

CHARTER COMMISSION
MEETING MINUTES
AUGUST 13, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Allan Sparks
Anne Takabuki
Jamie Woodburn
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)

EXCUSED

Sherrilee Dodson (Vice Chair)

GUESTS

Dave DeLeon
Mark Adams (The Maui News)
Ed Tanji (Honolulu Advertiser)
Marilyn Alexander (Case Lynch)

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 4:08 p.m.

II. PUBLIC TESTIMONY

A. Jim Smith, individual and resident of Haiku.

Smith: I wouldn't be here if I hadn't listened to your deliberations last week on the board of ethics and the ethics code. Since the opportunity avails itself for a final look at the issue, I'm here to ask you to reconsider some of the changes that you were talking about at the last time I was here...on Section 10-4.d. There is a circumstance that you should be aware of, and in light of the circumstance I would ask you to consider a change that I would like to suggest in the language. Currently there is a bill before the mayor for approval which grants exemptions to churches for certain road improvements; I've mentioned it before to you. At the same time, attorney William Crockett is proceeding through the county a series of building permits -- fifteen building permits -- to develop a campus for a religious corporation, and it seems to me relevant in the sense that the mayor is in a position where if she in fact approves these bills, then she may...the family may, in a sense, benefit from that approval. And so I would like to submit this testimony concerning the section of the code that you were thinking about last time. I've written it so I'll just read it to you now. [SEE attached Communication 92-77, read verbatim by Mr. Smith.]

It seems to me that what you would do with this correction would be to place the citizen...to give the mayor the right to speak as a citizen, but to claim that testimony away from representation that she is the government or that she is the county. And I think that it would simplify the Charter in that you wouldn't have to have a number of classes; it would allow spouses to appear before boards as long as the idea was present that they were representing themselves as individuals and not representing the county. And I think that would be a minimal change that would satisfy, I think, the concerns of political rights to free speech as well as the protection of the public interest. Thank you very much.

Wright: Do you understand that there's nothing that restricts spouses here in the current code from appearing, and nothing in what you have proposed that will restrict spouses from appearing. What you're asking, I'm afraid, may not...and that's what we tried to discuss the other day, is there's nothing currently that precludes spouses from doing that; there's nothing in our change that would preclude spouses from doing that. In fact, this section that we were amending doesn't even address that; it's directed to

Wright: (Continued) a different matter. And so all I'm saying is I'm afraid that if you're thinking that we should make an amendment that addresses what the spouse of a county employee can do, or officer, this isn't the section that either way will take care of that particular problem that you're bringing up. And right now, if a new section is added or something is changed, I don't favor that kind of change; but I'm just telling you right now if we left it the way it was, if we changed it the way you just read, or if we changed it the way we've got it in here, it will not address the spouse of an officer or employee of the county and their actions. I mean, it simply won't.

Smith: Well, what I'm proposing is the Section 10 which relates to county interest -- representing a private interest against the county interest -- be retained, okay. And to improve that, to simply add the statement that I read to you. But, the issues with the spouses is not the issue, the primary reason that I'm proposing this. The primary reason is to retain the distinction between county interest and private interest in the ethics code so that that can be a point of review; that's where it hangs is this against the county interest...is this against the public interest. If you delete the words against the county interest, you've got nothing. And so I would say that the issue is that speakers speak as a private individual -- that's the issue; and whether it's a spouse or whether it's the mayor or whether it's the council -- they cannot be representing themselves as government -- only as individuals. And that's the, I think, the issue.

Wright: Well, first of all I have to disagree with you on a couple points. I don't believe that we can say that the mayor can only speak as a private individual; she was elected to this position where she is the representative of the county. You know, whether you like it or not, and I think that it's wrong for us to say that she could only speak at any time as a private individual -- that's simply not the case. But secondly, when you said against county interest, the way it was worded before it said you cannot represent a private interest, or you cannot go against county interests -- it was joint. And what our legal counsel told us is that the way it was phrased was redundant, because if you cannot represent a private interest in any capacity as an employee or officer, then you're not going against county interests. Do you understand? You can't go in against it. Because what you're saying, Jim...what I don't understand...

