within the Hilo Hospital, to take forces that were divisive at that point in time where it appeared politically impalatable for the Governor to continue his previous administration and, basically, turned it around to a viable entity wherein all of the individuals concerned with the operation of Hilo Hospital have now almost united together in support of Mr. Hankins and his mission, which is to provide the people of the County of Hawaii, and particularly the area of Hilo, the best possible hospital services under the state aegis.

"Mr. President, I recognize that in the past year or two we have had several investigations in the Senate, one related to the heptachlor in milk crisis, one related to the investigation of prison activities in 1981, wherein no one within the state administration was fired in circumstances, I believe, to be greatly more important than the so-called philosophical differences expressed by Mr. Charles Clark in the firing of Mr. Hankins.

"I just wanted to state that for the record, Mr. President. I hope this body will give due consideration to the resolutions that are and will be before this body related to this particular episode and as it may relate also to the expenditures of the new Hilo Hospital which is about six months away from complete readiness to be used in the state system. Thank you very much."

Senator Cayetano also rose on a point of personal privilege as follows

"Mr. President, before going to my point, as a follow-up to Senator Carpenter's remarks, I understand that since this gentleman has amassed 20,000 signatures, the Democratic party is thinking about running him

for the Senate in District 2 -- as a Republican.

"Mr. President, the point I wish to speak about is contained in an article published in the Honolulu Star Bulletin on Saturday, March 3, 1984, and the headline reads: 'Ariyoshi: State Will Wring Resources to Finance Pact.'

"By way of introduction to my remarks and some questions that I'd like to pose later, let me quote from the beginning of the article: 'Governor George Ariyoshi last night met privately with Democratic members of the State House of Representatives to brief them on the new two-year contract covering Hawaii's more than 40,000 state and county workers.

"Earlier in the day Ariyoshi told reporters that the state can cover its share of the new contract -- which will cost the state an estimated \$34 million -- "by squeezing and wringing" the resources it now has.'

"Mr. President, I've been a bit concerned about the Senate's position with respect to our finances. As a member of the Human Resources Committee, I was told by the chairman when we passed the budget recommendations over to Ways and Means that the instructions from Ways and Means were that we should pass over our recommendations without any feeling but indicate our priorities, and I think the chairman of the Human Resources Committee made the right decision in terms of not listing our priorities because, if you don't have a feeling, there is really no sense in listing your priorities as setting priorities include, I think, consideration and adjustment of monetary considerations. I have several questions, therefore, which I would like to pose to the chairman of the Ways and Means Committee, if he would yield."

The Chair inquired: "Mr. Chairman, would you yield to a question?"

Senator Yamasaki replied: "Mr. President, if it's a question pertaining to the budget, I do not think that I will yield at this time."

Senator Cayetano inquired: "Mr. President, it is a question pertaining to the budget. It is a question...let me state the question. After the Senator hears the question, then he can decide whether he wants to answer it or not. First of all, has the Senate completed its financial plan? And if so, will members of

the Senate who are not members of the Ways and Means Committee be given a briefing on the plan? Does he care to answer that question?"

Senator Yamasaki responded: "The financial plan that we have right now is a tentative one. You know that the Council on Revenues will meet again and I expect to have some statement from them. Also, we are looking at the tax collections for the month of February and March, and then we will have a better, complete picture of our resources."

Senator Cayetano further inquired: "But, do we have a financial plan based on the latest Council on Revenues' projections?"

Senator Yamasaki then replied: "Yes, Mr. President, we have a tentative plan and we have explained that to the members of the Ways and Means Committee."

Senator Cayetano further inquired: "Will the Ways and Means staff be available to brief non-Ways and Means members on that financial plan?"

Senator Yamasaki responded: "Not at this point, Mr. President."

Senator Cayetano then stated: "Then a question to you, Mr. President, if you will yield. The question is this. Apparently, the Governor and the members of the House, at least the Democratic members of the House, thought that the latest collective bargaining package that was agreed to by the state and the public workers' unions was important enough or had an impact, significant enough, on the budget to require a meeting."

"Has the Senate leadership been considering such a meeting with the Governor so that we can be apprised of how this collective bargaining package will impact, if any, on the state's finances?"

The Chair replied: "In terms of the Senate leadership, the answer is yes. We are considering meeting with the Governor."

Senator Cayetano inquired: "Is there any timetable in terms of meeting with the Governor?"

