

dl

5800

Serial: 3051

5 MAR 1964

From: Commander, Fourteenth Coast Guard District  
To: Commander, Group Hilo  
Commanding Officer, CGLORSTA HAWAII  
Commanding Officer, CAPE SMALL(CG-95300)

Subj: On street metered parking places; Island of Hawaii

1. Recently a government vehicle on official business was ticketed for non-payment of parking meter fees on the island of Hawaii. Judge Miyamoto of Hilo expressed the opinion that government owned vehicles should not be exempt from paying parking meter fees and/or fines for violations of parking meter regulations. As a result of negotiations between the United States Attorney, the State Attorney General and the Chief Magistrate of Hawaii, Judge Miyamoto agreed to permit pending citations to be dismissed. Therefore, there probably will be no further difficulty in connection with the present outstanding summonses.

2. In order to avoid recurrences of this situation, you are directed to instruct all persons under your command who hold valid government motor vehicle operator's permits that:

a. They are to make every effort to avoid parking official vehicles in on-street metered parking places.

b. They are to park in on-street metered parking places only when such parking is essential to the accomplishment of the driver's official mission.

*Charles Tighe*

CHARLES TIGHE  
Chief of Staff

Permanent File

DO NOT DISCARD

TREASURY DEPARTMENT  
UNITED STATES COAST GUARD

ADDRESS REPLY TO:  
COMMANDER  
14th COAST GUARD DISTRICT  
1347 KAPIOLANI BLVD.  
HONOLULU 14, HAWAII



dl  
A17  
Serial: 3083  
11 March 1963

From: Commander, FOURTEENTH Coast Guard District  
To: Commander, Group HILO  
Commanding Officer, LORSTA HAWAII ← MAIL TO  
Subj: Parking meter fees for federal vehicles  
Ref: (a) CO, LORSTA HAWAII memo 11 DEC 62 file A17 to CCGD14  
(dl), same subj

1. The subject of parking meter fees arises recurrently because there has been no firm judicial holding in point. The reason for this is that there is not enough involved to make litigation worthwhile.
2. I have to concur with the County Attorney's observation that the Comptroller General's decisions are not judicial precedent. I cannot agree that the decision has no bearing on the case, however. Federal funds cannot be expended without specific statutory authority and it is the Comptroller General who decides in a particular case (which is not expressly provided for) whether there is authority to expend federal funds. In the case of parking meter fees for federal vehicles he has decided that there is no authority to expend federal funds; hence no employee of the federal government can lawfully expend federal funds for parking meter fees for marked vehicles.
3. Please note that the Comptroller General has held it is immaterial whether the meter fee is a regulatory or a revenue measure.
4. I concur in your position to continue to park federal vehicles without feeding the meters.
5. The following are pertinent extracts from Comptroller General's opinions:

18 Comp Gen 151, 153:

Whether the parking meter fee...be regarded as a tax or as a license fee incident to the exercise of the police power, the imposition of the fee or any fee in lieu thereof upon the United States raises a fundamental question as to the relations between the State, acting through the city, and the Federal Government. The city would of course have no authority to tax the functions of the Federal Government without its consent. McCulloch v. Maryland, 4 Wheat. 316. If it be considered that it is the

police power which is being exercised here, the Supreme Court of the United States has held that definitions of the police power of the State must be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the general Government, or rights granted or secured by the supreme law of the land. New Orleans Gas Co. v. Louisiana Light Co., 115 U. S. 650...

In Johnson v. Maryland, 254 U. S. 51, it was held that the State of Maryland had no power to require an employee of the Federal Government to obtain a license and pay a fee therefor as a prerequisite to driving a Government-owned vehicle in the State. See, also, Hunt v. United States, 278 U. S. 96. The two cases just referred to are cited by the Supreme Court in Arizona v. California et al., 283 U. S. 423, 451, as authority for the proposition that the United States may perform its functions without conforming to the police regulations of a State.

It has long been the rule of the accounting officers that there is no authority of law for the payment of a State fee for a license tag required by the State for a Government vehicle, even though the fee is limited to the cost of producing the tags. 15 Comp. Dec. 231; 1 Comp. Gen. 150; 4id. 412.