Smith: I read the testimony; I mean, I read the confusion that was said, but it seems to me...let me read this...

Wright: How do you define against county interests?

Smith: Represent private interest in any action or proceeding against the interests of the county.

Wright: Yes, we don't want them representing private interests at all.

Smith: All I'm saying is that as a private citizen...first of all, the mayor has a voice before any board, okay? That's in the Charter, as mayor; she's not elected to represent the county -- she's elected simply as the chief executive officer to administer...it's spelled out in her duties. And, I don't see in the duties as a representative. We have an elected legislative branch, and we have the executive branch; and her powers and duties concern department heads and administration, and that's the balance, I think, of the two party system. But, that's debatable. What I'm suggesting is that our ethics code needs to retain the distinction between representing private interests and the interests of the county, because it is the conflict between the private interests and the interests of the county that brings into play violation of this ordinance. And, if you take this out of this particular section, you've made it impossible to enforce. So, my

Smith: (Continued) request is simply that you retain that language, and maybe clarify by deleting the section part, which I think it may be correct in saying is denying certain rights to certain people, and that would be the part...or appear in behalf of private interests before any agency. What I'm saying is once the person describes themselves as a private individual and not a representative of the government, then free speech is there and they can do what they want. You may say that that's risky because you're still carrying the shield of office, but I think that's all that needs to be done...is to separate yourself from the public authority that you're carrying. And, I hope you would do that because deleting that specific reference to against county interest, I think, simply reduces the prohibition to nada.

Chair Nakasone: Any further questions? Okay, thank you very much.

III. APPROVAL OF MINUTES

The minutes of the August 3, 1992 and August 6, 1992 Charter Commission meetings were approved as circulated.

IV. COMMUNICATIONS

The following Communications were accepted by the Commission:

- A. 92-74 Letter dated August 13, 1992 requesting retention of current county council representative basis; submitted by W. Orikasa
- B. 92-75 Letter dated August 13, 1992 objecting to redistricting of one central seat; submitted by W. Pellegrino
- C. 92-76 Letter dated August 13, 1992 objecting to redistricting of one central seat; submitted by S. Hall
- D. 92-77 Written testimony presented verbally at August 13, 1992 Commission meeting; submitted by J. Smith

V. COMMUNICATIONS

A. DECISION MAKING - ARTICLE 3 - RESIDENCY AREA PRECINCT BOUNDARIES

Chair Nakasone: Mr. Sparks, you have a recommendation?

Sparks: Yes; I was just looking at our latest communication. Is it my chance now?

Chair Nakasone: When ever you are ready; you've got the floor.

Sparks: As some of you know because you were at the meeting Monday, I'm interested in making some corrections, what I consider some important corrections to the boundaries we have on our residency areas. The best way to get clear on that is to get a good close look at the maps. Now, Marilyn has done some pages, if we in our wisdom should make these changes, that are ready to just insert into our report, so there's no delay there. As you know, we have to have our report done by tomorrow. So, let me at least point to the right portions of the map...

The first one that I'd like to take up, and we have to take them up one at a time I'm sure, is the most serious one, I think, and that's my concern that I mentioned last time...that far East Maui district is too small in population. Most of us were eager to have a residency seat for East Maui...Hana and Keanae...because it's a unique rural area, and we were reluctant to add other areas into that residency seat because they were different in nature. I don't think we adequately thought through the political implications of such a small population base for candidates to come from and such a remote area. So, my concern is that with that small a population base we'll see a lot of elections with either no contests or virtually no contests -- no credible opposition to whoever the

