

James R. Smith

March 19, 2012

Chairperson Joshua Stone, and
Members of the Maui County Charter Commission
200 S. High Street
Wailuku, Hawaii 96793

Subject: The next charter commission may have nothing to do.
(as amended)

Dear Members,

You have been informed by the Mayor during the Public Testimony portion of the meeting on March 5, 2012, that the changes in structure to the Department of Fire and Public Safety and Department of Environmental Management could be accomplished by budget amendment.

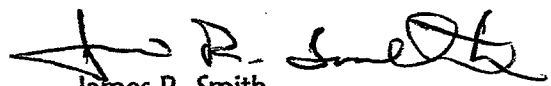
A review of the record of our charter indicates the law does not support the Mayor's pronouncement. It establishes that the structure of Departments is determined by approval of the people of a proposal presented to them by this Commission or the Council. (Report of the Charter Commission of the County of Maui, 10/18/1982 at pages 7, 8 and 9) Further, that unless an appropriation has been made for a position, the mayor cannot create the position. (See Commission Final Report 6/17/1964 at page7). This means the position is created by law, prior to its funding, so that expenditure goes for a position as a transfer, not as an increase in expense.

If you ignore these facts in your Final Report, a person's trust in governance by law, is ridiculed. Trust in the integrity of a process giving value to my existence is injured. The stakes are high, if I am but one of many.

In order to protect the integrity of this commission, it seems the the mayor's reasoning regarding restructuring of the Department of Fire and Public Safety and Department of Environmental Management must be incorrect, though other reasons may make support valid. (Proposal 2 and Proposal 9 as listed on your agenda filed on March 13, 2012 for this meeting, March 19, 2012). The Final Report defining the reasons for this commission's action, in respect to our political model of separation of powers, and as it may define and confirm my dignity is terribly important.

I hope you find time to consider this issue,expressed here and in oral testimony.

Respectfully submitted,


James R. Smith

031912- Public Testimony from Jim Smith

lest the issue ever be raised in a judicial proceeding it was necessary specifically to give this power to the County Clerk. The second change provides that the County Clerk shall adopt rules for the classification, storage and destruction of all of the County's records. It was felt by the Commission that the public's ability to examine the public records of the County was deterred by any lack of systematic record keeping. Further the Commission recognized that not all public records are open to inspection by the public (see §92-50 et seq, H.R.S.) and that some means of classifying those records which shall be open to public inspection (as opposed to those which shall be closed to public inspection) should be formulated. The task of formulating such rules (pursuant to Chapter 91, H.R.S.) is given to the County Clerk. It was not the intent of the Commission to saddle the County Clerk with the responsibility of classifying, storing and destroying such records, but only with the responsibility of providing for rules which would be uniform for all the agencies of the County.

THE EXECUTIVE BRANCH

As indicated earlier the executive branch of the County government is responsible for the execution of those policies formulated by the County Council in its legislative capacity. Although the proposed charter gives great authority to the Mayor to execute the policies of the Council, it is the intent of the Commission that the Mayor be limited to the execution of duties, powers and functions prescribed by State law or the County's charter and ordinances. It was not the intent of the Commission to give the Mayor the power to establish powers, duties and functions, but only to execute those duties given to the executive branch of the County government in the most efficient means possible.

Section 6-2 of the 1976 charter has been deleted in its entirety. That section provides for the adoption of an administrative code. The Commission examined the necessity of continuing the requirement of an administrative code. Given the fact that to date the County has operated without such a formal code and such a requirement would decrease the flexibility necessary to the executive branch of the government if it is to continue the efficient operation of the government, the code has been eliminated. In addition, the power of the Mayor and the Council to change the structure of the County's departments has been eliminated in its entirety. The Commission reasoned that if the people, through their charter, established the departments of the County of Maui and assigned certain powers, duties and functions to those departments, then only the people should have the power to alter their structure through a charter amendment. Although the Commission considered the idea of abolishing any charter reference to departmental structure and leaving such organizational decisions to the Council and/or the Mayor, it rejected this alternative.

Section 6-4 of the 1976 charter has been amended in several respects. Section 6-4(1) has been amended in its entirety. Presently that section provides that all personnel

actions shall be taken by the administrative heads of departments subject to the provisions of the charter and regulations adopted pursuant thereto. Most personnel actions are dictated by state law. State laws are superior to any provision of the charter in matters of personnel (see HGEA v. County of Maui, 59 Haw. 65 (1978)). It was therefore inappropriate to have a charter provision in conflict with a Hawaii Supreme Court ruling and the State constitution. The new provision (new Section 6-3(1)) provides only that the administrative heads shall take all personnel action. Such personnel actions shall be pursuant to law, whether those laws be civil service laws, collective bargaining laws, or in some cases charter provisions (i.e. appointment of deputy prosecuting attorneys, etc.).

