

MAUI COUNTY CHARTER COMMISSION

Wailuku, Maui, Hawaii

SEMINAR

DATE: June 27, 1966

PLACE: Kahului Library Conference Room,
Kahului, Maui

CALLED TO ORDER: 7:37 P. M.

PRESIDING: Douglas Sodetani, Chairman

MEMBERS PRESENT: Douglas Sodetani, Chairman
Emil Balthazar
William F. Crockett, Vice Chairman
Shiro Hokama
Nadao Honda
George Kondo
Paul Pladera
Keith Tester
James Ushijima
Charles C. Young, Research Assistant

MEMBERS EXCUSED: Harry Kobayashi

GUEST SPEAKERS: Professor Norman Meller, Department
of Political Science, University of
Hawaii
Mr. Richard Takasaki, Vice President
of Financial Affairs, University of
Hawaii
Mr. Herman Doi, Director, Legislative
Reference Bureau, University of Hawaii

OTHERS PRESENT: Kase Higa, County Attorney
Jack Stephens, Maui News Reporter
Tsuruyo Kohatsu
Mrs. Myrtle L. Crockett
Mrs. Virginia Wirtz
Dan Higashi
Lloyd Sodetani
Mr. and Mrs. Francis Pomroy
Jitsuo Yoshimori
Mrs. Agnes Balthazar
Frank Crockett

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The Chair opened the Seminar by introducing the Guest Speakers and the members of the Charter Commission to the audience.

Prof. Meller: In working up the charter, particularly in the negotiations and the discussions, it's far better to get the things out in the open and talk about them and be able to respond to them and keep the programs under the table and, therefore, you have to deal with everybody at arms length, and it becomes rather difficult with regards to

the touchy areas that have to be resolved if you're going to be able to put a charter together.

Here in Hawaii, we're quite different from the mainland. We have no demand that we must have local government here. Mainland sort of starts out with the idea somehow or other that anything about local government is a spec. It's always built upon local government. We don't have that at all. You push most people here and merely make them respond honestly. The tendency is for most people to reply, well, the State government--that's more efficient than a local government. The local government, you're not exactly sure why it's inefficient. Some say people are incompetent, some say they don't do enough. You don't have enough reasons, but the mind is set. Somehow or other, what local government does could be handled better if the State took it over.

I think we ought to recognize until recently to shift the population of the economic endeavor, anything you want to identify, any criteria you want to use. Only very recently that this has started slowing down shifting the other way and so there was a good deal of sense to put all the directing of services in Honolulu because that's where they are being provided, because that's where the people are.

Now, if you're talking about services in local government is trying to provide, I think you must pay very careful attention to what is your population, what is your anticipated growth of population, what's the nature of population, what's the nature of economic activity you're going to have here and, in turn, what type of services should local government provide and what type of structure do you need to provide on services.

I think you also have to recognize that part of the world of today is that Federal funds are providing a larger and larger share of the services that are being met in local government and to the extent that you are going to be tapping Federal funds. Any local government today is going to have to look at Federal funds, such things as urban redevelopment, such things as filing studies, such things as economic development. Everything you identify, Federal funds is getting into the act. You have to know what's happening in Washington, what the new things are, what the attitudes are, what other chance you could get. This means, somehow or other, you're going to have to be able to move not only to Honolulu to try and get some State funds to help out for local government type of services, but you're also going to have to look towards the national scenes in getting Federal assistance there. This means, in part, that you may very well want the structure in your own local government in such way that you can cooperate with other local governments, such things as cooperatively trying to keep tab on what's going on in Washington, cooperatively putting in your bids for Federal assistance.

In short, setting up your local government is not necessarily Maui verses the rest of the islands. There is a basis for cooperation. Besides that, of course, is a basis for lot of other things that take cooperative activity in the county. You're beginning to take this on a semi-formal basis, which brings your county officials together for discussion on problems which you're always sharing. Quite clear, you can go beyond just talking about your problems and start talking about sharing your man power.

We don't have much local government. We don't have much background for local government. There is a need for local government, but there is a need for local government which doesn't necessarily have to be inflexible, but should be, in short, designed to take care of the things you can foresee in development. Not necessarily those you have today. To sort of indicate what we have, we have the most centralized government than any State government in the United States. We have more functions of government provided by the State government.