The Chair replied in the negative and Senator Cayetano further inquired: "Will this meeting be just confined to the leadership or will Democratic members of the Senate be invited?"

The Chair responded: "That decision hasn't been made, but for the moment it will be confined to the leadership."

Senator Cayetano further inquired: "One last question to the chairman of the Ways and Means Committee. Let me preface my remarks, Mr. President, by stating that the reason I bring this up on the floor is I think all of these points I'm raising should be a matter of record, and that is the only reason I'm bringing it up on the floor."

"I could very well talk to the Ways and Means chairman, personally, on these matters, but I think the questions that I'm raising are significant or at least of some interest to the other members of this Senate. The Governor has stated in the Star Bulletin, that the new contract will be covered, and again I quote the Governor, 'by squeezing and wringing' the resources it now has."

"My question to the Ways and Means chairman is, is the Ways and Means Committee prepared to consider any bills or suggestions to raise additional revenue for the state?"

Senator Yamasaki replied: "Mr. President, as we all know we have a vehicle over at the House which raises some revenues."

Senator Cayetano further inquired: "May I ask the chairman what vehicle is that, ...unless he's referring to the...oh, the same one, okay. (laughter)"

"I believe that vehicle is dead and buried and long gone, Mr. President. Are there any vehicles or bills in the Senate, in the Ways and Means committee, which the committee will consider pushing out to raise additional revenue to fund not only the collective bargaining package, but also to avoid, in the Governor's words, the 'squeezing and wringing' of the state's resources to fund our different programs?"

Senator Yamasaki then replied: "I don't think that we have any plans to consider any other additional revenue measures, except for possibly some fees."

Senator Cayetano continued:

"I close, then, by voicing my concern about this, Mr. President. I believe that there has been some confusion about the impact of the repeal of the exemption on rum as it

affects the case that is now before the United States Supreme Court.

"We had a meeting with the attorney for the state, a Mr. Dexter, and in Mr. Dexter's words, and Senator Henderson can correct me if I misstate his words. Mr. Dexter said, 'If you want to protect your revenues, repeal the exemption.' Repealing the exemption, Mr. President, would make readily available to the state approximately \$2 million or so a month.

"What I think the confusion is about in the case that is before the Supreme Court, is that there are not too many Senators who realize that what is before the court is only the exemption on okolehao and fruit wine. The laws setting both exemptions have expired. The rum exemption is not before the Court and, therefore, will not be decided in June.

"The point I'm trying to make is that we have an opportunity to safeguard our revenues by repealing the rum exemption. At the present time, the liquor distributors who are opposed to paying the tax are paying the taxes collected after the exemption on okolehao and fruit wine expired. They are paying those taxes under protest because of the rum exemption. Basically, they are saying, 'As long as the rum exemption is on the books, we pay under protest; you have to put that money in escrow.' And that is the point, I think, that many do not understand.

"I talked to the House Majority Leader today. They have a bill which they've informed me will be coming over. And, even he did not understand that the rum exemption was not before the Court. I would hope that the Senate leadership would meet on this point. I'll be glad to sit down and give the benefit of my opinion since I sat with Senator Henderson and spoke to the attorney who argued our case before the United States Supreme Court for the benefit of our point of view, if it matters any. But, I'd hope that the Senate leadership takes this point under serious consideration because if the \$89 million or so that is now in escrow, which was collected under the fruit wine and okolehao exemption...if the Supreme Court of the United States determines that those revenues were collected under two exemptions which are unconstitutional, then, there is a great probability that the revenues collected after those exemptions expired will also be

unconstitutional because of the rum exemption.

"The attorney for the state, Mr. President, informed us that a case could be made for the okolehao and fruit wine exemption as being products which were indigenous to Hawaii, but the point he raises is that no such case can be made for rum because rum is made in Bermuda, the Honduras, and all over the world. It is not unique to Hawaii. And, that is the problem.

"I would hate for us to be responsible for losing revenues of \$2 million a month until such time as that exemption can be repealed. If we do not repeal that exemption in this session, and the Court declares the other two exemptions unconstitutional, what will happen is that the Governor will have to call us back into special session or we will have to wait until we get into the next regular session to repeal the law.

"So, I make these remarks because I think this is a very, very serious problem. I think that there is some confusion about the facts involving this problem. I think that the Senate leadership should concern itself very soon about it."

