

MINUTES OF THE MAUI
COUNTY CHARTER COMMISSION

DATE: August 25, 1975

PLACE: Maui Beach Hotel, Room 281, Kahului, Maui, Hawaii, 96732

CALL TO ORDER: 12:00 noon

PRESIDING: Monsignor Charles Kekumano, Chairman

MEMBERS PRESENT: Monsignor Charles Kekumano, Chairman
Paul Mancini, Commission Attorney
Edwina Bright
Margaret Cameron
Hideo Abe
Catalino Agliam
Ralph Murakami
Stephen Petro
Joseph Souki
Lloyd Sodetani
Allan Sparks

MEMBERS EXCUSED: Sanae Moikeha

Minutes

The minutes of the Charter Commission meeting of August 18, 1975 were discussed and by motion duly made and seconded said minutes were amended to reflect the approval at that meeting of the minutes of the commission meetings during the period of July 28, 1975 through August 11, 1975. Upon motion duly made and seconded the amended minutes of the August 18, 1975 Charter Commission meeting were approved.

Public Hearings

Monsignor Kekumano discussed the process of issue refinement. He stated that it was his opinion that the commission should present to the public issues which the commission is seriously considering implementing. He further stated that options should remain open for the public to comment upon.

Monsignor Kekumano continued that the recommendations decided upon by the commission should be cast as tentative conclusions to which the public could react.

Mr. Souki suggested that the commission come to some philosophical conclusions prior to recommending specific changes to the public.

After discussion by motion duly made and seconded it was moved that the commission reach tentative conclusions on issues upon which the commission is seriously considering implementation and that the public be provided clear notice that these conclusions are tentative and also that the public be provided tentative options on certain key issues.

Analysis of Issue

Mr. Mancini provided a chart restating the issues that had been refined by the commission's committee of the whole. He restated the issues providing the arguments for and against each proposition as the commission deliberated on the issues.

Mr. Mancini stated the options for consideration concerning form of government as follows:

Form of Government

Considerations:

To institute a pure, strong mayor form of government where no executive boards and commissions would exist.

Pros: Accountability clear-----Water
Planning
Police
Civil Service

Cons: Some degree of checks and balances lost; insulation of political influence lost.

Liquor Commission required by state statute.

To institute a council-manager form of government vesting in the council the authority to legislate for the county and to hire, supervise and dismiss a full-time professional manager, who is charged with county administration. Ultimate responsibility for both legislative and executive functions would be concentrated in the council. The council would choose a mayor from its own members - yet he would have only ceremonial functions.

Pros: Efficiency; council becomes true policy making body.

Cons: Political leadership lacking.
Could result in increased political infighting.

Monsignor Kekumano stressed that each of the recommendations concerning form of government were hybrid suggestions. He commented that a pure strong mayor form of government was not feasible because certain boards and commissions were required by state statute to exercise executive functions.

Mr. Sodetani commented on the roles of the Liquor Adjudication Board and the Civil Service Commission regarding their executive function.

Mr. Sparks questioned whether serious consideration should be given to the council-manager form of government. He stated that his readings on the subject have led him to the conclusion that there was no real difference in the two systems. Each

system required the chief executive to be the major political force in the community.

Mrs. Cameron indicated that deliberation by the public on the council-manager form would be helpful; she commented that controversy at this stage in the commission activity is a healthy thing.

Mr. Abe expressed his opinion that the public would not accept the council-manager form of government.

After discussion, by motion duly made and seconded it was moved that the commission adopt two alternatives for public consideration on the form of government for Maui County; namely,

- a) To consider modifying our current form of government to provide a hybrid strong-mayor form by abolishing or restricting the executive powers of certain boards and commissions; and
- b) To consider implementing a council-manager form of government.

There were eight votes in favor of the motion and two votes against the motion.

Mr. Mancini restated considerations for the composition of the council as follows:

Council Composition

To institute an electoral system whereby a percentage of the council is elected by districts of equal population and the remainder of the council is elected on an at-large basis.

Pros:

Compromise on district/at-large issue.

Insulates log rolling by large districts.

If majority elected at-large ensures overall view of county problems.

Could use existing legislative districts.

Cons:

Districts would have to be quite large.

Benefits of districting may be lost.

Lanai and Molokai not ensured a seat.

May not satisfy the public's stated needs for districting.