There has not been overlooked the statement of Mr. Justice Holmes, speaking for the majority of the Court in Johnson v. Maryland, supra, that -

Of course an employee of the United States does not secure a general immunity from State law while acting in the course of his employment. That was decided long ago by Mr. Justice Washington in United States v. Hart, Pet. C.C. 390. 5 Ops. Atty. Gen. 554. It very well may be that, when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment-as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets. Commonwealth v. Closson, 229 Massachusetts, 329.\*\*\*

While it may be that parking regulations or restrictions fall within the class of "general rules" referred to in the quoted language from Johnson v. Maryland as proper for complying with by Federal employees when not in conflict with Federal law or authority, the imposition by a police regulation such as that here in question, of a license fee for parking in a public thoroughfare, said fee to be used to defray the cost of administering and enforcing the regulation, would appear scarcely distinguishable, insofar as applicable to the instrumentalities of the Federal

Government, from the fee involved in that case. In view of the holding in that case, and in the absence of a determination by proper judicial authority of the liability of the United States for parking meter fees imposed by municipal ordinance or State law, the accounting officers would not be justified in approving such fees as proper charges against the public funds of the United States.

26 Comp Gen 397, 398:

[Since the decision in 18 Comp Gen 151] "[t]here not having been found any subsequent court decisions determining the liability of the United States for parking meter fees, the said office decision of August 11, 1938, is applicable to the instant matter. If the Government is not liable for payment of parking meter fees, no expenditure of public funds is authorized for payment to the city of rental or the cost of providing parking space on the street in lieu of paying parking meter fees, in the absence of statutory authority authorizing such payment..."

34 Comp Gen 417:

The general rule is that title to streets is held by a municipality in its public or governmental capacity rather than in its proprietary capacity. See 64 C.J.S. 60, 64, Municipal Corporations, section 1682; and Harbor Land Co. v. Village of Fairport, 49 N. E. 2d 194, 204 (Ohio). Parking meter fees generally have been held as being imposed incident to traffic regulation under the police power of a municipality. City of Columbus v. Ward, 31 N. E. 2d 142 (Ohio); People v. Lang 106 N.Y.S. 2d 829 (New York); Bowers v. City of Muskegon, 9 N. W. 2d 889 (Michigan). No case has been located in which such a charge was held to be incident to a proprietary function, such as a lease of space from the city referred to in the letter of July 7. See, generally, Johnson v. Maryland, 254 U. S. 51; Arizona v. California, 283 U. S. 423, 451; Penn Dairies v. Milk Control Comm'n, 318 U. S. 261; Mayo v. United States, 319 U. S. 441.

While it was stated in 18 Comp. Gen. 151 that there was nothing in the parking meter ordinance there involved purporting to make it applicable to the operations of the Federal Government, the fact was not controlling in the disposition of the case. As pointed out in said decision, a State cannot in the exercise of its police power "encroach upon the powers of the general Government, or rights granted or secured by the supreme law of the land." Also, see 14 Comp. Dec. 256, and the cases referred to therein. Thus, it would seem that the language of the Traffic Code of the City of Cincinnati which purports to make its provisions applicable to "operators of vehicles owned or used in the service of the United States,"

may not operate to require payment of parking meter fees under the conditions here in question.

In the absence of a determination by proper judicial authority of the liability of the United States for parking meter fees or the enactment of appropriate legislation, the payments in question are not authorized to be made from appropriated funds.

38 Comp Gen 258, 260:

We have not found any court decisions determining the liability of the United States for parking meter fees nor were any such decisions cited... Hence, in the absence of legislation by the Congress permitting or requiring the payment of such fees, the decisions cited must be held to be still applicable. It may be pointed out, however, that the decisions do not contemplate generally that the employees will pay the parking fees but rather, where the Government car is plainly marked as such, that the fees be not paid on the ground that they constitute an unauthorized attempt by the State or municipality to tax or burden the Federal Government in carrying out its functions and are not properly assessable against the United States or for payment by it. If the fees in such cases are not properly payable by the United States, it would naturally follow that an employee who pays such fees is not entitled to reimbursement since the expense is not proper~~x~~ for payment by the United States in the first instance.

