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MINUTES OF THE
MAUI COUNTY CHARTER COMMISSION

DATE: January 29, 1964

PLACE: Board Chambers, Wailuku, Maui

CALL TO ORDER: 7:50 P.M.

PRESIDING: Masaru Yokouchi, Chairman

MEMBERS PRESENT: Masaru Yokouchi, Chairman
Emil Balthazar
Richard Caldito
William F. Crockett, Vice-Chairman
Cornwell Friel
Shiro Hokama
Nadao Honda
Keith Tester
Charles C. Young, Research Assistant

MEMBERS EXCUSED: C. H. Burnett, Jr.
Harry Kobayashi
Thomas Yagi

OTHERS PRESENT: Kase Higa, Deputy County Attorney
Mrs. Jay Van Zwalenburg
Mrs. Ann Gillin
Mr. Nathan Ambrose
Robert Johnson, Advertiser Reporter

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ROLL CALL:

There were 8 members present and 3 excused at the regular meeting of the Maui County Charter Commission on January 29, 1964.

MINUTES:

The minutes of the meeting held on January 22, 1964 were distributed to the members of the Charter Commission. Minutes of the meetings held on January 15 and 16, 1964 were approved as circulated.

TENTATIVE DRAFT OF CHARTER:

Pages 42 to 68 of the tentative draft of the charter were circulated to the members of the Charter Commission.

DISCUSSION ON PROPOSED CHARTER:

Section 3-9. Powers of County Council

- Mr. Higa: This section was taken from the Model County Charter and Section 6-2 was taken from the City and County of Honolulu Charter. I personally prefer the provision in the City and County of Honolulu Charter which gives the mayor the power to propose the organization of different agencies upon two-thirds vote of the council.
- Mr. Balthazar: Under the State who does the reorganization?
- Mr. Higa: It is a two-way proposition. The State Constitution limits the State government to twenty departments so at the first session in 1959 the State legislature organized the State to about eighteen departments, but thereafter there has been changes either upon the recommendation of the governor or the legislators decided among themselves. For example, the Hawaiian Homes Commission and the Department of Land and Natural Resources, as originally established, these departments were to be governed by independent commissions appointed by the governor, but Governor Burns requested he be given the power to appoint the chairmen of these commissions who will be the executive head of the respective departments. As provided on Page 14, the power of the council to create, abolish or combine executive agencies I think will give the government in general enough flexibility.
- Mr. Crockett: Are these the executive agencies created by the charter or by the administrative code?
- Mr. Higa: My interpretation is that it would apply to any agency, whether it is created by the administrative code or by the charter.
- Mr. Crockett: To make it consistent we should make the language on Page 7 conform to the language on Page 14. My observation is that you cannot restrict agencies, boards and commissions in the charter because quite often you will have new agencies created as the need arises.
- Mr. Tester: The problem is getting government to do away with the agencies that are unnecessary. As time goes on some agencies may not become necessary.
- Mr. Balthazar: More decisions should be concentrated with the council. It should not be scattered all over. There is a chance if you don't specify who has the power of setting up the commissions or how much power to give to the commissions, you might have a real sense of divided government by the council trying to get across one thing and the mayor doing exactly the opposite. I would like to see a political party accept responsibility for what they do.

Mr. Higa: It is going to be extremely difficult for you to say which commissions are not necessary.

Mr. Crockett: Let us assume that we want to keep the Water Board. Under this language in Section 6-2-- "Upon recommendation of the mayor, the council may by a two-thirds vote of its entire membership change, abolish, or re-arrange the executive agencies of the county government"-- could the Water Board, if it is established under the charter, be abolished with the amendment to the charter?

Mr. Higa: That is how I would interpret this. If we take the section that was taken from the City and County Charter, I think there is adequate safeguard in the two-thirds vote. If you try to decide which boards and commissions are necessary, are you going to say these are the only boards and commissions that shall exist in the county?

I don't consider this problem of boards and commissions to be too serious. I feel that you are going to have commissions come and go. They really haven't hurt the operation of the government as far as I have noticed.

Mr. Tester: If we are going to have certain boards and commissions, the language should be made such that it will be difficult to handle them.

Mr. Balthazar: Certainly, if you have two-thirds vote, there is adequate safeguard.

Mr. Higa: I don't think that such a program as the Lahaina Restoration Program would have gone through without the Maui Historic Commission. Maybe we should put in the charter something to the effect that commissions that are no longer operating shall be abolished.

Mr. Crockett: Once the mayor makes the recommendation and the council makes the decision, it is going to be difficult to get rid of the agencies. To establish an executive agency you must have some of the executive powers of the mayor. Our basic concept by the charter is that we are going to have a strong mayor and that we should close the door.

