

James R. Smith
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Paia, Hawaii 96779

November 12, 2011
Members of the Maui County Charter Commission
200 S. High Street
Wailuku, Hawaii 96793

Subject: Integrity as it affects your study of
the Maui County Charter

Members,

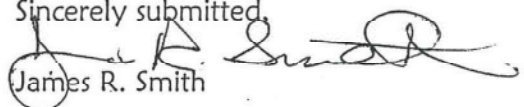
Minutes of your meeting on October 10, 2011 at page 15 show the word "corrupt" incorrectly used in public testimony to this commission by a promoter of single member district voting. Black's Law Dictionary defines corruption: an act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and rights of others. (6th Edition at page 240.)

By this definition a person can be corrupt but not a system.

A member of this commission is employed as a government affairs director at a large organization that historically participates and advances the financial interests of its membership. This member appears to be paid for that service. At your October 24, 2011 the member represented that organization, before this commission; and transmitted to commissioners a document related to an issue he currently is deliberating upon. The commissioner benefits in a personal way by advancing this position. This action appears inconsistent with his official duty and contrary to my right to have impartial study and deliberation by each commissioner, when considering proposed charter amendments.

In light of these events, I request that the commission by Resolution, bring this matter to the Maui County Board of Ethics and request an advisory opinion specific to the question of whether there exists an inherent conflict of interest in this member's continued participation in deliberation specific to single district voting. The integrity of this process is threatened by actions that advance personal opportunity at the expense of a trusting public. This commissioner does not appear to care.

Sincerely submitted,


James R. Smith

IV. OVERVIEW/DISCUSSION OF PREVIOUS CHARTER COMMISSIONS

A. William Crockett (Continued)

Crockett pointed out that a "whole lot of time" had been spent on district representation by previous Commissions and that it was decided to defer the problem by providing for another Charter Commission appointment two years later. However, the proposal they came up with was voted down in the following election.

Crockett reiterated his position that there is "no problem with the system as it exists today. The system we have right now works pretty good considering the geography."

Crockett stated that his personal feelings are that "district representation hurts the individual voter rather than helping the person; I don't like district representation" because "pork barrel budgeting then comes about and lends itself to wheeling and dealing. There is a lot of perversity built into the system."

Regarding the change in Council makeup which would occur with districting, Crockett observed that with nine to eleven council members "you have a collegiate body of the County of Maui, and you can maintain that up to 13 people - after 15, you lose the collegiate feeling - the Council gets too large."

Noting that "it all started with Toshi Anzai in 1949," Crockett said that separate districts for Molokai and Lanai are "probably the only solution for the County of Maui."

When asked his feelings on residency requirements for the three Central Maui seats - breaking it into three distinct races, Crockett replied that "single member districts end up with head-to-head elections," and that "one-man-one-vote does not mandate single member districts - you can have multi-member districts."

2. Planning Commission for Lanai - Regarding the Planning Commission on Molokai, "when the Charter was last amended to create the arrangement we now have, I opposed it publicly." Crockett cited the following reasons for his opposition to another planning commission for Lanai:

- a. Expense - substantial capital costs involved with revenue bonds required along with general obligation bonds.
- b. Staffing - redundant with a new system; also, administrative staff turn-over a problem.

(7) A person loses the person's residence in this State if the person votes in an election held in another state by absentee ballot or in person. In case of question, final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter.

(Emphasis added.)

Eight¹ of the twelve Complaint Letters state, "... it is widely believed that [Mr. Kaho'ohalahala] actually resides with his wife on Maui." Assuming, for the purpose of argument, that this widely held belief is true, section 11-13, HRS, contemplates that a person may have a residence separate and apart from his or her spouse when it states as follows: "For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse."