Senator Yamasaki then rose and responded as follows:

"Mr. President, in response to the remarks made by the Senator from the 20th District, the statement made by Mr. Dexter to the four of us, Senator Henderson, myself, Senator Cayetano and Senator Aki...I think that he qualified the statement in regard to the statement made by the Senator from the 20th District on the repeal of the rum provisions. He said that this was his personal opinion; so it could be that other attorneys would have other opinions, likewise. And, certainly I think that we ought to, according to the advice of the Attorney General's office, not repeal the rum provisions because it may prejudice our case before the Supreme Court, and any kind of inclination that the Supreme Court might have in regard to our state's position may affect the outcome of the case.

"And, as you know we have 90-95 million dollars in escrow, and if we were to repeal the rum provisions, it amounts to approximately 24-25 million dollars. However, we must also take into consideration that out of the \$95 million that is in escrow, interest has accumulated and that interest has gone into the general fund, and we

are using that interest money through non-tax revenue resources. And, if we should lose the \$95 million, we also have to pay back the interest that we are now using, so the net effect of this is \$10 million, approximately. So, I would not like to jeopardize the state's position of \$95 million plus approximately \$16 million in interest.

"This is my position as far as the state's position on the liquor tax is concerned, I think that we should take the position that we should protect the interest of the state so that we can have a decision made by the Supreme Court not influenced by any action made in this session."

Senator Henderson then rose in response as follows:

"Mr. President, I'd like to respond to the chairman of Ways and Means' remarks. At that meeting that Senator Cayetano, Senator Aki, Senator Yamasaki and I attended, it was very clear that Mr. Dexter was recommending that we repeal the exemption. There was no question in my mind.

"He said it was his personal opinion, that anything that was discriminatory in our tax laws ought to be repealed because he said that there's a good chance that the Supreme Court is going to hold in favor of the liquor wholesalers. There's no question that after talking to Mr. Dexter that very day, I talked to Mr. Bigelow who argued the case for Paradise Liquor and for McKesson. They have about \$60 million of the \$89-or-90 million that's in escrow; and it was his opinion that the state, if we were to look out for our own interest, should repeal the exemption right now.

"I think that what Senator Cayetano said is correct, that we pass a bill repealing the exemption. There's no question that we will be picking up in excess of \$2 million a month. If we did it right now, we can look forward to, say, collections for April and May and June would be over \$6 million, so we have a clear claim to the money of about \$30 million for the biennium.

"So, I think if we really want to look out for the interest of the state, as far as our interests are concerned, as far as our budgetary concerns are, we should certainly take Senator Cayetano's advice and repeal the exemption.

"In talking with the Attorney

General's representative, Mr. Honda, I gathered from him that he felt that if we did take such action, there'd be a very, very small chance that the Supreme Court would even take into consideration our action; that it looked like the Supreme Court has received all the testimony they are going to take on the case. They should be making their decision very shortly. I think that in our own interest we ought to repeal the exemption. Thank you."

Senator Cayetano further stated:

"Mr. President, in response, I'd like to add to the remarks made by Senator Henderson. As I said, apparently there's some confusion about this matter. I don't think either Senator Henderson or I are confused. Mr. Dexter, an attorney who was hired by the state, has a great deal of experience in appellate matters, has argued many times before the United States Supreme Court, a specialty which many lawyers do not engage in. Mr. Dexter (I wish I had recorded the conversation but we didn't) clearly made the point that if you want to protect, and I'm going to quote him, and Senator Henderson and maybe Senator Aki can correct me if my quote is wrong. He said, 'If you want to protect your revenues, repeal the exemption.'

"And he also made this point and I think that I agree with this point. He said that the Supreme Court of the United States has upheld subsidies and so if we want to help the local industry, if we want to help the two rum companies that are making rum in the State of Hawaii, then perhaps what we should do is give them a subsidy which matches the amount they would save on the exemption.

"Then we accomplish two things; we help the rum industry and we protect our revenues. Repealing this one exemption has no bearing on the ninety-something-million dollars that's before the Supreme Court at the present time. I have never appeared before the United States Supreme Court but I have some knowledge about what goes before the court on appeal and what goes before the court is what's in the record.

"Mr. Dexter, himself, said that the parties upholding the state on this matter tried to bring the rum exemption into the argument, but they were precluded from doing so because the matter was not before the

Court. What is before the Court is the okolehao and fruit wine exemption, and that's the only thing that's before the Court."