There is no reason at all, for example, why we have to be like, let's say, anyone of the mainland states which is talking about developing a state police system because people go back and forth like mad in the cities to the counties. If they commit a crime in one place, they shift over and, therefore, you have a problem of how to set law enforcement of each one of the units of government where the boundaries are such that the criminal has the advantage of facing up to the State police system. We have a water barrier and it's not too difficult to work out a police system with each one of the counties a cooperative activity.

I think local government has to be encouraged here in the islands and if you tend to identify the municipal type functions, these are the things that ought to be built in and ought to be done well. It may be less efficient. It may be cheaper. Frankly, to have all government run out of Honolulu, maybe you can buy larger lots, you can run your civil service system, maybe, because you're dealing with a larger number of people, maybe on a less costly basis. I don't know, but maybe it might be more efficient. This is only one measure of efficiency. This is dollar efficiency. You want government to be more responsive because you want it to be. This is the different type of efficiency, and this type of efficiency, I think, you can only get by having municipal type of functions set up in a system which is as close to the people as possible.

This raises another question. Why not have a County of Molokai? Why not have a County of Lanai? Well, the answer, of course, I think is that all government is sort of a compromise between where services can be most efficient economically. It becomes rather clear as the years of government becomes smaller and smaller, it's true that people may have more access, but on the other hand, that's a sign of efficiency. I think the answer to Molokai and Lanai is in part that at the present time, it's hard to say that there is enough needs in the island to support a whole system of government completely distinct--apart from Maui.

History, of course, has always kept the islands together as far back as you could see. The whole thing started when Kamehameha set his first government. So, joining these islands together is traditional. It may well be that someday you may want to break these three islands because Lanai and Molokai may develop.

Mr. Doi: In attempting to speak about the powers the Charter Commissions may have, we must have some understanding of the power relationships between the Federal Government, the State Government and the political subdivision.

We know that the United States Constitution is the Supreme law of the land and limits the powers of the Federal and State Government; that the Constitution of the United States divides sovereignty, the supreme political power between the Federal Government and the State, and that the powers of the State Government are limited by the State, not only by the State Constitution, but also by the United States Constitution, and that the political subdivisions are merely creatures of the State. Knowledge of this fact brought us to the conclusion that the political subdivision within the State do not have inherent powers, but rather derive their powers from the State Government or the State Constitution. This conclusion has been long recognized by long series of cases, and I'm sure that any lawyer can find the cases providing this authority.

This concept of the State is the fountain head of the source of all powers, the political subdivision, and is borne out in Article 7 of the State Constitution. By that Article, each political subdivision has besides you only those powers conferred by the State Legislature under general laws. The State is also given the powers to determine the limits and the procedures under which charters or political subdivisions are to be formed.

Knowledge of State Government is restricted by the Federal and State Constitution forces us to reach another conclusion, to-wit, that the Charter Commissions are necessarily restricted by the provisions of the Federal and State Constitutions. Thus, the Charter Commissions are restricted by the Bill of Rights provision in both Constitutions. Insofar as our own Constitution is concerned, the Charter Commissions are restricted by our State Constitution in regard to the following areas:

1. Taxing Powers. There are several articles regarding the power of taxation which can only be delegated by the State Government.

2. Bonded Indebtedness. This is the authority of the county to issue bonds. The State has already provided the authority for the county to issue bonds by legislation that was passed previous to the State Constitution which is still in effect. But the Constitution sets the limits of the amount supplied that the counties may issue.

3. Local Government Powers. That the State Legislature is mandated to create counties and is permitted the right to create political subdivision and that such subdivision will exercise such powers as shall be conferred by general laws. From the provisions of the State Constitution, we know that political subdivisions are to exercise only powers that are conferred upon them by general laws. Now, what does this term "general laws" mean? The Attorney General's Opinion gives us some idea as to what it means.

The Attorney General's Opinion No. 61-36, dated March 17, 1961, states: "A general law is one that offers equally without discrimination as the things within the territorial jurisdiction of the State of Hawaii, or offering equally and effect particular persons or things of the class based upon a reasonable and proper classification.

The 1965 definition was reiterated as follows: "A general law is one having uniform operation applying equally or alike upon all persons, entities, or subjects within the relation, conditions and circumstances described by a law or affected by conditions to be remedied."