Mr. Kaho'ohalahala admits that he resided on Maui when he was director of the Kahoolawe Island Reserve Commission.² However, section 11-13(5), HRS, states as follows: "(5) A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison[.]" Therefore, Mr. Kaho'ohalahala did not lose his residency due to his absence from Lanai while he was employed in service of the State.³

One Complaint Letter⁴ alleges that "The 444 Fraser Ave. address is the home of his father. His siblings, I believe, are listed on the deed of the home. His residence for approximately the last 10 years has been 124A Fleming Road, Lahaina, HI."

The language of Hawaii Revised Statutes, section 11-13, paragraphs (1), (2), and (4), makes it abundantly clear that physical presence or absence from a particular place is not the deciding factor in determining the residence of an individual. "Under section 11-13, one's state of mind determines one's place of residence." Atty. Gen. Op. 86-10. (Emphasis added.)

¹ See, Exhibits "A-1" through "A-4", "A-6", "A-7", "A-9", and "A-10".

² You state in your written response on behalf of Mr. Kaho'ohalahala, "Mr. Kaho'ohalahala does not dispute that he resided on Maui when he was director of the Kahoolawe Island Reserve Commission. This commission is a state commission created pursuant to Chapter 6K, Haw. Rev. Stat."

³ Exhibit "A-8"

⁴ See Exhibit "A-5"

Results from Kula Community Association Survey on Four Charter Commission Proposals

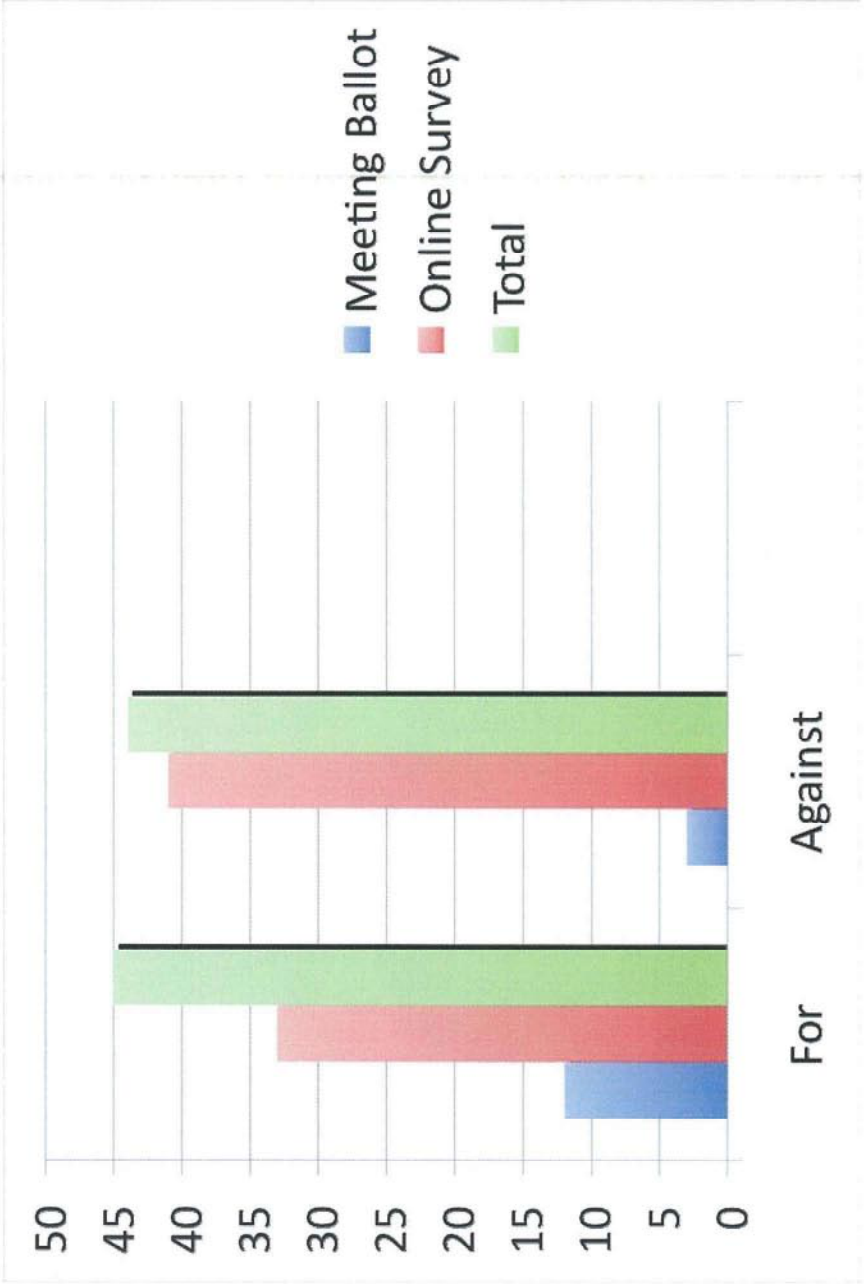
The Kula Community Association's November 9th General Meeting was a "town hall" format discussing four Charter Commission Proposals. Ballots were handed out at the meeting and an online survey was available on the KCA's website, www.kulamaui.com