Mr. Balthazar: I would definitely like to see in the charter a provision preventing the delegation of powers in an executive agency as noted here.

Mr. Higa: Personally I feel that this Honolulu Charter has enough safeguard in Section 6-2 that they can reorganize and create new agencies.

Section 6-3. Other Executive Agencies

Mr. Higa: I think that is as far as you can go as provided in this section in creating new agencies. I don't think you can go to the extent that no new agencies can be created.

My suggestion is that on Page 7, subsection (1) change it to "to establish county departments, offices or agencies in the manner provided in this charter" which means that they must refer to the section on the Executive Branch to see how county offices can be established.

Mr. Crockett: Section 6-2 says that "New functions may be assigned by the mayor to existing agencies, but to the extent that this is not practicable, the council by two-thirds vote of its entire membership may upon the recommendation of the mayor create additional departments". Does this mean that if we set up an independent Board of Water Supply, the engineering function of the Department of Public Works and the Board of Water Supply could be consolidated or performed by the same personnel?

Mr. Higa: I would say that would require recommendation by the mayor or two-thirds vote of the council. New functions to my knowledge will be new services that the county may want to provide.

Mr. Crockett: I am trying to think of some language so that the mayor and the council together can, to some extent, have something to say about the operation of these departments so that the Board of Water Supply does not become a power by themselves. I wonder if you could word something out in this particular section.

Mr. Higa: You mean you want to give the mayor the power to take away some of the powers from the Board of Water Supply?

Mr. Crockett: I am not thinking about taking away functions as much as consolidation. I wonder what this paragraph means and how it would operate-- "council by two-thirds vote of its entire membership may upon the recommendation of the mayor create additional departments".

Mr. Higa: Perhaps the members of the Honolulu Charter Commission felt that they didn't want any new agencies.

Mr. Crockett: We got these agencies; we don't want to abolish them. We want to get the mayor to say that the same personnel will be used by two agencies.

Mr. Higa: On Page 63, Section 13-17--Coordination of Work--this section is advisory in nature saying that all these agencies should cooperate as much as possible to eliminate duplication and overlapping of functions.

Mr. Crockett: On page 7, subsection (4)--"take testimony and require the production of evidence-----" I think a man has constitutional right to refuse to incriminate himself.

Mr. Balthazar: That should be a matter of general law.

Mr. Higa: We shall cut it off after "administer oaths".

Mr. Crockett: We should insert "U. S." before "governmental units" in subsection 5 on Page 8.

Section 3-10. Restriction on County Council and Council Members

Mr. Higa: This section was taken from the Model County Charter and it is quite similar to what we have in the Honolulu Charter under Section 3-107-- Removal of Councilmen.

This is one of the concepts of the strong mayor system because the mayor is directly responsible for the activities of the county departments and none of the council members should be in any position to be able to direct an employee to do something.

Mr. Crockett: I suggest the removal of the word "willful" in subsection (2).

Article IV. Ordinances and Resolutions

Mr. Higa: This is generally copied after the Honolulu Charter except we have adapted it to what has been the present practice of the County of Maui. In Honolulu they have three readings.

Mr. Caldito: After the second reading in how many days will it take effect?

Mr. Higa: It becomes effective after it passes second reading. Under this charter it will become effective upon approval by the mayor.

Mr. Crockett: Section 2.08 of the Model County Charter provides for public hearings on each ordinance. I don't see any provision for having public hearings in our draft. I think it is a good idea except in the event of an emergency.

Mr. Higa: The only objection I can think about is that our traffic code goes by ordinance also. In some cases you must have a public hearing. I don't know if it serves too useful a purpose for every ordinance to go to a public hearing. If you look at the traffic ordinance, it is almost automatic--that can be changed so easily if it is found impractical.

Mr. Caldito: Are public hearings held for zoning?

Mr. Higa: It is required by the zoning ordinance.

Mr. Yokouchi: Are fiscal matters subject to public hearings?

Mr. Higa: No. We publish the annual budget and any time thereafter, if there is an amendment to the budget or if the council lowers its estimated income from the general income tax, an ordinance is passed. No public hearing is required.

Why don't we insert a provision saying that "upon request by certain members of the council, some ordinances are subject to public hearings"?

It was agreed by the members that:

1. Public hearings on ordinances shall be held upon the request by three members of the council.

2. The mayor can propose ordinances.

Section 4-2. Introduction, Consideration and Passage of Ordinances and Resolutions

Mr. Crockett: What do you mean by 4(c)--"the imposition of a duty or penalty on any person,-----"?