In contrast to the general laws, Opinion No. 62-11 defines the special or local law as being one which relates to a particular person or thing, or to a particular person or thing of a class, or which operates on or over a portion of a class instead of all of a class. Thus, it has been held that a special law relates to particular places, rather than the whole territorial state.

Opinion No. 65-9 states a law is special if it relates to a particular person or things of a class instead of to all classes.

What is the significance of this? The Constitution says that the powers granted to counties should be granted by general laws. The opposite side of the point is, and the Attorney General has told, that any grant of power to accomplish by special law after statehood is void.

Opinion No. 61-36 states: "All special or local acts passed after the adoption of the Constitution is conferred powers upon political subdivision of the State are void." This Opinion goes on to hold the special or local laws enacted prior to statehood are not void but remain in effect.

To the same effect to Opinion Nos. 62-11 and 63-22. These Opinions clearly states that all general laws which conferred powers on the county since Statehood and all general and special laws enacted prior to Statehood are valid.

During the 1963 Session of the Legislature, Act 73, the charter enabling legislation, was enacted. Act 73 is incorporated in the Revised Laws of Chapter 143-A. It did not specifically define the powers of the counties for charter commissions. However, when one reads the Senate and Conference Committee Report for the Bill that eventually became Act 73, all three reports make it clear that the counties are to assume only those functions that they presently have.

House Standing Committee Report No. 41, which accompanied the Bill later enacted into Act 73, stated: "Throughout the briefing and meetings, it was evident to your Committee that it was feasible during this session to consider only the passage of charter enabling legislation, leaving aside the problems of how and what functions and responsibilities should be delineated and allocated between the City and County to some later legislative session.

It was the consensus of knowledgeable people that to consider the delineation and allocation of functions and responsibilities between the state and county government would involve a much more intensive and comprehensive study, especially in the area of providing for a realistic program of financing to implement the proposed delineation and allocation of functions and responsibility of the state and county government.

In view of the above, it is the intention of your Committee to provide in this field only the right to organize charter commissions for framing and adopting charters for local government and not for enlarging the powers of the county beyond those presently granted by statute."

If the grant of powers by Act 73 should be interpreted by what has been said in the Committee Report from the Bill which became Act 73, then the conclusion must necessarily be reached that the legislation tends the counties to merely rearrange functions that we presently have and not to extend the powers that they presently have.

In 1965, with the passage of Act 65, Session Laws of Hawaii 1965, the intent of the Legislature was clarified when it eliminated the mandatory requirement of those counties without a charter appoint a charter commission. The repeal of the section dealing with legislative ratification is also significant since Senate Standing Committee Report No. 324 stated: "Section 143A-11, which is the legislative ratification section, is repealed. This section refers to the ratification of county charters by the State Legislature. Your Committee believes that such ratification is inconsistent to the basic philosophy of home rule. And, furthermore, in reality, such ratification does not offer protection against the accidental contravention of state law by charter provision. Charters must be passive within the provisions of the general laws of the State, and the State Legislature authorized now and in the future after the adoption of the charter to enact general laws. Therefore, the concept of ratification of the county charter by the State Legislature is not only in conflict with the spirit of home rule, but it also serves no useful purpose."

I believe it eminently clear from the foregoing, the Legislature intended that the county rearrange the functions that it presently possesses and that the Legislature did not intend to extend or diminish its present function.

One of the points which I haven't covered in my prepared text is that of the case of Reynolds vs. Simms. I think most of you are familiar with that case which has caused such a hullabaloo in the State Legislature, for it deals with the reapportionment of State Legislature.

I'm sure many of you in the audience would be interested to know whether or not the Charter Commission that has been appointed will have to consider this case during their deliberations. I think Kase is familiar that Stanley Ling, his counterpart in the City and County of Honolulu, has already issued several rulings from his office as the Corporation Counsel for the City and County of Honolulu, and he believes that the Reynolds vs. Simms' opinion applies to the City Council and to the county government, although he didn't stretched that point that far. He only said it applies to the City Council. I think it's rather apparent that it does apply to the City and County of Honolulu. Likewise, it may very well apply to the County of Maui, and I think if Kase asks for that rule, it would really put him on the spot. It tells you to take that into consideration when drafting the charter.

Mr. Takasaki: To talk about finance, I think by itself really doesn't make sense because finance,

within a political structure, has reference only to the role that government plays and unless you agree on what role you want government to play, I really cannot intelligently define what kind of financial provision you want in the charter.