  
G. H. PATRICK BURSLEY  
By direction

Office of the County Attorney

County of Hawaii

July 15, 1963

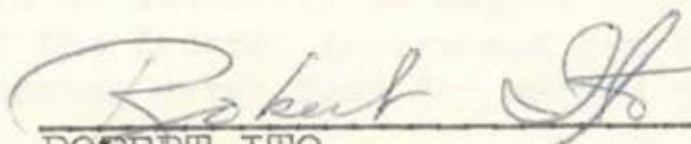
LTJG, L. N. Schowengerdt, Jr.  
c/o Commanding Officer  
USCG Loran Station  
Post Office Box 2  
Hawi, Hawaii

Dear Sir:

Thank you very much for the opinion dated March 11, 1963. Enclosed herewith we are returning said opinion from the Commander, Fourteenth Coast Guard District to Commander, Group Hilo, Commanding Officer, Lorsta Hawaii, regarding parking meter fees for federal vehicles.

A copy of the opinion was transmitted to Judge Richard Miyamoto, South Hilo District Court Magistrate.

Very truly yours,



ROBERT ITO  
Deputy County Attorney

beo

DISTRICT COURTS  
COUNTY OF HAWAII  
STATE OF HAWAII

UNIFORM TRAFFIC TICKET  
AND COMPLAINT

SUMMONS

8919

Driver \_\_\_\_\_ Sex \_\_\_\_\_  
Address \_\_\_\_\_  
Age \_\_\_\_\_ Birth Date \_\_\_\_\_ Op. Lic. \_\_\_\_\_ Chof. Lic. \_\_\_\_\_  
Veh. Lic. No. \_\_\_\_\_ Make \_\_\_\_\_ Yr. \_\_\_\_\_ Type \_\_\_\_\_  
Owner \_\_\_\_\_  
Address \_\_\_\_\_

(Fill below when citing juvenile)

Parents' Names \_\_\_\_\_  
Mailing Address \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at (time) \_\_\_\_\_  
the above named driver (owner) did unlawfully operate (park) the above  
described vehicle upon a public \_\_\_\_\_  
highway (street) namely \_\_\_\_\_ of \_\_\_\_\_

County of Hawaii and commit the offense of

LEADING CAUSES OF ACCIDENTS	SPEEDING m.p.h. in _____ Zone <input type="checkbox"/> Radar <input type="checkbox"/> Pace				NAME
	MP. LEFT TURN	No. Signal	Cur. Corner	From Wrong Lane	
	MP. RIGHT TURN	No. Signal	Into Wrong Lane	From Wrong Lane	
	MP. THROUGH	Pass Middle Lane	Middle of Lane	Not Reached Lane	
	MP. THROUGH	Wrong Place	Walk Speed	Raster	
	IMPROPER PASSING & LANE USAGE	At Intersection	Cut-In	Wrong Side of Pav.	
		Between Traffic	On Right	On Hill	
		Lane Straddling	Wrong Lane	On Curve	
	IMPROPER PASSING & LANE USAGE	Expired Meter No.		Creating Hazard	
	Other Violations				

in that (describe) \_\_\_\_\_  
\_\_\_\_\_

CONDITIONS THAT INCREASED SERIOUSNESS OF VIOLATION	SLIPPERY PAVEMENT		CAUSED PERSON TO DODGE	TYPE OF ACCIDENT	
	Rain	Mud		P. D.	F. O.
DARKNESS	Night		Pedestrian	Fatal	F. O.
	Fog		Driver	Fatal	Veh.
OTHER TRAFFIC PRESENT	Cross		Just Ahead Adv.	Non-Collision	
	On-Carling			Right-Angle	
AREA	Pedestrian		HIGHWAY TYPE	Head-On	
	Same Direction		1-Way	Side-swipe	
	Business		2-Lane	Rear-End	
	School		4-Lane	Run-Off Roadway	
	Residential		4-Lane Div.	Intersection	
	Rural				

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 19\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Date Received \_\_\_\_\_ Time \_\_\_\_\_

