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LEGISLATIVE REFERENCE BUREAU
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December 13, 2010

MEMORANDUM

TO: Honorable Will Espero
Senator, 20th District

FROM: Terrence Lee
Research Attorney

SUBJECT: Shipping Carriers; Right to Inspect Cargo for Contraband

This memorandum is in response to your inquiry as to whether shipping carriers such as Matson Navigation Company, Inc. (Matson) and Horizon Lines may inspect cargo for contraband without the express authorization of the entity shipping the cargo.

Common Law

Attached please find a United States Supreme Court case that recognizes that common carriers have a common-law right to inspect packages they accept for shipment, based on their duty to refrain from carrying contraband.¹ The case cites a decision from the United States Court of Appeals, District of Columbia Circuit (also attached) that explains that the objectives of safeguarding life and property and frustrating criminality may warrant inquiry by a carrier as to the contents of a parcel tendered for shipment, and may also justify a reasonable inspection of the parcel to fulfill that purpose.²

¹ *Illinois v. Andreas*, 463 U.S. 765, 769-770, 103 S.Ct. 3319, 3323-3324 (1983).

² *United States v. Pryba*, 502 F.2d 391, 399, 163 U.S.App.D.C. 389, 397 (1974).

Matson and Horizon Lines Terms and Conditions

Please note also that it appears that both Matson and Horizon Lines reserve the right to inspect cargo in their shipping agreements. Attached please find copies of:

- (1) Matson's Bill of Lading Terms and Conditions;
- (2) Matson's Sea Waybill Terms and Conditions of Carriage; and
- (3) Horizon Lines' Bill of Lading Terms and Conditions,

each of which states the carrier's right to open containers and packages as a condition for shipping items.

We have kept this response to your inquiry brief due to time constraints. However, if more information or clarification is needed, please do not hesitate to ask.

If you have any questions, please contact me by phone at 587-0666 or by email at tlee@capitol.hawaii.gov.

APPROVED:

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