

MINUTES OF THE
MAUI COUNTY CHARTER COMMISSION

DATE: September 5, 1963

PLACE: Board Chambers, Wailuku, Maui

CALL TO ORDER: 7:40 p.m.

PRESIDING: William F. Crockett, Vice-Chairman

MEMBERS PRESENT: Masaru Yokouchi Chairman
Emil Balthazar
C. H. Burnett, Jr.
Richard Caldito
William F. Crockett, Vice-Chairman
Cornwell Friel (Molokai)
Shiro Hokama (Lanai)
Nadao Honda
Keith Tester

MEMBERS EXCUSED: Harry Kobayashi
Thomas Yagi

OTHERS PRESENT: County Attorney's Office:
Kase Higa, First Deputy County Attorney

Wailuku District Court:
Andrew H. Wong, Magistrate

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ROLL CALL:

There were 9 members present and 2 excused at the regular meeting of the Maui County Charter Commission on September 5, 1963.

MINUTES:

The minutes of the previous meeting held on August 22, 1963 were distributed to the members and approval of said minutes was deferred until the next meeting. Minutes of the meeting of August 13, 1963 were approved as circulated.

LITERATURE:

Copies of "Information for Charter Commission" and Organization Charts of the County Attorney's Office and the various district courts of the County of Maui and also the agenda for the seminar to be held in Hilo on September 12 and 13 were distributed to the members of the Charter Commission.

COMMUNICATIONS:

The following communications were received since the last meeting:

1. Memorandum dated August 20, 1963, from Mr. Fred Bennion, Director of the Tax Foundation of Hawaii, informing us that they are preparing a short mimeograph report which describes the various forms of municipal government and which is available to us at no cost. Order for 15 copies of this report has already been placed.
2. Letter dated August 26, 1963, from Dr. Kaoru Noda, Chairman of the Hawaii County Charter Commission, together with draft of the program for the seminar in Hilo on September 12 and 13.
3. Letter dated August 27, 1963, from Mr. Herman S. Doi, Researcher, Legislative Reference Bureau, informing us that Mr. Richard Takasaki will be one of the participants at the seminar in Hilo.

GENERAL DISCUSSION:

County Attorney's Office:

Mr. Kase Higa, First Deputy County Attorney, was present to brief the members of the Charter Commission on the operations and functions of the County Attorney's Office. Mr. Higa explained to the members the "Functions of the Attorney's Office" as submitted by that office.

Mr. Higa: Under the present setup the County Attorney's Office handles both civil and criminal cases. Mr. Yoshito Tanaka, Hawaii County Attorney, has testified that he would like to see the functions separated and have a separate County Prosecutor and a separate County Attorney. It may involve more finances but I think this Commission should take this into consideration in their deliberation. I wish to inform you, with the concurrence of County Attorney Harold Duponte and the members of the staff, that this proposal is worthy of some consideration. Mr. Tanaka felt that both the prosecuting and the county attorney should be appointed. Mr. Duponte feels that the system we have right now (elected county attorney) has worked out fairly well.

We feel that what this commission should consider is to make two separate departments - the prosecuting attorney and the county attorney department (one to criminal and one to civil matters). It may well be that in a county this size, instead of having an elected prosecutor, we should have an appointed prosecutor and an appointed county attorney, or if you prefer, we could continue with the County Attorney's Office being involved in both prosecuting and civil functions.

- Mr. Caldito: Referring to No. 14 of the "Functions of the County Attorney's Office" (Give, when required and without fee, his opinion in writing to the county officers on matters relating to the duties of their respective officers) - if this department is separated into two departments, would this possibly be the main function of the County Attorney?
- Mr. Higa: It will be the main function but, in addition to that, the County Attorney will be handling land matters (acquisition and condemnation suits) and all other civil suits. These are functions which will still belong to the County Attorney's Office even if it is separated. There are areas where it may appear criminal but it is still considered to be a civil suit.
- Mr. Caldito: You have four attorneys in your office. How many of you specialize in county matters and how many participate in prosecution? Do all of you handle county matters and vice versa?
- Mr. Higa: With four attorneys we cannot afford to specialize, so we try to assign duties as we think fit. Two of them exclusively are assigned to the district courts. With two attorneys, if one is ill or on vacation, we must have someone else; and it is quite often that two of them are incapacitated. We don't have district court cases daily, but we have enough work to keep two of our attorneys busy all the time.
- We cannot specialize under our present setup. If any civil case appears in any district court, the attorney appointed to that district will handle that particular case. Any other problem that occurs in that district would be assigned to him. We have departments to which they are assigned; for example, one attorney is assigned to the Department of Labor, one to the Liquor Commission, and one to the Central Maui Memorial Hospital and to the Kala Sanatorium to give them advice on various problems that they may have. In practically all of the departments which are involved in the County we are the advisers.
- Mr. Crockett: We may have a rash of criminal cases and need a lot of manpower. That is the only objection I think can be raised upon a separate department.
- Mr. Higa: I do feel personally that the functions of the attorneys' office in the neighbor islands have not been appreciated, and I think that we should pay more attention to enlarging the department. As it is now I think that the County is getting inadequate legal service. I think the traffic code should be brought up to date. We just don't have the manpower to have things ready on time. This sort of thing should have been done 2 or 3 years ago. I don't think that all of the deputies should be expected to work night and day for the