Sparks: (Continued) incumbent is...much as we've seen over the years with the Lanai seat. And the reason that concerns me is that means all the voters in the county -- that's all of us since we're electing at large -- will be deprived of a choice when that happens. And that means if the voters don't have any...if elections are going to mean anything, there needs to be effective competition in elections so voters have a choice...so that then the elected officials are accountable to the public, and have to pay attention to the public. If there's no choice, then accountability really suffers. So that's why I think that concern, in my mind, is much greater than the earlier concern we had about keeping this as a unique kind of a community with its own resident there. To fix that, I believe the best way to do that is to take precincts 1201 and 1202 and add them to that East Maui area...so the line would be here instead of here. That will increase the registered voter count considerably and the population considerably. The registered voter count in that area then would be 2809 in our East Maui residency area; that's a little more than Molokai. When I checked back over the records, Molokai with their population of almost, but not really, three times Lanai's has done pretty well in fielding candidates. This year I think about five candidates. And Molokai's in a sense even more remote because they have the cost of campaigning by flying over by air, right? So that should assure us of enough candidates...credible candidates in the East Maui district if we make that change. It will...there's a couple other points I want to make or reiterate -- if I can notice that problem with a small population in a remote area, maybe denying the voters choices -- other people are going to make those connections very quickly and argue fairly effectively, I would guess, against our whole scheme...so we're going to have a hard time selling it the way it is now to the voters. Try to imagine yourself explaining it...why we should keep it this way, and why...that population should be enough.

Chair Nakasone: Al, would you make a motion to that effect so that we understand your proposal as stated in here?

Sparks: All right, I move then that we move precincts 1201 and 1202 from the Makawao-Paia residency area into the East Maui residency area.

Yonenaka: Second.

Chair Nakasone: Discussion?

Yonenaka: I think it's a fairly logical move; I know there was some members and some members of the public who have talked to me and expressed concern about the small size. It's still in keeping, I think, with the continuity of that area; it's basically a rural area. And, I think if we are serious about presenting something to the voters, this is one area that we have to fix -- it's pretty obvious. I don't see any way we can do it without expanding that area just a little in terms of population.

Takabuki: Just a comment. I appreciate your efforts, Al, in trying to address some of the concerns I had before, but I still have a problem...a real basic problem with the idea or the concept of three seats for what I see for the total East Maui area. So, while I might entertain some of the minor corrections I know you talked about earlier, I still cannot support that.

Sparks: I really think it's a mistake to think in terms of you're giving East Maui three seats, anymore than it's saying we're talking away from Central Maui a seat or two. I think the way we talk about things makes a lot of difference in how we think about things. And, in fact in my mind, we're not giving anybody anything -- we are electing at large; that means that all nine of the representatives are representatives for the entire county. So

Sparks: (Continued) we're talking about representatives for East Maui...whoever should win...being our representatives, and Hana's representatives, and we all have an interest therefore in it being an effective electoral contest. And, any of those seats that we are talking about for the East Maui area are really guaranteeing a resident from those areas on the council, and that resident has to represent the whole county because they have to go before the voters throughout the entire county. So those residents will be powerfully affected by large population areas in Central Maui or anywhere else; they will also be, in close contests, they will be very interested in all the votes -- even in remote areas like Hana and Lanai. So, we all have an interest in effective contests, and we have to keep reminding ourselves that we're not giving a certain area a seat -- we're just giving them a resident that is elected by the entire county -- it's a representative for the entire county. You're not giving them...like we would in true districts...somebody they elect. I think there's a lot...

Chair Nakasone: Okay, further discussion?

Sparks: Of confusion all the time in the way we talk about these things. While I'm on the topic, I know some of us would like to see two residency seats for East Maui, and maybe one of our seats be a no residency seat. The problem with that, for me, is that it doesn't maximize the potential that we have in this scheme for distributing the geographic distribution of the people on the council. I think there's a real advantage to having people reside in the different areas of the county on the council, and that's one of the things we can do with our scheme. The other problem is it gets us back into this language confusion; we'll never break people of the habit of talking about that no residency seat as an at large seat...when they are all at large; and so the confusion factor just goes on and on and on. I listened to the forum last night with the candidates for council talking and everybody was referring to the no residency seat as the at large seat, as if the others were not at large. So, that's a problem with going that route, I think.