Senator Yamasaki then responded:

"Mr. President, I might also add that there are 31 states in our nation that have some kind of protective measure to protect their liquor industry, and this is the reason why I think that the Supreme Court will also weigh all these things before such an important decision is made. Should they reverse our position, then it may affect other states that have protective measures. That is the reason why I think it is important for us to consider these things before we do anything that might affect our position before the Court. As you know, a lawyer will advise his client, and I have been faced with that also, that if you have a case under litigation in the Court that you do not do anything that might prejudice your case before the Court. Thank you."

Senator Cobb rose and stated:

"Mr. President, on this very point, at the risk of practicing law without a license as frequently mentioned by the former House Finance chairman, I find it ironic that the predictability of a court decision is really one of the most unpredictable things in the law."

"I can recall three years ago when we had what was called a primary source bill before your Committee on Consumer Protection and Commerce and before both houses of the Legislature, and we learned that the matter was on appeal before the Supreme Court of the United States and both sides were confident of victory. Basically, as we conducted a hearing on the primary source law it became very apparent that some elements of the law were discriminatory in favor of large, licensed wholesalers to the detriment of small wholesalers who could not compete with the certification process or the approval process of liquor manufacturers. In that case, the Supreme Court was faced with a very clear choice between the equal protection clause of the 14th Amendment of the Constitution and the State preemption clause on liquor of the 21st Amendment to the Constitution. The so-called repeal of prohibition was contained in the actual wording, 'the regulation of liquor is left solely to the states.' The net effect of the decision of the Supreme Court upholding the primary source law somewhat surprised me because in effect

the Court said, 'You can have a law that is discriminatory because the states have the sole and exclusive jurisdiction on matters of liquor.'

"I see a similar situation obtaining in the case now before the Court and I would not hazard to make a prediction, based on that past experience, as to what the decision of the Court might be. I do agree that we should take a very serious look, however, at whether or not this whole question ought to be acted on."

"I'm glad that three other Senators, or possibly four, were present at the meeting. I wish I had been included. At the same time, I have reservations myself about, one, when the decision is going to take place; two, the predictability of the decision; and three, the fallout of ramifications from it. Thank you."

Senator Cayetano then stated:

"Mr. President, I suggest that you call Mr. Dexter himself. Mr. Dexter is the attorney that's going to represent the state. The chairman of the Ways and Means Committee talked about following the attorney's advice; well, he is the attorney for the state."

"I suggest you call him yourself and pose two questions, the same questions that I posed to him. The first question that I posed to him was, if we repeal the rum exemption, would the liquor companies have any ground to continue to pay under protest. The answer he gave me was, no; no, because there is no grounds to argue discrimination. And the second question was, if we repeal the rum exemption, will it endanger the state's case on appeal; and the answer he gave was, highly unlikely that it would."

"Now, hearing Senator Yamasaki's recollection of what Mr. Dexter said to us at that meeting, I sometimes wonder whether I was in the same room because I think my interpretation of what was said is very different. I think it would be very easy for the Senate leadership to arrange a conference call with Mr. Dexter to find out exactly what he said."

Senator Kawasaki rose on a point of inquiry as follows:

"Mr. President, what started out as a question of personal privilege got to be almost a full-scale discussion of whether to repeal the liquor exemption bill or not. But, I think

the fiscal impact of that decision to repeal or not to repeal is important enough that perhaps a serious caucus should be called by you of the entire Senate, not only the Majority but the entire Senate, with Mr. Dexter and other people who are knowledgeable about this issue. It is entirely in order. I think the money impact is so great that perhaps this is one of those very important issues we should discuss and not try to debate it on the floor here with perhaps cursory information on the subject."

The Chair interjected: "If there is no further discussion on the subject, the Chair would like to note that it is quite perplexed with the present use of personal privilege. I think it has gone too much afar. There's nothing on the floor to be debated or discussed. The discussion is not germane to the proceedings today. The Chair has allowed in all instances a wide latitude in allowing what may be called a privileged motion.

"The Chair would like to be as liberal as possible in the interpretation of personal privilege and I am in agreement with Senator Kawasaki that it has gone astray. I would like to caution members of the Senate in the future to restrict the use of personal privilege to what is before the body. I am considering very seriously the need to more closely define what a personal privilege is.

"There are other bodies that have put a very strong restriction on what is considered to be a personal privilege, that personal privilege applies only when a personal injury is made to a member of the body while on the floor. To me, personally, I think that's too restrictive. I think people ought to say what they feel, but I think it should be done in a certain context.