County for the amount that they receive. We have helped the Board of Supervisors in a number of ways but, if we could have someone to devote all of his time to that area, we may be able to do a lot more than what we are doing now.

- Mr. Tester: Where does your money come from?
- Mr. Higa: All of our monies come from the General Fund.
- Mr. Tester: What is the total amount of fines credited to the General Fund?
- Judge Wong: All fines and bail forfeitures are deposited with the County of Maui. We don't have a complete picture because each court is separate and is independent of each other. I know for one year bail forfeitures exceeded \$10,000. I would say that the fines should be well over \$5,000 a year.
- Mr. Burnett: If we had an appointed County Attorney and an appointed Prosecutor, would it be more efficient and would it function better, or are you satisfied with the present system?
- Mr. Higa: Naturally the County Attorney feels that he should be elected.
- Mr. Burnett: I would take that you are perfectly satisfied with what you already have, except that you would like to have a little more help.
- Mr. Higa: Maybe I am being subjective about it, and this commission should be objective, but we should recognize the fact that the trend is toward appointed department heads. It may be more advantageous.
- Mr. Balthazar: There was a question as to the merits of elected county attorneys. By simple human equation you cannot get an answer whether it would be better to be elected or appointed.
- Mr. Crockett: I think that the County Attorney should be elected to office by the choice of the people. The people should have something to say.
- Mr. Higa: We can't compare our conditions with those in the City and County of Honolulu. The prosecution functions should be adapted to these local conditions. The prosecutor should look to the wishes of the people.
- Mr. Balthazar: Would you say your office spends more time in prosecution than in civil matters?
- Mr. Higa: The time spent is about the same. We have a lot of misdemeanors and we have enough felonies.
- Mr. Burnett: I see no reason whatsoever to change it.

- Mr. Crockett: This situation is satisfactory at the present time, but how do the department heads feel from the support they are receiving from the County Attorney?
- Mr. Higa: I think this county has sort of established a policy and we try to do more than any other county, as far as the County Attorney's Office is concerned, to help the various departments with their problems. Most of you have not been in the County or the State government, but there is an increase in tendency to turn administrative problems into legal problems, especially when they become unpleasant. As far as I am aware, our department has never turned down any department.
- Mr. Crockett: If we should ask the other departments whether the County Attorney should be elected or appointed, what do you think their answers would be?
- Mr. Higa: I don't think they would have any complaints about the present system. They probably are satisfied. You can only draw that you would have good arguments for an elected prosecutor and for an appointed county attorney; you would have poor arguments for an elected county attorney and for an elected prosecutor.
- Mr. Yokouchi: Do you think that if this department is separated, it would be impractical to have an elected counsel? If you have an elected prosecutor and an appointed county attorney, would it be too heavy? You would have an overload of work at certain times.
- Mr. Higa: We could shift the deputies back and forth so that they would not be committed to doing just prosecution work.
- Mr. Yokouchi: If you separate this department, then you would need one head in each of the two departments. There would be one prosecutor and one counsel who would have so many deputies. If we have it written in the charter that the deputies on one side would help the other side, wouldn't it cause jurisdictional problems? Assuming that your department is separated, we will have to face the problem that they will not cooperate.
- Mr. Crockett: The functions are so different. Under this condition, if one is elected and one is appointed, there would be no common ground to meet on.
- Mr. Higa: If both are appointed, it might work.
- Mr. Crockett: Who appoints who?
- Mr. Higa: The County Attorney is elected by the people and he in turn appoints the deputies.
- Mr. Tester: Is there any magistrate on Lanai?
- Mr. Higa: Mr. Hasegawa, who is the magistrate of the Lahaina District Court, is also the magistrate for Lanai. There is a clerk on Lanai.