For example, if government is viewed negatively as something necessary, but not to be trusted, the financial provision should be spelled out in great detail in the charter and financial powers widely divided among several independent officials. However, if government is viewed positively as a constructive cause for solving community problems in order to achieve more satisfactory social and economic conditions, the financial provisions and structure should provide for high degree of centralization.

I think there was a time in history and this is true, I think locally, in American local government that the people had good cause for distrusting the men they elected to office. Under these conditions, division of powers, financial powers specifically, made very good sense as a matter of precaution. However, this is rarely true today in the United States and probably including Hawaii. At the same time, the problems of society and of government are becoming much more complex, and it is becoming increasingly clear that to solve the growing problems of community, counties particularly, we need strong leadership.

This means that, as a general rule, a chief executive, whether he is elected, such as an elected mayor, or appointed, as a county manager, should be given authority over all county functions and be given authority to appoint and remove all his principal subordinates. Functionally, the chief executive to be effective should have primary responsibility for preparing integrated county plans and budgets for submission to the legislative body, whether it's the Board of Supervisors or Council, and for executing the programs, the ones they approve. Obviously, to do this, he needs staff and some of the key staffs he needs are pretty obvious. He needs a budgeting staff, a finance staff, personnel staff, something recently developed--assistant analysis staff, as well as staff to provide various central services in addition to the regular line departments which exist to provide direct service to the people.

Also, I think if you are moving to an elected chief executive, such as a mayor, my personal observation is this. He needs some sort of assistant, whether you call him chief of staff, or direct administrative services--someone who is directly responsible to him to coordinate the various staff services, such as budget finance, assistant analysis, personnel, and so on. Because, normally, an elective chief executive may not have the special competence in this particular area and yet to administer programs in an efficient manner as possible, coordination of staff becomes more and more important. I think some of you experienced this under Act 97.

I think lot of complaints I hear is that there are too many agencies involved. No one seems to be making the decision and so happens there is no one coordinating that agencies to carry out the provisions of Act 97.

I might just mention some of the specific provisions of the charter in terms of, again my observation, without going

into the details because I think these may come out in the discussion if you express an interest.

Budget preparation is one of the chief functions that the chief executive should have, either directly under him, such as the City and County which has a budget director in the mayor's office, or under the administrative services director, who coordinates budget preparation together with various other staff services for the chief executive. The thinking now is that the budget is not primarily a financial document. It is a program document so the entire emphasis has shifted to the kind of person you want to head the budget operations.

At one time, you were looking for an accountant. Primarily, someone who can work with figures, but this is the last, probably, qualification the modern conception of what a budget man should be. He should be someone who knows government, who knows programs, who knows how to allocate resources, how to consider alternatives, and how to measure efficiency in government. These are different kinds of persons that administer budget programs.

More and more, budgets are being prepared on at least a five year basis so that you do not make budget decisions today without knowing what the implications are the second, third, and fourth year will be.

The Federal Government, for example, is a very complex operation and has adopted a five year budget. It doesn't mean a five year budget is set. Actually, you act only on the first year budget, but always with reference to a five year program and every year the five year program is revised as conditions change.

The other development again in budget is the capital budget, which is the construction part of the budget, public improvement part, an operating budget, becoming coordinating so that you do not have a separate staff, separate considerations in acting on the capital budget independently from the operating budget.

Obviously, another very important concept of budgeting is that all funds should be budgeted. Often times in government, only the so-called general funds, which make up less than half of the total financial resources of the jurisdiction, is budgeted. The other funds, primary special funds, are not budgeted.

In terms of purchasing, one of my observations is that it's important that the purchasing provisions be quite flexible in the charter because purchasing, more and more, has to be valued in terms of administrative competence in deciding how to get the best price in terms of the objectives that you have that you want to accomplish.

One of the things that's happening in government today and all levels of government is that we go to the same procedure of purchasing while you buy a \$10 item or \$1,000 item, or \$200 item and yet it cost maybe \$5 to \$10 to process one purchase order to go through the entire procedure of getting a

requisition, having a central purchasing office retype it, issue a purchase order, wait for a bill from the vendor, then you match the bill with the purchase order, get a receiving report back to the accounting office, then the accounting office pre-audits, so there's a voucher and by the time you finally get a check from the auditing office or the finance office, \$10 is a very minimum cost to be incurred in buying something that might be worth \$5 or \$10. So, yet if you have strict procedures written in the charter or the ordinance, you are compelled to go through this kind of procedure, which really doesn't make sense. So, lot of jurisdictions now are setting up different procedures for minor purchases as compared to major items.