Mr. Higa: That refers to any ordinance which has a penalty clause. Any bills appropriating money or any bills imposing penalty on a person or any measure shall be by ordinance. You must have that; otherwise they might pass a penal provision without an ordinance.

Mr. Crockett: Should a publication of ordinance appear before an ordinance takes effect?

Mr. Higa: It doesn't take effect until the mayor has approved the ordinance, and the mayor cannot approve it until it has passed two readings.

No. 5 on Page 10 means after the mayor has signed it. This is being done now. You will notice in the Honolulu papers that, after the mayor signs it and it becomes an ordinance, a notice is published that such an ordinance had been filed in the clerk's office.

Mr. Crockett: The point is that a person could be in violation of the law before notice of the action was published.

Mr. Higa: That is true, too, but that is the same situation here. Our ordinance takes effect upon two readings and it takes a few days before we can publish the notice of an ordinance. It is a practical problem you can't get away from.

Section 4-5. Codification of Ordinances

Mr. Crockett: The Model County Charter provides for the recodification every five years. I think we should have a provision like that for every ten years. The codification of ordinance should be kept up to date.

Subsection (2) says that "No publication of the code shall be required,-----". We should have a provision to the effect that "Code should be published at a reasonable price to the public". (It was agreed by the members that such a provision will be inserted in this section.)

Article V. County Clerk

Mr. Higa: This is fairly similar to what we have in the City and County of Honolulu Charter. This section sets up in a very general way the duties of the clerk. Under this system the council appoints the clerk.

Mr. Young: Do they determine his salary, too?

Mr. Higa: He may not be under civil service, but his pay is determined by the position classification plan.

Mr. Balthazar: Personally I feel that the clerk should have the benefits under the retirement system and other such protection. It seems only fair.

Article VI. Executive Branch

Mr. Higa: Article VI, Executive Branch, on Page 14 has been taken from the City and County Charter.

As stated earlier, we will try to conform Section 3-9 to this section (6-2). Section 6-3 is advisory more than anything else, but it is meant to discourage the creation of new boards and commissions.

Section 6-4. Creation of Advisory Committees

Mr. Crockett: This section gives the mayor the power to appoint advisory committees. We should have a provision in this paragraph to the effect that council shall not have power to create advisory committees.

Mr. Yokouchi: Why do you oppose advisory committees?

Mr. Crockett: I think we'll have conflict between the council and the mayor. If the council wants to investigate a particular department, they should hold a hearing and have the whole thing over with and not have an advisory committee continuously looking over the department's shoulder. I think it conflicts with our idea of strong mayor.

- Mr. Balthazar: What about the first sentence "The mayor or department heads, with the approval of the mayor,-----"?
- Mr. Higa: Cross out "or department heads, with the approval of the mayor".
- Mr. Crockett: Who sets the salaries of the department heads? Is it going to be done by ordinance?
- Mr. Higa: Where the employee concerned is not within the position classification plan nor within the civil service system, then their pay will be set by the mayor with the approval of the council. I think it would be a good idea to have such a provision in this section.

Section 6-5. Appointment and Removal of Officers and Employees

- Mr. Crockett: Does paragraph 2 mean that those members will not be subject to civil service?
- Mr. Higa: This means when the department submits its budget, you will have to have so much money for so many employees who will be under the civil service system.
- Mr. Crockett: The language here is that the council will appropriate so much for personnel services. You could use that money for any number of persons.
- Mr. Higa: The department heads recommend the creation of positions.
- Mr. Crockett: According to this paragraph, the department heads create the positions.
- Mr. Higa: This in effect gives the council a method of checking on the administration. I think this language is sufficient. The council should have some power to check on the spending by the administration. That is one of the few powers that is left under the strong mayor type of government to the council.
- Mr. Crockett: It should be in clearer language that the decision as to how large a staff is going to be within any department will be the responsibility of the council.
- Mr. Tester: It appears that it would be an opportunity for the department head, after the money has been appropriated, to go back to the council and say "this is not enough money".
- Mr. Higa: I think we can have sufficient safeguard if we say "Department heads may not appoint more than the staff for which appropriations have been made by the council". (Agreed by commissioners)

Section 6-6. Powers and Duties of Heads of Executive Agencies

Mr. Crockett: Re paragraph 4, some of the regulations affecting the public--for instance, those issued by the Board of Water Supply--are very important. I think the regulations should be finally issued by the council. A lot of these rules are just as important as ordinances that are passed.

(It was agreed by the members that the second sentence in this subsection would read "Such regulations, after public notice and public hearing and upon approval by the council and the mayor, shall have the force and effect of law".)