The Chair called for a recess at 8:55 p.m. Meeting was reconvened at 9:10 p.m.

Wailuku District Court:

Mr. Andrew H. Wong, Magistrate, appeared before the commission.

Judge Wong: There are 6 district courts in the County of Maui - Wailuku, Makawao, Hana, Lahaina, Molokai and Lanai. The magistrates are appointed by the Chief Justice for a term of two years. In other words, the magistrates are part of the State jurisdictional system. The running expenses of the courts (magistrates' salaries, clerks' salaries, and other expenses) are furnished by the respective counties. If I recall correctly, the PAS report recommends that the State should bear the burden of financing the district courts. The Chief Justice recommended this to the last legislature. Accordingly, a bill was introduced by the last legislature providing that the expenses should be borne by the State and the fines should go to the State. Unfortunately, the bill didn't go through.

Mr. Yokouchi: What about the jurisdiction of the district courts?

Judge Wong: The jurisdiction of the district courts is set forth by statute. The district courts have jurisdiction of civil cases where the claims do not exceed \$2,000. Insofar as criminal cases are concerned, the jurisdiction extends to misdemeanors only where imprisonment does not exceed one year, regardless of the amount of fine involved. In felony cases they may have preliminary hearing if there is proper cause to hold one. We also have jurisdiction of committing mentally insane persons to the State hospital or to some other suitable State institution.

A greater portion of the work load in the district courts consists of traffic cases. Under the point system, which was enacted in 1961, every traffic court handles its own traffic violations. Anyone who is cited may present a citation directly to the clerk of the court. Prior to that, the police received all bails and determined what cases must go to court, but now we have jurisdiction over all traffic cases. Each magistrate sets the amount of bail and we also determine what cases must go to court, such as careless driving, inattentive driving, and other moving vehicle violations. Each court is required to keep a record of all traffic violators, even their date of conviction, sentences, etc. All dispositions are forwarded to the Wailuku District Court, which is called the Central Violations Bureau. Then the clerks tabulate the points, and, assuming that 12 points have been accumulated, the Central Violations Bureau will so notify the clerk of the other district court where this violator resides. The magistrate will then proceed to suspend the operator's license.

- Mr. Balthazar: Wouldn't it be feasible to consolidate the courts on this island to one big district court?
- Judge Wong: On the Island of Hawaii the clerk of each court is also clerk of all the other courts. They are all located in the Hilo District Court.
- Mr. Balthazar: There is some advantage - balance of work load.
- Judge Wong: Insofar as the County of Maui is concerned, each court is separate and independent.
- Mr. Tester: What is the length of appointment?
- Judge Wong: District Court magistrates are appointed for two-year terms. There was some talk, and it was recommended, that the appointment of the full-time magistrate, who is not allowed to enter into private practice, should be at least four years.
- Mr. Burnett: Would you be opposed to election? You rather have it as it is now?
- Judge Wong: Definitely, it involves too much politics otherwise. I think we have a good system and it has worked out very well.
- Mr. Yokouchi: What is the difference between district courts and circuit courts?
- Mr. Higa: The circuit court has jurisdiction over probate matters, divorce matters, and land matters. District courts are limited to handling misdemeanors, civil cases, assumpsit cases, cases below \$2,000, and a lot of miscellaneous cases.
- Mr. Yokouchi: Why is there this separation where the money for the district courts is furnished by the County and the other is furnished by the State? I think the magistrates should be appointed by the mayor if the County has to incur the expenses of the district courts.
- Mr. Higa: According to the Constitution, we have one judicial system - a central court as may be created by the legislature.
- Mr. Yokouchi: If it's under one judicial system, then the logic thing would be that all the costs should be incurred by the State.
- Mr. Crockett: District courts should represent the counties, but when the Constitution came in, we have one single integrating system.
- Mr. Yokouchi: Do the lawyers favor this one judicial system?
- Mr. Crockett: The lawyers feel that it should be one judicial system. The states are moving in that direction.

ADJOURNMENT:

After thanking Mr. Higa and Judge Wong for their time and information, the Chair adjourned the meeting at 9:45 p.m.

NEXT MEETING:

September 19, 1963, commencing at 7:30 p.m., in the Board Chambers.

Respectfully submitted,

Harriette E. Miyamoto
HARRIETTE E. MIYAMOTO
Secretary