Section 6-4(2) of the 1976 charter has been amended to allow the administrative head of a department to assign any of the powers, duties and functions assigned specifically to that department head to any of his staff members. This amendment would allow, as an example, the Director of Public Works, who is presently, by ordinance, assigned the duty of approving all subdivision maps, the power to assign this function to one of his subordinates. This will give department heads more flexibility in delegating authority to their staff. In addition, reference in §6-4(2) to the power of administrative heads to supervise the performance of their staff has been deleted for the reason that the Commission felt that such language was unnecessary and that it is inherent in the position of the administrative head of a department to supervise the performance of that department's staff.

Likewise §6-4(3) has been deleted in its entirety for the reason that the Commission felt the power of a department head to prescribe rules for the organization and internal administration of his department is inherent. Language in the charter providing for such power is unnecessary.

A final change to the present §6-4 is a major change worthy of discussion in this report lest the change be misunderstood. Presently §6-4(4) provides that a department head shall perform such duties as shall be assigned him by the Mayor unless such department head is the administrator of a department governed by a board or commission. The present charter is ambiguous as to which departments, if any, are governed by a board or commission. The proposed charter resolves that ambiguity. With the exception of the Department of Personnel Services no department in the County of Maui is governed by a board or commission. With said exception, all departments of the County of Maui are governed and supervised by the mayor. The amendment of the present §6-4(4) is the new 6-3(2) of the proposed charter. This new subsection provides that department heads shall perform such duties and exercise such powers as shall be assigned by the charter or assigned by the Mayor. This subsection should be read in conjunction with §7-5(10) and provisions contained in each chapter of Article 8 under powers, duties and functions of the department head which provide that the department head shall "perform such other duties and functions as shall be assigned by the mayor." It is

the purpose of the Commission to provide for flexibility on the part of the Mayor to run the executive branch of the government as efficiently as possible. However, the power of the Mayor to assign duties and powers to the several departments is subject to several limitations. Those limitations are as follows:

1. Powers, duties and functions assigned to a department by the charter shall not be reassigned by the Mayor for any reason.

2. The Mayor may only assign or reassign such powers, duties and functions as shall be established by ordinance, state law, or the state constitution. The Mayor is not empowered by any provision of the proposed county charter to establish any power, any duty or any function other than those provided for by law.

3. Although the Mayor has the right to assign and reassign powers, duties and functions to and between departments, other than those powers, duties and functions assigned to a department by the proposed charter, such power is limited by the budgetary restrictions of funding. Thus, as an example, although the Mayor would be empowered to transfer the function of juvenile counseling from the Department of Human Concerns to the Department of Police, the Mayor would not be empowered to transfer personnel positions funded in the Department of Human Concerns to the Department of Police without an appropriate budget ordinance amendment.

Many have expressed the concern that the language of the charter bestows upon the Mayor too much power and may be the subject of abuse. It was not the intent of the Commission by its amendments to allow the Mayor any power by these amendments other than the power to have flexibility in choosing which department may most efficiently execute the policies set by legislative bodies.

As has been indicated the Mayor shall be the chief executive officer of the County of Maui. Several changes have been made in the proposed charter regarding the Mayor's powers, duties and functions. Those changes are as follows:

1. Section 7-4(1) has been amended to delete the power of the Mayor to exercise supervision over agencies "as he may deem desirable" and instead has provided that he shall exercise supervision over those agencies in addition to the departments enumerated in Article 8 as shall be provided by law.

2. Section 7-4(3) of the 1976 charter has been amended by providing that the Mayor may create positions for which appropriations have been made and deleting a reference to those positions "authorized by the council" as such language is redundant. Further the reporting requirement on the abolition of positions has been changed from the requirement of a "monthly report" of such action to a report to the Council within fifteen days.

B. COMMISSION ON PROPOSAL

The Commission is aware that the present planning process has concerned itself with more than mere physical planning. Indeed, after a review of what in fact our Planning Department is doing, the Commission has proposed a definition of the General Plan, and the General Plan process, that is both in keeping with current practices by the Planning Department and with current advanced thinking by professional planners elsewhere. In essence, the Commission's proposal is a codification, if you will, of the best thinking in this dynamic area of local government functions. It speaks in terms of a broad long-range statement of development policies and the effects that such policies might have on the social, economic, and environmental aspects of our community.

The Commission believes that this recognition of the impact that general planning will have on the social, economic and environmental character of the County is indeed being responsive to the needs and desires of the people of Maui. This responsiveness is further preserved by the continuation of a lay Planning Commission which is obliged to hold public hearings on any proposed General Plan or revisions thereto.

The Commission also believes that accountability to the people is further strengthened by providing for the appointment of the Planning Director directly by the Mayor rather than by a multimember Planning Commission appointed under staggered terms.

If the Planning Director is not performing in keeping with the desires of the voters of Maui, the latter can direct its displeasure to the elected appointing authority.

This same reasoning caused the Commission to propose the direct appointment by the Mayor of the head of the Board of Water Supply and the head of the Department of Personnel Services.

VI. CONCLUSION

Therefore, this Commission presents the proposed new Charter as the culmination of a year's study and discussion. The Commission made every effort to structure a County government based on the elected officials who would always be accountable to the

people for the actions of government.