Mr. Crockett: Referring to the Water Board--we are going to have a commission and yet Section 6-5(1) provides that the mayor shall appoint and remove the department heads.

Mr. Palthazar: It was agreed that we would not have a commission over the mayor. We have decided to have an advisory committee in its place and the manager would be directly under the mayor.

Mr. Higa: Why don't we add something here so that it would not apply to the head of independent boards and commissions?

Mr. Yokouchi: The council still has power to create boards and commissions.

(This section was deferred until the question of boards and commissions is settled).

Upon suggestion of Mr. Higa, the sections pertaining to the mayor was deferred and the commissioners went into the discussion on Article VIII--Executive Departments, Boards and Commissions.

Article VIII. Executive Departments, Boards and Commissions

Mr. Higa: In other charters the duties of the departments are explained in detail. My theory about this is that if we were to have a new county, we would have to spell out in detail as to how many boards and commissions we should have. What we have tried to do in this section is to more or less designate the departments, boards and commissions which are presently operating. Instead of spelling out the duties and responsibilities of the Board of Water Supply, for instance, on Page 28, we say that "the powers, duties and functions shall be as authorized by law or by ordinance". I think that is concise and definite enough.

The Chair called for a recess at 9:20 P.M.

Meeting was reconvened at 9:30 P.M.

Chapter 1. Office of the County Attorney

- Mr. Higa: Please change the word corporation counsel to county attorney wherever it is mentioned in this chapter.
- Mr. Tester: I move that this office be split in two offices. Seconded by Mr. Crockett.
- Mr. Yokouchi: In our minutes of December 12, 1963 there were three proposals.
- Mr. Higa: Why don't we say that there shall be one County Attorney's Office providing specifically that the mayor may propose and with the concurrence of two-thirds of the members of the council create an office of the prosecutor.
- Mr. Tester: Do you feel that the county attorney should be elected or appointed whether it is one or two offices?
- Mr. Higa: I think the county attorney should be appointed.
- Mr. Crockett: At the December 12th meeting we had three proposals.
- Mr. Higa: You should have one proposal.
- Mr. Balthazar: I don't see any advantage to having two separate offices. May I ask why you were suggesting separate county attorney's office and prosecutor's office?
- Mr. Tester: One would be elected and one appointed.
- Mr. Balthazar: You intend to favor elected prosecuting attorney?
- Mr. Tester: Yes.
- Mr. Higa: In Honolulu the prosecutor is appointed by the mayor without confirmation, but the county attorney is appointed by the mayor subject to confirmation.
- Mr. Crockett: What a prosecutor does has almost no connection with what happens in the rest of the government. He is just about exclusive in enforcing criminal law.
- Mr. Balthazar: Might it not hamper his views?
- Mr. Crockett: Because he is elected? I think he will be more independent. It doesn't make any difference to the government. There is almost no connection between what the prosecutor does and what the government does.

- Mr. Higa: There is a lot of merit to having an elected prosecutor. The only thing is that this is such a small county. If this county grows a little more, there will be more merit in having two separate offices.
- Mr. Crockett: The counties on the mainland have separate offices. You said you didn't think it would result in any increase in cost.
- Mr. Higa: I said possibly with one or two more secretaries. There will have to be at the minimum at least two secretaries on each side.
- Mr. Crockett: You can have the same office and the same secretaries, but just divide the office in half.
- Mr. Balthazar: Do you think they would work very well in the same office with the same secretaries under different administration? How do they interchange the use of deputies?
- Mr. Yokouchi: There has to be a separate staff as far as the attorneys are concerned.
- Mr. Balthazar: I so move that there shall be a county attorney's office to handle both prosecution and civil cases and that upon recommendation of the mayor and by a majority vote of the council an elected prosecutor's office may be created. Seconded by Mr. Friel and carried unanimously.

(The other sections in this chapter were deferred until they are redrafted according to the decision made by the commissioners).

Section 8-1.5. Special Counsel

- Mr. Higa: This language was taken from the City and County of Honolulu charter. I think there was some expression at your previous meeting that if someone is impeached, he would have to pay for his own expenses.
- Mr. Crockett: In the Revised Laws there is a provision that the corporation counsel and deputies will not engage in private practice of law.
- Mr. Higa: It will still be applicable. There are a lot of provisions in this draft which will still be controlled by the statutes.
- Mr. Crockett: I would like to see that the responsibilities of the elected prosecutor will include all the non-support reciprocal act. In Honolulu this is handled by the corporation counsel.

ADJOURNMENT:

The meeting was adjourned at 10:00 P.M.

Respectfully submitted,

Harriette E. Miyamoto

HARRIETTE E. MIYAMOTO
Secretary