Woodburn: As an advocate for the former scheme in terms of the Hana district being unique and having their own resident candidate, I support the move that Al's proposing just because it expands the population base and hopefully the pool of candidates that we can realize from that area, and works to maintain much of the uniqueness of the area with the combination of the Haiku...the addition of the Haiku area into it. I think it's a good compromise.

Wright: I agree that maybe the population base needs to be expanded; I feel that it defeats what we were trying to do, and the reason that I'm opposed to it is I don't feel there will ever be anyone from Hana that is on the council, or that is from that area at least, I believe they'll only be from Haiku and that area. So, I just feel that in a way it defeats it, although I recognize the fact that it would increase the pool of candidates.

Yonenaka: It's still an at large system so...

Wright: I understand all of that...we've been over this forever. I mean, I really do understand the at large; I'm just saying, as a reality, with the pool of candidates and the recognition, I just don't believe it will happen -- and maybe it won't.

Chair Nakasone: Any further discussion? I made my comments before about this, and I still believe that Central Maui...or that no residency requirement would get a larger pool of candidates. And, the anticipated growth of Central Maui also, I think you have a greater pool of candidates, and yet you have only two seats.
So, ready for the question? Roll call.

ROLL CALL:

Mondoy: Yes.
Fabrao: Yes.
Wright: No.
Reyes: Yes.
Sparks: Yes.
Cockett: No.
Woodburn: Yes.
Yonenaka: Yes.
Nakasone: No.
Takabuki: No.

MOTION DIES.

Sparks: Okay, the next one we need to fix...

Chair Nakasone: Recess.

[RECESS/RECONVENE]

Chair Nakasone: The meeting shall reconvene; Mr. Sparks, you have another proposal?

Sparks: Actually, what I want to correct now...let's see, I think I can make this motion because it's a different idea than the one that failed last time, right? I would like to move that we put all that area of precinct 806 north of Pohakea Gulch into what we call the Wailuku residency area; and all that portion south of Pohakea Gulch into South Maui residency area.

Yonenaka: Does everybody know where that is?

Sparks: Yes, there's a line up there that's pretty close to it.

Woodburn: Right where the highway joins right there?

Sparks: Yeah.

Chair Nakasone: So this goes to Wailuku and this goes to South?

Sparks: Right; so Waikapu's now in Wailuku and Maalaea is now in South Maui...if we pass it. Big if...

Woodburn: Second.

Chair Nakasone: Discussion?

Yonenaka: Call for the vote.

Chair Nakasone: Okay, roll call.

Mondoy: Yes.
Fabrao: Yes.
Wright: Yes.
Reyes: Yes.

ROLL CALL (Continued)

Sparks:	Yes.
Cockett:	Yes.
Woodburn:	Yes.
Yonenaka:	Yes.
Nakasone:	No.
Takabuki:	Yes.

MOTION CARRIED.

Sparks: Now, the next one I don't think I can move for reconsideration because I already lost on it. It's the Wailuku-Kahului division. It was actually an error when Daryl tried to get precincts from census tracts...he put it up this way -- I want to put it this way.

Yonenaka: So, you can't introduce it?

Sparks: I think Debbie can though if she's interested.

Wright: Okay, I'll buy an interest. The motion is that the residency area, that is called for our purposes, Wailuku-Waihee-Waikapu consist of the 2nd, 3rd, 4th, 5th and 6th precincts of the 8th representative district, and the 5th, 6th and 7th precincts of the 9th representative district; and that the Kahului residency area shall consist of the 1st, 2nd, 3rd and 4th precincts of the 9th representative district and the 3rd precinct of the 10th representative district.

Chair Nakasone: Wait, I'm confused about this.

Sparks: Well, I was afraid that reading it would confuse people, but if you look at...

Yonenaka: That's what we have now, don't we?

Wright: No, this is the change; this is not the same as what's in the book.

Fabrao: This is a change. Maybe you can point out those districts, Al.

