

A SUPPLEMENTARY STATEMENT OF THE ACTIVITIES, FINDINGS AND RECOMMENDATION OF THE CHARTER COMMISSION TO THE BOARD OF SUPERVISORS OF THE COUNTY OF MAUI

Since the submission of our Statement dated February 6, 1967, the Maui County Charter Commission has been asked to further clarify certain provisions of the proposed Charter. This Statement supplements the Statement of February 6, 1967.

DISCIPLINARY POWER OF  
THE DEPARTMENT OF POLICE

Section 8-9.4 of the proposed Charter provides:

"The dismissal, suspension, or demotion of any police officer or employee in the police department shall be under procedures set forth by civil service laws and regulations."

The Commission carefully considered the problem this section resolves.

At the present time a police officer, or an employee of the police department, who has been disciplined by the Police Commission cannot appeal to the Civil Service Commission. Section 8-9.4 gives a disciplined police officer or employee the same right of appeal to the Civil Service Commission now enjoyed by the other civil service employees of the county.

The members of the Police Department are members of a quasi-military organization. The Police Commission, the Chief of Police, his deputy and the senior officers of the Police Department must therefore establish and maintain a high level of discipline within this organization.\*

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\*Under the Uniform Code of Military Justice a member of the armed services has certain rights of appeal to the civilian Court of Military Appeals. By enacting the Uniform Code of Military Justice, Congress recognized that a person who puts on a uniform does not, by that act, lose all of his civil rights. 50 USC Sec. 867.

For example, insubordination on the part of a police officer in a critical, hazardous situation may result in the loss of life. Accordingly, under Section 8-9.2(1) the Police Commission has the power to enact rules regulating the conduct of police officers and employees of the Police Department.

Section 8-9.4 does not restrict the power of the Police Commission to enact such rules regulating conduct. Section 8-9.4 simply gives a police officer or employee who has been disciplined a right to appeal to the Civil Service Commission.

Section 8-9.4 does not mean that the Police Commission cannot act upon disciplinary matters within the Police Department. The Police Commission should determine whether the Police Chief or the Police Commission will take final disciplinary action within the Police Department. Section 8-9.4 simply provides that, after final disciplinary action has been taken within the Police Department, a police officer or employee can appeal to the Civil Service Commission.

#### SUBDIVISIONS

Under Section 8-6.3 of the proposed Charter the Planning Director will approve plans for the subdivision of tracts of land. At the present time, under the current Subdivision Ordinance, the Board of Supervisors must approve such subdivision plans. The Subdivision Ordinance states the technical requirements for a subdivision. The Planning Director can best determine whether the plans proposed by a subdivider satisfy the requirements of the ordinance. The Council, the County's legislative body, should not be burdened with such technical detail.

#### APPORTIONMENT OF THE COUNCIL

Under the proposed Charter the Council will be elected at large. However, of the nine seats, one must be filled by a

resident of Molokai, and another must be filled by a resident of Lanai.

Upon taking office the Commission asked the County Attorney to submit a memorandum as to the effect of the reapportionment cases decided by the United States Supreme Court upon the various alternate proposals for electing the Council. The County Attorney submitted such a memorandum on July 7, 1966.

The Commission carefully considered the memorandum of the County Attorney before it adopted the mentioned method for electing the Council. The Commission and the County Attorney were of the opinion that the proposed method of representation was constitutional.

Several persons who appeared at the public hearings held by the Commission argued that the proposed method for electing the Council was unconstitutional.

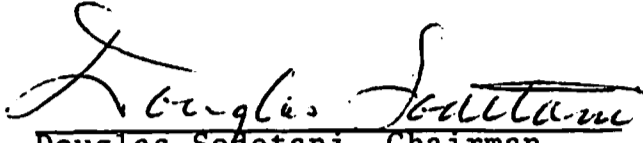
Dusch v. Davis, \_\_\_\_ U.S. \_\_\_\_ (May 22, 1967), indicates that the proposed method for electing the Council is constitutional. In the Dusch case the United States Supreme Court said with respect to the method of electing the Council of the City of Virginia Beach:

"Each of the 11 councilmen is elected by a vote of all the electors in the city. The fact that each of the seven councilmen must be a resident of the borough from which he is elected is not fatal."

The apportionment scheme considered in Dusch is very similar to the method now employed in the County of Maui, which the proposed Charter continues. The Dusch case should allay the fears of those who believed that the method of representation proposed by the Commission was unconstitutional.

Dated at Wailuku, Maui, Hawaii, this 29th day of June,

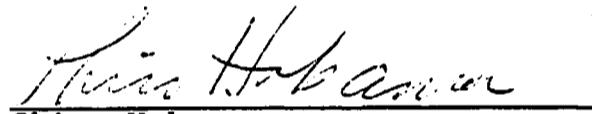
1967.

  
Douglas Sogdetani, Chairman

  
William F. Crockett  
Vice Chairman

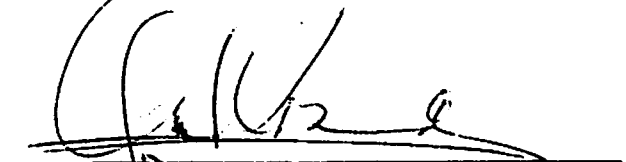
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Emil Balthazar

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Edward L. Cluney

  
Shiro Hokama

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Nadao Honda

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Harry Kobayashi

  
George Y. Kondo

  
Paul Pladera

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Keith B. Tester

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James S. Ushijima