8919

SEE REVERSE SIDE FOR INSTRUCTIONS

DISTRICT COURTS  
COUNTY OF HAWAII  
STATE OF HAWAII

UNIFORM TRAFFIC TICKET  
AND COMPLAINT

SUMMONS 3:37 13031

Driver \_\_\_\_\_ Sex \_\_\_\_\_  
Address \_\_\_\_\_  
Age \_\_\_\_\_ Birth Date \_\_\_\_\_ Op. Lic. \_\_\_\_\_ Chof. Lic. \_\_\_\_\_  
Veh. Lic. No. \_\_\_\_\_ Make \_\_\_\_\_ Yr. \_\_\_\_\_ Type \_\_\_\_\_  
Owner \_\_\_\_\_  
Address \_\_\_\_\_

(Fill below when citing juvenile)

Parents' Names \_\_\_\_\_  
Mailing Address \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at (time) \_\_\_\_\_  
the above named driver (owner) did unlawfully operate (park) the above  
described vehicle upon a public \_\_\_\_\_  
highway (street) namely \_\_\_\_\_ of \_\_\_\_\_

County of Hawaii and commit the offense of

LEADING CAUSES OF ACCIDENTS	SPEEDING m.p.h. in _____ Zone <input type="checkbox"/> Radar <input type="checkbox"/> Pace				NAME
	MP. LEFT TURN	No. Signal	Cur. Corner	From Wrong Lane	
	MP. RIGHT TURN	No. Signal	Into Wrong Lane	From Wrong Lane	
	MP. THROUGH	Pass Middle Lane	Middle of Lane	Not Reached Lane	
	MP. THROUGH	Wrong Place	Walk Speed	Raster	
	IMPROPER PASSING & LANE USAGE	At Intersection	Cut-In	Wrong Side of Pav.	
		Between Traffic	On Right	On Hill	
		Lane Straddling	Wrong Lane	On Curve	
	IMPROPER PASSING & LANE USAGE	Expired Meter No.		Creating Hazard	
	Other Violations				

in that (describe) \_\_\_\_\_  
\_\_\_\_\_

CONDITIONS THAT INCREASED SERIOUSNESS OF VIOLATION	SLIPPERY PAVEMENT		CAUSED PERSON TO DODGE	TYPE OF ACCIDENT	
	Rain	Mud		P. D.	F. O.
DARKNESS	Night		Pedestrian	Fatal	F. O.
	Fog		Driver	Fatal	Veh.
OTHER TRAFFIC PRESENT	Cross		Just Ahead Adv.	Non-Collision	
	On-Carling			Right-Angle	
AREA	Pedestrian		HIGHWAY TYPE	Head-On	
	Same Direction		1-Way	Side-swipe	
	Business		2-Lane	Rear-End	
	School		4-Lane	Run-Off Roadway	
	Residential		4-Lane Div.	Intersection	
	Rural				

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 19\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Date Received \_\_\_\_\_ Time \_\_\_\_\_

13031

SEE REVERSE SIDE FOR INSTRUCTIONS

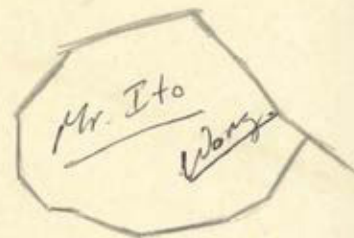
*Erroyo Hills*

*Summons # 8638*

*Std 10 Dec 62*

*Expired Plates #180*

*Officer Chinsley Badge 99*



L. N. SCHOWENGERDI JR.  
LTJG, USCG, CO

DISTRICT COURTS  
COUNTY OF HAWAII  
STATE OF HAWAII

**NOTICE TO APPEAR**  
**(UPON FAILURE TO APPEAR AT TRAFFIC VIOLATIONS BUREAU)**

TO: U. S. Coast Guard  
Hilo, Hawaii

Veh.Lic. T-15385 5/22/63 3:03 P.M.  
Parking Meter

You have been issued Uniform Traffic Ticket and Complaint No. 13031 for a traffic offense and instructed to appear at the Traffic Violations Bureau at Hilo, Hawaii within 72 hours after the receipt of the citation, but you have failed to heed the said instructions.

YOU ARE THEREFORE notified to appear at the said Traffic Violations Bureau forthwith upon receipt of this Notice. Failure to do so shall result in the issuance of a penal summons or warrant of arrest for court appearance. (You may mail the \$1 to this office)

Date: May 28, 1963

For the District Magistrate

*Clavi G. L. Yap*  
CLERK, TRAFFIC VIOLATIONS BUREAU.