These results are the preliminary results and the final results will be available for the November 28 Commission meeting.

Because there were differences in the results between the ballots from the meeting and the online survey, both results are presented along with the total.

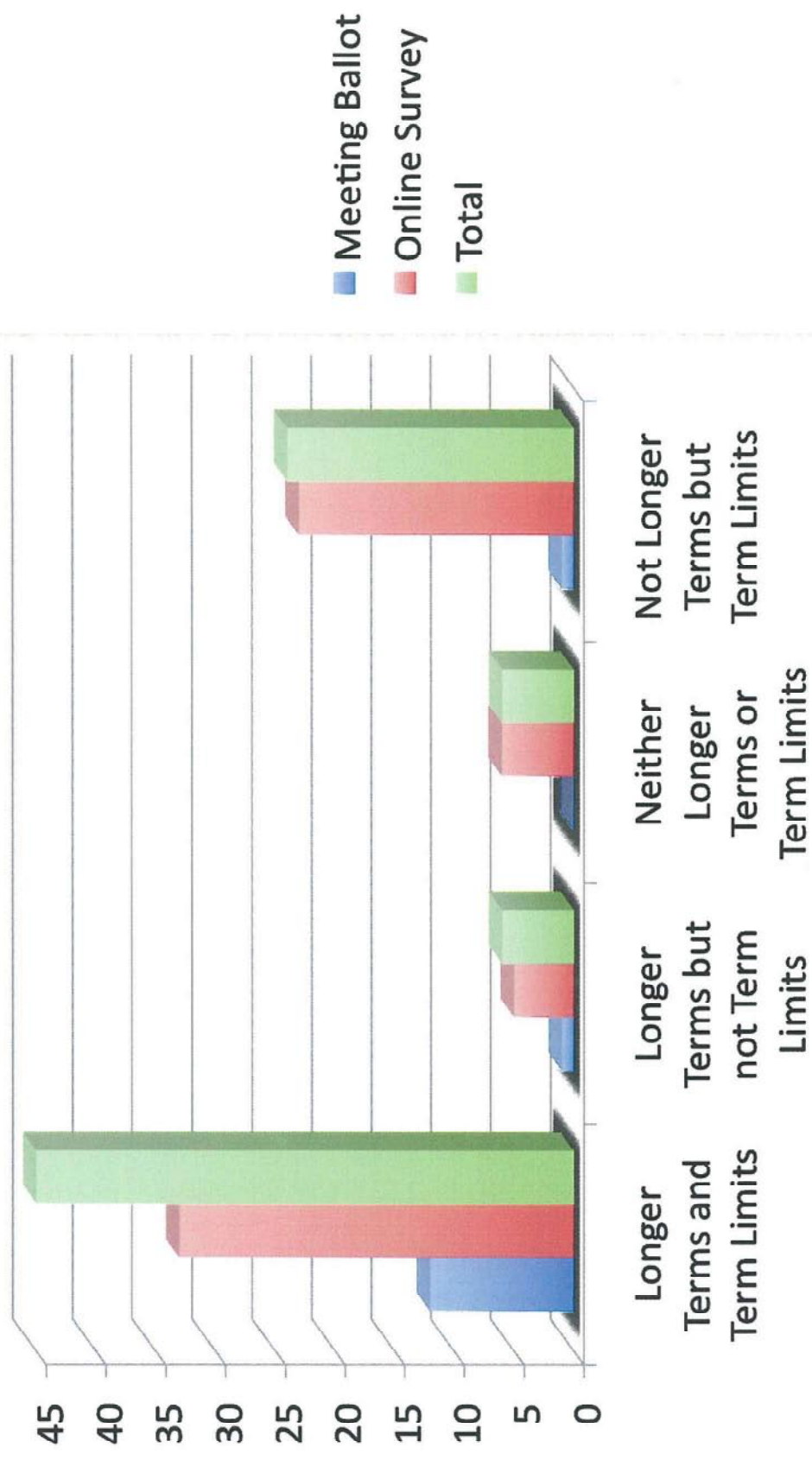
Results calculated by Ron Montgomery, 283-9079, ronmaui03@gmail.com