For example, several of the jurisdictions, including some local businesses, I think Castle and Cooke, issue blank checks together with the purchase order so that when you order something, the check goes out with it and you don't have to worry about waiting for all the documents before you make the final payments. Our experiences indicated that business procedures and ethics are such that you can pretty much rely on getting pretty much what you order with very little discrepancy between what's received and what's paid in advance. If there is discrepancy, there is always easy access to adjustment since these are consuming relationship that you have with the vendors.

Mr. Tester: Is this done on the basis of estimated costs?

Mr. Takasaki: What's done now is you have on the purchase order the top part you have a blank check and you type on the blank check the vendor's name and you leave the amount empty, but you qualify the blank check by saying this is good for not more than \$100 and only within six months. So, when the blank check goes to the vendor, he puts in the exact amount in the cancelled check and your cancelled check tells you it's cashed.

This is hard for government to do because I proposed this to our State Comptroller and he says we can't do it because the law says this, etc. Lot of these things which are necessary to really run government efficiently are humstrung by details and legal description, so, it's important when you draft the charter.

Mr. Tester: In our county government, do you feel our budget director, or whatever he might be called, should come directly under the mayor or the administrative assistant, or should he be under the Treasurer's Department, or the Finance Department, or just where should he fit into this?

Mr. Takasaki: I think there are two places the budget director can fit in. He can either be directly under the mayor, or he can be under a broader department. He can be one unit of a larger, either a department of finance, or department of administration type where you have purchasing, you have budget, or several other functions together.

For a smaller jurisdiction such as a county, I'd like this integrated operations better. It's not big enough to have a separate budget department as you do in the State or the Federal Government. I think it's more sense to have it integrated. It should have a specially qualified person to head this particular budget operation and about him a very broad gage person who understands management in general. He knows how to utilize

the resources he has under him in helping the mayor administer his program.

Mr. Tester: Do you feel it should be totally separated from the Treasurer's Department?

Mr. Takasaki: I think the treasurer should be part of this office. The treasurer's functions should be part of the finance operations.

Mr. Kondo: How advanced are the City and County data processing?

Mr. Takasaki: I think they either got or are receiving the IBM 360, which is the latest equipment. This is only the beginning. This is a very important field for government, but you do have to have very specialized assistants to put much of your operations on a computer, which is systematized so you have maximum benefits from it.

Mr. Balthazar: How do you write in or how do you phrase for a charter for education of a person. The moment you begin to write specific qualifications, you run into all kinds of problems. You run into the kind of problem that Professor Meller pointed out where you might not find a qualified man available here. Yet, you have local resentment of bringing a outside person. Then you have the professional people. Some of the professional people here on Maui indicate it quite deplorable not to write in professional qualification. We need more competence. We certainly need them, but it should still be a matter of discretion.

Prof. Meller: One of the marks of a professional of a group becoming professional is the establishment of a standard, including the system that nobody can be called a professional. I'm not really sure, you see, who is a professional, who isn't. I'm darn sure if you watch it developed, you start having a board, you have to have examinations and you have to have qualifications and pretty soon it becomes almost impossible for anybody to perform in any way relating to that profession without meeting the requirements. So, I wouldn't worry too much about this system, but you must have your standards, otherwise, you're not being professional.

Mr. Crockett: I agree with what Bill said and I agree with what you said, but I disagree with your last statement that we shouldn't worry about it, because this is one of the reasons why our charter was attacked the last time.

Mr. Doi: You're always going to have a hard time to find the right kind of talent. We have that same problem at the State level and at the University level. Talent is so hard to find locally, but I think we're trying to get around to the problems by setting up training programs for persons who had put into their door to really train these people to become professionals and be really equipped with the kind of knowledge that they should possess, especially in Mr. Tester's remark, perhaps, the head man has to be sympathetic. Often times, the person is unsympathetic to something he does not know about and, possibly, the solution there might be to expose him to the kind of experiences that may be conducive to his realization that this is really a work saving method that will really help him to make the higher kind of decision, rather than the mundane type of system.