Sparks: What happens is, I think, 905 goes from Kahului into Wailuku and what was the other change?

Woodburn: 804.

Sparks: And 804. Let me just point at it -- 905 is this area, the county building down to the hospital -- we're putting that into Wailuku side. So, all this we can see right below us here would be indeed considered in Wailuku. We'd run a line down to the hospital, down Kaahuman and Beach Road would put Puuone into Wailuku -- that's 804.

Wright: Is there a second?

Yonenaka: Second..

Chair Nakasone: Can you go over that motion again?

Wright: Do you want me to read it again? It's written here.

Chair Nakasone: Which one is that?

Wright: It's the first page of the proposed additions.

Woodburn: It's a change of the first two sentences.

Sparks: See where it says under objective...it tells you what's happening.

Wright: It only removes the 5th precinct of the 9th representative district from the Kahului residency area to Wailuku; and the 4th precinct of the 8th district from Kahului to Wailuku. And, Al has up there a drawing that shows the changes in the...

Chair Nakasone: Okay, discussion? We all understand the motion? Any question on the motion?

Sparks: Let me reiterate it again...I think we're just correcting something that is basically an error when he tried to translate from census tracts to precincts, and it probably wouldn't have happened if I weren't on vacation and had he gotten a better map to work from. So...and it makes a less goofy line between the two.

Wright: I was going to say, I voted against this before and I'll just point out I don't think it makes a drastic difference either way because it's a residency area; however, it does seem to fit closer -- Al, once he drew the map -- I felt a little clearer, it does go with our more general defined definitions of Wailuku and Kahului. I don't think it makes much difference because of the residency nature of the requirement, but it certainly doesn't hurt anything.

Chair Nakasone: Okay, further discussion? I just want to make one comment...being that I did oppose the general makeup of the county council, I cannot support this. Roll call.

Mondoy:	Yes.
Fabrao:	Yes.
Wright:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Cockett:	Yes.
Woodburn:	Yes.
Yonenaka:	Yes.
Nakasone:	No.
Takabuki:	Yes.

MOTION CARRIED. Any other suggestions or proposed amendments? Victor?

Reyes: On the requirement for the corp counsel and the prosecuting attorney...the requirement to practice three years in the State of Hawaii was deleted. That was a mistake. Why? Look at the qualifications of the other department heads and they all have basically a five year experience... Since we have deleted the portion of practicing in the State of Hawaii, I would like the three year period increased to five years; number one, it makes it consistent with other five year requirements, and number two, I think a three year practice anywhere in the United States to be considered as a potential candidate for those two very important positions here in the county...I think it's a little bit -- it demeans the position in a word as far as I'm concerned, in a way that it's too small a requirement for such a very important position. So, I'd like to move it from three to five.

Chair Nakasone: Okay, is that a motion? You're dealing with 8-2 and 8-3? It refers to at least three years -- you want to amend it to at least five years?

Reyes: Yes, Mr. Chairman. I'm not proposing that it be in the State of Hawaii, but just changing it to five years.

Chair Nakasone: Is there a second?

Sparks: Second.

Chair Nakasone: Discussion?

Wright: I can understand the concern, and the other department heads do require five years; my concern is that it doesn't necessarily relate, once again...you can practice law for three years or for five years, it doesn't necessarily mean you're going to be a better administrator. And, we keep forgetting that these are more administrative jobs than they are necessarily. You'd have to have legal knowledge, there's no doubt about it, and you have to have some experience; personally, you've got a lot of people after three years I'd rather have in the position than some people who have practiced for ten years. But, some of that just comes from individual...and the administrative ability. I'm only afraid that we're talking about length of practice synonymous with administrative ability, and it's not the same thing; it's a very different thing. I can understand, perhaps, if you want to put in a requirement of some administrative background, although that might be kind of frightening; but all I'm saying is that it just doesn't line up in my mind, that because you've practiced law for three years or for five years you're going to be a better administrator or you're going to have even more legal knowledge. So, you know, I have mixed feelings about it -- I understand there's a stiffer requirement for the other department heads, but I don't see it as necessarily lining up or being that...and that's the only concern I have on that, because it's not the same thing as having the right experience. I don't really see anybody that's practiced for three years being nominated to the job, to tell you the truth; I just don't think that's something that's going to happen anyway.