1. Charter amendment proposing a reduction of the number of signatures for Initiatives and Recalls from 20% of registered voters to 10% of those who voted in the last election.



There was a noticeable difference in the results of those in the town hall meeting, who had the opportunity to learn and exchange ideas than those in the online survey.

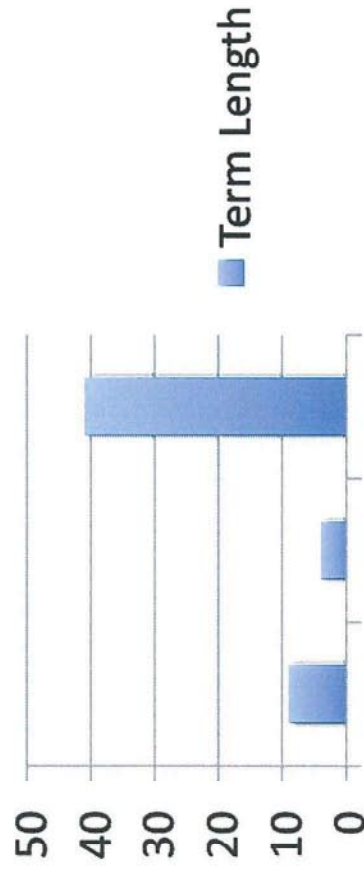
2. Charter amendment proposing an increase in term lengths and enactment of term limits for Council Members



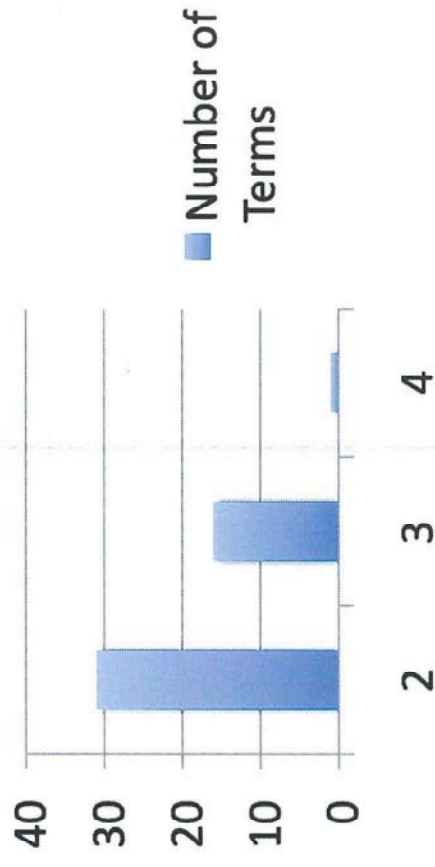
There was a strong preference for term limits regardless of whether terms are longer or not