Mr. Crockett: Let me get to the nuts and bolts of what people actually say. They say if we leave these things broad and general, as I think we should, we're going to have the mayor, who is a politician, appointing other politicians who don't know a thing or just a bunch of nincompoops running the government. So, they feel in order to protect themselves, we got to have these rigid qualifications built in the charter for these top level administrators. Then, they go further in saying, well, since we're going to have these nincompoops in, the next result is we're going to have a number two man who is qualified and, therefore, we, thereby, add to the cost of government.

Prof. Meller: Isn't the other side of that balance, however, if you have competent people in, you don't have to worry about setting up qualifications. In short, the extent of distrust you have in the government you set up. Like the four year terms. Then, the way of having protection is to write into this charter all of the qualifications supposedly designed to make sure the people have minimum professional and special requirements, but on the other hand, you have certain types of political control. Shorter terms--devices by which the people are able to respond and express their views. Then, there's less need for setting these things.

Mr. Tester: Well, the only need, of course, is the fear that the appointing person will appoint those who do not concur, and they say that the way to avoid that is by having a long list of qualifications.

Mr. Doi: He might never appoint anyone. I think Dr. Meller is making a point here and that is, if the government is geared or the form of government is set up here so that the responsibility appointed to the chief executive, or whoever makes the appointment, so that it is eminently clear that whoever he appoints is responsible for him, and he is responsible for their action, then I think the voters will really have a clear choice as to who they want to head their government, whether they want the guy who appoints nincompoops, or whether they want the person who appoints qualified people.

Mr. Crockett: That is what we said time and time again, but somehow we can't seem to get it across. What you said though if we're trying to balance this, we should then provide for things in the charter which makes for a more responsiveness government itself.

Mr. Takasaki: On the county, I might must make one comment. It's very important that accounting be integrated with budgeting. Pretty much in government today, accounting is independent of budgeting and unless you keep the books the way you authorized the programs and expenditure of funds, it's hard to have a probability because books are kept by one way and funds appropriated by another system, so these are very important considerations. A lot of these things becomes very simple once we get it properly set up on the computer.

I mentioned system analysis. Just to repeat again, this is a new need that is very important now and any complex organization has to have a system analysis staff. They should be located somewhere near the top and if we do have an administrative services type of director, this man will be reporting directly to him. He would be the person going around throughout

government seeing which procedures, which kinds of data can be computed on a computer with minimum duplication.

Personnel functions obviously rest with the chief executive and one comment here is that again, this probably is not a charter function, but a question of ordinance. You're building flexibility so that in the professional classes, provision can be made for compensation based on qualification with wide range of job requirements, rather than this very narrow kind of system, which presently exist, where unless a job is pin pointed very specifically at a certain level, you can't hire anyone else for that particular job and this often meets the needs of government. I think the system should yield so you can get the best man rather than by some technicality meet the qualifications so you have to get someone much more mediocre for that particular job.

Internal auditing again has to be a function of the chief executive as distinct from external auditing, which rest with the legislative branch or legislative auditor. Internal audits should be much broader than just a financial audit. I think the financial audit can best be done by independent CPA. Your charter last year proposed such a system, and I think it's fine. But the audit of programs to see whether the authorized programs are being carried out effectively and efficiently to see whether the systems are adequate in terms of internal checks and controls and to conduct sampling financial audits when there is suspicion that things are not being ordered. These kind of audits has to be done by the chief executive.

Finally, I think answering some of the questions raised earlier, the best safeguard against possible abuse of power by strong chief executive is a strong legislative body. First, the powers to tax and appropriate funds should clearly be left in the legislative body. In other words, sometimes the chief executive has too much discretion in power in deciding how funds should be spent. I think the broad intent of all these decisions should be vested in the legislative branch, as well as the powers to investigate and to conduct audits. These, I think, are the kind of powers you need in the legislative branch to obviously minimize possible abuse by the executive branch. Actually, what I'm saying is that to meet the problems of today for a County such as Maui to assume the role of leadership in government, it could solve many of the complex problems. You need both a strong executive and a strong legislative branch, but strong in different areas.

Mr. Tester: How do you get a strong legislative branch?