And again, I must caution all of the Senators that the Chair will continue to be liberal on the question of personal privilege but I hope that it will not carry over to excess, such as what was done today. I would like to leave those limits as broad as possible, in the sense that is debate is in good taste and it doesn't refer to personal kinds of things, the Chair is most reluctant to limit...I mean, really, the Chair would favor open discussion, but I think I would like to caution, for the third time, the Senators to keep such discussion within certain confines of decorum."

Senator Kawasaki stated further:

"Mr. President, lest my point of inquiry is misconstrued, I think Senator Cayetano is to be commended for having brought up this issue. I think the concerns that he expressed are perfectly legitimate. It's important enough for each of us to consider it. What I wanted was some direction or some indication by you that this issue is important enough for us to have a caucus on. And the fact that this discussion ensued after a point of personal privilege was made, perhaps, was a minor violation of the Rules, certainly, but it was important enough that I just wanted to make sure that some subsequent discussion on this issue will take place under your direction.

"But, I do not want my point of inquiry to be construed as a criticism of Senator Cayetano having used the personal privilege motion. He is to be commended for having brought this matter to our attention. It's important enough, I trust, that you will call a caucus for this. And, if we have to, in violation of Senate Rules whatever they are, on a point of personal privilege bring important issues like this to the entire body, then perhaps we're justified in doing that...to hell with the rules."

The Chair replied:

"Well, that might be true, but I think we've got to maintain decorum as speaks to what is germane to the discussion before the body. It is possible to talk about all kinds of subject matters and the Chair has allowed that, in the past, to take place notably when a member has been aggrieved by people outside of the Legislature, certainly. And if this provides avenues of recourse to change people's opinions of us, that's fine. However, when it comes to personal privilege, there might be need for some narrowing down of this when it starts getting too wide and too broad.

"I think we've got to maintain decorum here with reference to, at least, what is being said on the floor. I have not laid down, as such, strict rules for limitations on discussion here in the Senate, as you all know. But perhaps we may have a caucus to discuss the whole question of personal privilege and what it constitutes, and whether or not we should continue with broad-ranging discussions like today's."

Senator Abercrombie then rose on a point of personal privilege as follows:

"Mr. President, I believe you indicated that if a member is aggrieved, especially if it takes place on the floor, that he or she should at least have the opportunity to make that known. My grievance is about the remarks made just previously by the Senator from the 14th District. Inasmuch as these numbers are new to us, I will indicate that that's Senator Kawasaki; he may not remember the numbers because of the changes. I think this is my third session and third set of changes with numbers, and another one to come up this year in the election. I do make the point that I think the Senator was speaking in an alliterative fashion with respect to his dismissal of the Rules and did not mean it in a literal fashion in any sense.

"My point, Mr. President, is to take us back to the beginning of this discussion to the point raised by the Senator from the 20th District, which was an article in the paper purporting to be the record of a conversation that took place between members of the House of Representatives and the Governor, and the implications of that conversation for the financial package that will be represented as being the Senate's position in the inclusion of monetary items within that budget and policy decisions to be made from that.

"That's where the original series of questions came. I think it was well within the bounds as you just indicated that you would like to see us pursue. The fact that the conversation then took place between various members on the floor as a result of that, I think, was ancillary, but nonetheless pertinent, to the question that was raised quite legitimately. So, I have no argument with your position. I think that the Senator from the 14th District's admonition with respect to a caucus is also in order. The reasons may be subject to some scrutiny by yourself, as you indicated, but I think an examination of the minutes of today's meeting, when they appear from the Senate Clerk, will indicate that the raising of the point, and the manner of its being raised, and the context within which it was discussed are well within the bounds that you have just indicated."

The Chair responded:

"For the Senator from the 11th District's information, it would be the Chair's, feeling that there are certain questions that can be answered through discussions on a private

basis, rather than using the floor of the Senate to convey a question on a confrontational basis.

"I think it is well within the scope of all of us being representatives of the people to address each other formally on the floor. Also I'm certainly aware that we could speak with each other on a private basis about what concerns us, but oftentimes that overflows out to the floor of the Senate.

"I would like to suggest that should questions come out dealing with differences of opinion, that discussions be held, for example, with the leadership. For example, the Senate leadership -- along with Senator Yamasaki -- is quite prepared to discuss any questions dealing with the liquor tax issue.