In view of this accountability theme therefore, the highest administrator (the Mayor) would be held responsible for all departments of the County administration. In the same way, the legislative branch of the County government as the policy making body, would be responsible for all matters pertaining to legal enactments and legal appropriations made by them.

The Commission believes that the proposed Charter will give the citizens of Maui County the kind of responsive and sensitive government that the public has made clear it desired.

Dated this 27th day of
February, 1976; County of
Maui, State of Hawaii.

Respectfully submitted,

Charles A. Kekumano
MONSIGNOR CHARLES A. KEKUMANO,
CHAIRMAN

Edwina U. Bright
EDWINA U. BRIGHT,
VICE CHAIRMAN

Hideo Abe
HIDEO ABE

Catalino Agliam
CATALINO AGLIAM

Margaret Cameron
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Sanae N. Moikeha
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Joseph M. Souki
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Allan R. Sparks
ALLAN R. SPARKS

Commission Final Report
6/17/64

ARTICLE V

OFFICE OF THE COUNTY CLERK

Under the proposed charter, the county clerk shall be appointed by the chairman of the council. The county clerk is to be treated as a department head.

The appointed county clerk shall have powers and duties quite similar to the powers and duties of the present elected county clerk.

ARTICLE VI

EXECUTIVE BRANCH

Article VI sets forth the manner in which the executive branch shall be organized. This article provides that an administrative code providing for a complete plan of administrative organization of the agencies of the county government shall be adopted by ordinance.

The council, by a vote of six or more of its members, and upon the recommendation of the mayor, may create additional departments. It should be noted, however, that certain agencies, such as the office of the elected prosecutor and the urban redevelopment and urban renewal agencies may be created by simple majority vote of the council.

The mayor may appoint advisory committees but the council shall not have power to appoint advisory committees.

As to the powers and duties of heads of agencies, rules and regulations affecting the public issued by agencies must conform to the provisions of the Administrative Procedure Act, Act 103, S.L.H. 1961, provided that prior to filing such rules and regulations with the county clerk, they must first be approved by the council and the mayor.

The phrase "independent agencies" as used in subparagraph 5 of Section 6-6 and elsewhere in the charter refers to such boards and commissions as the board of water supply, police commission, liquor commission, board of trustees

of the Maui community hospitals, managing committee of Kula sanatorium and general hospital, urban redevelopment and urban renewal agencies; board of appeals and any other independent board or commission which may be created pursuant to the charter. These boards and commissions may not be financially independent, but they are intended to manage their departments without interference from the mayor. The mayor can voice his opinion in the proceedings of these independent agencies, but he shall have no vote.

ARTICLE VII

MAYOR

Article VII sets forth the qualifications and powers, duties and functions of the mayor.

A majority of the commission was of the opinion that there was no necessity for a managing director such as there is in the City and County of Honolulu.

There is no specific provision in the charter for the appointment of an administrative assistant to the mayor, but this will not preclude the mayor from making such an appointment. The powers that are given to such an administrative assistant is largely a matter of discretion with the mayor.

Among other powers, the mayor has the power to appoint the necessary staff for which appropriations have been made by the council. Unless an appropriation has been made for a position, the mayor cannot create the position. It is thought that in this way the council will have effective control over the expenditure of monies for new positions.

The mayor also has the duty of recommending to the council a pay plan for all department heads and other employees exempt from civil service. The salaries of officers and employees of independent boards and commissions exempt from civil service, such as the salary of the manager of the board of water supply, is to be established by the independent board or

HANA COMMUNITY ASSOCIATION

Post Office Box 202, Hana, Hawaii, 96713

*"TO DEVELOP A UNIFIED COMMUNITY SPIRIT AMONG THE PEOPLE
RESIDING IN THE DISTRICT OF HANA"*

March 15, 2012

Maui County Charter Commission, Josh Stone, Chair
200 South High Street, Wailuku, Hawaii 96793

Sent Via Email: charter.commission@mauicounty.gov corp coun@co.maui.hi.us
Mayors.Office@co.maui.hi.us

**Subject: Proposed Charter Amendment(s) Regarding Native Hawaiian
(Kanaka Maoli) Rights.**

Aloha Chair Stone and Members of the Maui County Charter Commission,

On March 13, 2012, the Hana Community Association Board of Directors discussed possible changes in the Maui County Charter to recognize "Native Hawaiian (Kanaka Maoli) Rights".

The basis of our discussion was a letter from Charter Commission Member Clifford Hashimoto with attached **Maui County Council Resolution 10-79, "Recognizing United States Public Law 103-150; The Universal Declaration of Human Rights of 1948; The International Covenant on Civil and Political Rights of 1966; And the International Covenant on Economic, Social and Cultural Rights of 1966"**.

After discussion, the board voted to "Recognize Native Hawaiian (Kanaka Maoli) Rights" within the Maui County Charter. We trust the Charter Commission and your professional staff to decide if Native Hawaiian Rights should be recognized in the Preamble, in an additional Section, or in both.

Mahalo !

John Blumer-Buell, Secretary

on behalf of the Hana Community Association Board of Directors

03/19/12 - Rec'd from John Blumer - Buell