Mr. Takasaki: You get a strong legislative branch by giving them definite powers in policy making role so that they have adequate staff to examine the budget prepared by the chief executive. They have the competent staff to conduct audits and investigations, so that in areas where it counts, they have the necessary competence and staff to do the work for them.

Mr. Crockett: In the last charter we proposed, we did provide for this legislative body. It was my idea, and in fact, it was the idea of the other people, that this would be a very strong arm of the council and that, moreover, this program type of auditing that you refer to, which you said is the responsibility of the executive, would be within the scope

of the responsibility of this legislative auditor acting for the council. Now, do you think the language that we put in the charter provided for that?

Mr. Takasaki: I'm not sure after we check it. The CPA firm-- the only thing they can do is to verify the accuracy of the financial statement. That's all they are qualified to do. Like in a commercial firm, they analyze the departmental or the accountant's statement and verify that with spot checks and verification, and this is an accurate reflection of the financial condition of the county and to the extent that you authorize them into the systems audit. They can say that certain controls are very weak. This is the additional kind of functions they have. But the kind of audit that the Legislature might want, which is to actually follow through on the appropriation that were authorized to see if the objectives were carried out.

Mr. Crockett: Well, it was my idea that this particular office, this particular function would very much come up with the type of report that the GAO does, or the Congress. Now, do you think then, perhaps, the way we set it up won't accomplish this objective?

Mr. Takasaki: I'm not sure. I have to check that again.

Mr. Crockett: Well, it does provide for an independent CPA firm.

Mr. Takasaki: The CPA firm by itself is not enough. They are not close enough to government to get involved in a day to day decision making to see the full indication of what the departments are doing.

Mr. Crockett: Then it might be better to set up a permanent type of office.

Mr. Takasaki: You need a permanent staff. Very small staff, but competent staff.

Mr. Crockett: At the last go around, I was strongly opposed to permitting the mayor after the budget was adopted to giving the mayor the power to transfer funds from one program to another program.

Prof. Meller: Is this program within the same department or from one department to another department?

Mr. Crockett: I was opposed even to the transfer within one department because I think the basic establishment of programs is the function of the council and once the council determines it, then if there's any changes, it should go back to the council for their approval.

Mr. Takasaki: I think the programs are defined broadly enough, if this makes sense. It all depends on how broadly or how narrowly you define your programs.

Mr. Doi: One of the things the State government provides is that the department head may transfer funds from one program to the other, provided that he can prove satisfactorily that the program from which the funds are transferred has accomplished the objectives of the program.

Mr. Crockett: Who does he give the proof to?

Mr. Doi: To the budget director, primarily, in the State system.

Mr. Crockett: But it's still within the executive branch.

Mr. Doi: But still accountable to the legislative body in case any questions are raised regarding the transfer, because they have to report the transfer of funds to the legislative body.

Mr. Takasaki: The important thing to distinguish is whether when you say program, it's really a true program, so that it's a legislative kind of responsibility to focus that this program objective is achieved. But sometimes programs are defined in terms of the means, rather than the true program and if it's done in this way, then the chief executive is pretty humstrung by a lot of restrictions.

Mr. Takasaki: This I speak from experience since I did work for the City and County, both in the finance office and budget office. I think it's very important that once the charter is adopted, that the county hire consultants to help during the transition process.

We tend to underestimate the complexity of the job of making the transition from one kind of operation to a completely chain kind of operation, which the charter brings about.

The charter is never self-executing even if it states in the charter you have to develop a complete set of new policies, new procedures, new attitudes and a great deal of training on the part of the existing employees. And one of the things is that employees, once they have experienced working under really top notch people in terms of carrying out the provisions under the charter, I think it sets their standards of operation at a very high level so that they will continue to operate at that high level. They're never aware of this. They're never exposed to top level kind of operation in spite of the best efforts to do the best job they can. Normally, this kind of talent is hard to find, except through consultant firms whom you might bring in for maybe a year or six months to help you develop a training program, develop new procedures, new manuals, new systems within the county.

To me, this is the best thing any county can make if you adopt a new charter. The City and County was slowing in doing this. I think if you study the history of the City and County Charter transition, it ran into all kinds of trouble. There were lot of investigations and so on. Lot of things which were legal under the old provisions of the laws became illegal under the provisions of the Charter. The employees had difficulty in adjusting from the old to the new. So, although it might cost you a little money at the start, I think one of the best things you can make is to buy some real top notch men to help you with the transition, and this I think will be money well spent.