"I just think that on the floor of the Senate, the business of the Senate has been printed in an orderly fashion, and anything that comes in outside of the printed order of business of the Senate, is really not germane. And, certainly, all of you in this body know full well that latitude is given quite a bit to free discussion, and I intend to continue that practice. I am hopeful that perhaps in the future we can do more honest talking with each other rather than taking to the floor of the Senate on a confrontational basis with reference to specific questions."

Senator Cayetano then rose and stated: "Mr. President, I think your remarks are well taken. I also hope, though, that we not be overly concerned with form over substance."

The Chair replied: "Well, I think we have to keep the operations of the body moving. It's my responsibility to see that it flows along and to see that all Senators are given equal opportunity to speak on the various issues. I want to be as fair as possible to all members of the Senate, which includes the Minority as well as the Majority. On this point, the Chair will take under consideration the question that's been raised this morning and an answer will be forthcoming."

Senator Kawasaki stated: "I didn't quite understand what you just said."

The Chair responded: "I said, the Chair will take under advisement the suggestion made by you, Senator Kawasaki, and other members of the Senate, to perhaps have a caucus to discuss the whole issue. However, I

must caution all of you that the leadership was planning to speak with the Governor and the Attorney General and the people who are handling the case in trying to make some rhyme or reason as to what is taking place. But that meeting has not occurred. As you know, the Governor has just come home over the weekend, so we have not had an opportunity to speak with him. We have notified him that we would like to set up some kind of meeting with him."

Senator Kawasaki interjected: "And specifically, the subject of the liquor tax exemption is one of the items..."

The Chair replied: "I think it's one of the many items that we want to discuss with the Governor."

Senator Kawasaki further stated: "In full realization that decking deadline is Friday, if we are to do anything about repealing this exemption, then I think a caucus is imperative."

The Chair answered: "I think the Governor is presently in Hilo but he should be back tomorrow."

Senator Kawasaki then stated: "I would like to have this itinerant Governor come back for this very important issue, if possible."

The Chair responded: "I'm sure the Governor feels that the issue in Hilo is also important."

At this time, Senator Kawasaki rose on a point of inquiry as follows: "Mr. President, I rise on a point of inquiry directed to the chairman of the Judiciary Committee."

Senator Chang replied: "May I hear the question, Mr. President?"

Senator Kawasaki then inquired: "I have been receiving inquiries from people wanting to know whether the capital punishment bill or the series of bills involving the newspaper monopoly is going to be held on hearing; are hearings scheduled for them? I didn't know the answer and perhaps the chairman of the Judiciary Committee could apprise us of his decision."

Senator Chang further replied: "Mr. President, these particular subjects have been previously heard by the Committee on Judiciary and in the interest of considering all matters that have been introduced to the Senate for consideration, these subjects will not be further heard

during this session."

Senator Kawasaki further inquired: "Mr. President, then are we to follow here in the Senate the basic policy that bills introduced in the past that have had hearings held in prior years will not hold hearings on bills in every committee?"

The Chair then inquired: "Is that addressed to the Chair or..."

Senator Cobb then responded as follows:

"Mr. President, in partial response to that question, I've always made it clear as a matter of policy that if in the first two years of a biennium, we hear an issue and decide upon it pro or con, that's it for the biennium unless there are compelling circumstances for change.

"And I've had very little argument from members of my committee on that particular policy because I think it's a fair one. It lays it out that if a bill is held in the first year of a biennium, it's held for two years; if it's passed in the first year of a biennium to the House, it's up for consideration in that body again."

Senator Kawasaki then asked: "Since when was this rule adopted by the Senate here?"

The Chair replied: "I don't think, Senator Kawasaki, it's a matter of a rule. I think it varies from individual chairman to chairman, but generally speaking, that has been the general way of treating measures."

Senator Kawasaki then stated: "Fine, except that we have to give due consideration to the fact that issues change regarding the same bills over the course of time, sometimes as much as in a matter of a few months. And I think the basic policy consonant with the views expressed by the Senator from the 7th district perhaps may not be the wisest thing for us to do."

The Chair further replied: "Well, I think the chairman of the Judiciary Committee has answered your inquiry. As I understand the answer, it is that the measure that you mentioned will not be heard this year."

Senator Kawasaki further stated: "I will so inform inquiries that came to my office, but I will also say this does not reflect credit upon either the Judiciary Committee or its chairman."

ADJOURNMENT

At 12:35 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, March 6, 1984.