Comments on Term Length and Term Limits

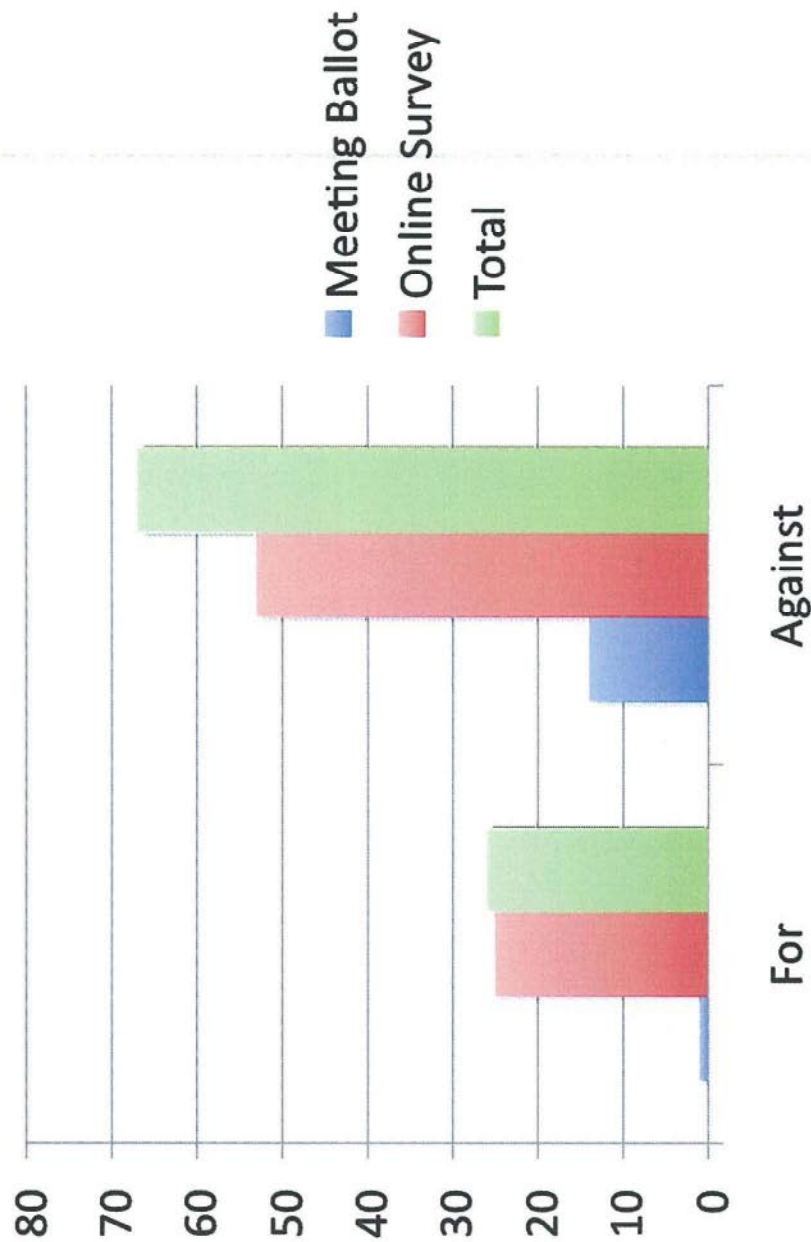
Term Length



Number of Terms



3. Charter amendment proposing a change from non-partisan to partisan elections



4. Charter amendment proposing a change from “At Large” elections for Council Members to some form of district elections. The chart below does not show all of the options, but does show those the KCA believes offer the best solutions.



Options 3.10 and 3.11 are variations on multiple Council members in multiple districts. Options 3.2, 3.3, and 3.4 are variations on single-member districts with consideration for Lanai and Molokai.