Mr. Crockett: I think all of us seem to imply that the top administrative offices of the county should be appointed who is responsible to the mayor, and yet we have an awful time selling this to the people.

Prof. Meller: You haven't added the other question--appointed by the mayor without review by the council?

Mr. Crockett: That's the question.

Prof. Meller: There is a difference between the two. I think your charter put in a provision, if I recall, providing appointments and removals solely by the mayor. I think everything practically, except liquor and civil service.

I think part of the answer there depend upon what is the sentiment of the community. If the community is afraid of too powerful a mayor, then quite clearly you have to have the council in on the act. In the whole series of alternatives, you can start out, such as, appointment by the mayor and removal by the mayor. The other extreme, of course, is appointment by the mayor and approval by the council and the person cannot be removed by the mayor without the approval of the council. That is two. Then you move to the center, such as, appointment by the mayor with the approval of the council, but the mayor having the power to remove without necessarily having the consent. Now, in accord to what you are trying to do, you are trying to meet the objection of the community that are afraid of too strong a mayor, unless we rely upon the council to participate. The question is how much should the council participate?

Mr. Pladera: Is that to be answered in view of the type of politicians we have now today to be responsible to the people?

Prof. Meller: This is partially it.

Mrs. Wirtz: I don't agree with you on that because if you give your council and your mayor powers and the authority to carry out their duties properly, then you'll get a better quality of people running for those office. You'll have more good serious citizens running where they can actually do something.

Prof. Meller: Let's take, for example, where you have a four year term or two year term. You have a four year term appointed by the mayor, no participation from the council. Clearly, this is far more of a danger than a two year term appointed by the mayor with no participation from the council. A strong mayor without the control by a council and having a four year term can go awfully far before the voters have a chance to come back to him.

Mr. Balthazar: Is there any value in splitting terms--having four years for the mayor and two years for the council?

Prof. Meller: Well, the usual reason given for changing the U. S. House of Representatives from two to four years is so that the President would go in and go out with a Congress, rather than always winning his Congress when he is elected and losing it in between.

Mr. Balthazar: If you have to make a choice if you were going to make a choice, giving the mayor the four year term, would not the fact that he is the administrative head, his policies, his decision would tend to touch more

people more times than the powers of the council? Therefore, if people on Maui, as the indication seems, are anti-four year term, then wouldn't that be self defeating to give the mayor four year term and the council the two year term?

Prof. Meller: The usual reason for the four year term, particularly for the executive, is to give him a chance to look for a long term program rather than having to be able to deliver every two years, otherwise get thrown out of office. It would be quite clear that some things are going to take more than two years.

Mr. Kondo: There has been quite adverse reaction from the public regarding compensation for the commission members. Some of our commission members are getting paid and some are not. On the original proposed charter, they did away with everything. As far as the commission members are concerned, nobody gets paid. What do you think of that?

Mr. Doi: Whether or not the commission members should or should not be paid depends on what you expect of them and whether or not you can get the people to serve on the commissions and give up their time free. Like on some commissions, the people who are appointed initially soon find out it has taken out numerous hours from their home, occupation, or their own way of living. And in many instances, you are going to find that people may not be so willing to serve. You can get only people from certain kind of industry to serve.

Mr. Crockett: About this legislative audit. Don't you think this is going to be a very sensitive position? If it is, how should we go about providing for the appointment, assuming we abandon this CPA, is it be a CPA idea? Should he be appointed for a long term of office, or should it be made civil service? What do you think about that?

Mr. Takasaki: Probably, shouldn't be civil service. Probably, he should be appointed by the council. My personal feeling is you need both. In other words, for the financial audit, it's best to use an independent CPA firm, but limit their audits to financial audit and have a very small staff to do the other kinds of audit. If you do have an independent CPA firm, this other auditor can be pretty much an appointee of the council he serves. It would be the same term as the council serves.

Mr. Crockett: We're afraid of making it the same term because if this particular person is to be effective, he's going to be stepping on a lot of toes. I mean that's his job to make people unhappy.

Mr. Takasaki: The State gives them about eight year terms.

After thanking the guest speakers, the Chair called for adjournment at 10:10 P.M.

Respectfully submitted,

Ayako Ishikawa
Ayako Ishikawa, Secretary