Reyes: It's true, I agree, that if you have longer experience doesn't necessarily mean that you'll be a better administrator; it's also true that not all people with three years experience...there'll be no one there who will become a better administrator, but I think it gives the county a better chance of...it just increases the chance of the county getting a much qualified person by upping that length of experience from three to five years.

Sparks: I think this is kind of a tidying up thing that makes some sense, but isn't in substance going to make an awful lot of difference; therefore, why not go ahead and do it? Stiffen the requirements a couple of years -- get a little guarantee of a little more maturity in the office.

Chair Nakasone: Further discussion? Roll call.

Takabuki:	Yes.
Mondoy:	No.
Fabrao:	Yes.
Wright:	No.
Reyes:	Yes.
Sparks:	Yes.

ROLL CALL (Continued)

Cockett:	No.
Woodburn:	Yes.
Yonenaka:	No.
Nakasone:	Yes.

MOTION DIES.

Chair Nakasone: Any further proposals to the amendments? If none, then we'll consider these Charter amendments as final. They will be submitted to the county clerk.

If there are no objections, the chair would like to note that all communications will be part of the final report.

And, if the subcommittee chairs wouldn't mind, schedule a meeting next week for laying out the ballot and descriptions -- all members are invited to this meeting. No problem with next week Thursday?

Wright: Why are we having a meeting?

Chair Nakasone: It's just discussing the layout of the ballot and the question of what we can recommend to the county clerk.

Woodburn: How much time do we have for that?

Nakasone: Until September 2nd.

Woodburn: Is when the ballot draft has to be ready?

Sparks: To him.

Chair Nakasone: Yes; but the official report is due on August 17th. It's Monday. We've still got to get an opinion from corp counsel as to what's the status of this Commission at the time we submit our final report, so whether we have to post for the meeting of next week to look at the possible layout of the ballot, I'm not sure whether we do it with or without the posting. Decisions aren't being made, but the question is the ballot; if we leave it up to the clerk, then you know...however, we're making a recommendation to the clerk on how we think the ballot should be outlined and devised.

Sparks: Were we going to have a ballot committee?

Wright: Yes, I was just going to say if there was going to be a committee or whether all of us were going to try and sit down and produce the ballot?

Chair Nakasone: Well, I requested that the subcommittee chairs get together and look at their sections...whether we can compile it as one or a couple questions, or have individual questions.

Woodburn: So it would be like what you had...a sample of from the last time, that showed all recommended changes to the charter...and then extract a few of the more critical ones?

Sparks: There's several ways we can do it; we can put sixty different amendments on there.

Woodburn: You really don't want this thing to pass, do you? [LAUGHTER]

Sparks: We could lump it all in one and say accepted by or lost; or we could parcel out some controversial ones...

Chair Nakasone: Yeah, we should; we should separate the questions.

Sparks: The guide to Charter Commissions pamphlet that came out from the civic league was that if you were substantially changing things, you should do it with one yes or no, up or down vote...but frequently when you do that, things interlock...you can't just do it piecemeal. But, they also recommend that if you've got one or two controversial things that...

Chair Nakasone: That it should be separated.

Sparks: You can split them out; that's the way I'm leaning right now. I'd like to see maybe three or four, and then one for all the non-controversial sort of housecleaning items.

Woodburn: Yes, I think that's a good idea.

Chair Nakasone: There's no further item on the agenda...

VI. NEXT MEETING DATE
Thursday, August 20, 1992 at 4:00 p.m., Council Committee Room, 7th Floor.

VII. ADJOURNMENT
There being no further business, the meeting was adjourned at 5:04 p.m.

ACCEPTED:

Robert Nakasone, Chairman Date