To institute an electoral system whereby a percentage of council members would run at-large but be residents of specific districts of unequal population while the remainder of the council would be elected on an at-large basis without any district residency requirements.

Pros: Compromise on district/at-large issue.
Log rolling minimized.
Certain districts could be ensured a council seat.

Cons: Districts do not elect councilman.

Some log rolling will result.

Same as existing system, only more districts could be created.

Mr. Sparks suggested that the alternative provisions regarding districts of equal population be dropped from consideration. It was his opinion that single member districts were not a practical alternative for Maui County.

Mr. Mancini stressed that this option could use existing legislative districts and need not provide for one member per district.

After discussion, by motion duly made and seconded, it was moved that the option concerning adopting an electoral system whereby a percentage of the council is elected by districts of equal population and the remainder of the council is elected on an at-large basis, be removed from consideration for implementation as such relates to public hearing.

The motion was defeated by a vote of seven against and two in favor.

By motion duly made and seconded it was moved and carried that the two options presented on electoral systems, in addition to an option considering our existing system, be presented to the public for consideration at public hearing and each option be cast as a proposition which the Charter Commission is seriously considering implementation.

Mr. Mancini presented the recommendations concerning the issue of term of office of the council.

Term of Office--Council

| To provide a four-year term of office for council members.

Pros: Two years inadequate to accomplish goals or to provide track record.

Two years requires constant campaigning - eyes on ballot box not issues.

Cost factor.

Cons: Electorate should be close to elected officials.

Will insulate elected officials from the electorate.

| To provide for a four-year term of office but to limit any council member from serving more than two consecutive terms.

- Pros: New blood must come in.
Restricts incumbent freeze-in.
- Cons: Creates lame duck legislators; could result in indifference.
Logic for limitation may exist for executive branch but not legislative.

A discussion followed on the merit of limiting the terms of the members of the legislative branch of government.

Mr. Abe indicated that no other county has instituted such a measure.

Mrs. Cameron felt that the public should have the opportunity to comment on the issue.

After discussion by motion duly made and seconded it was moved and unanimously carried that the Commission adopt the two propositions concerning the term of office for the council as issues for public consideration and implementation at public hearings.

Mr. Mancini presented the recommendations concerning a vacancy in the membership of the council.

Vacancy: Council Office

To provide that the unsuccessful candidate with the largest vote in the last election fill any vacancy that might exist on the council.

- Pros: People's choice argument.
- Cons: Chaos created if district representation implemented.
Political party not represented.

If a four-year term is instituted, and where the unexpired term exceeds two years, to provide for a special election to fill such a vacancy in the council; provided, however, if the unexpired term is less than two years, the council shall fill the vacancy.

- Pros: People should choose when extended tenure at issue.
Benefits of special election exceed costs.
- Cons: Cost implication
Districting may create a set of problems

No candidates

Limited candidates

A discussion followed with regard to the fact that the political party should be represented in filling any vacancy that might occur. Various untenable situations were discussed that may occur if a district representation scheme was instituted and if proposition one concerning the candidate with the largest vote in the last election was implemented.

After extensive discussion, by motion duly made and seconded, it was moved and carried that the two propositions concerning a vacancy in the membership of the council be adopted by the Commission for consideration and implementation by the public at public hearings.

Mr. Mancini presented the recommendations concerning the powers of the council.

Powers of the Council

To provide precise language in the charter assigning policymaking and program development responsibilities to the council.

Pros: Primary legislative responsibility must flow from philosophy of government; co-equal branches of government.

Cons: Requires manpower increase
Cost of government should increase
Adversary roles may develop between branches of government

To provide for a mandatory fiscal audit each year by direction and control of the council.

Pros: The audit is a legislative act
Audit is a part of monitoring responsibility of the council and part of council's accountability to the public.

Cons: Conflict may increase between the branches
Who performs the management audit role?

To delete the provision requiring the council to have the recommendation of the County Attorney in order to employ a special counsel.

Pros: Council should have the right to a second opinion and independent thought.

Cons: Could foster litigation and an adversary role with the County Attorney.

By consensus of the Commission the issue concerning the policymaking responsibilities of the council was deferred.

After discussion, by motion duly made and seconded, it was moved and unanimously carried that the recommendation concerning a provision for an annual mandatory fiscal audit by direction and control of the council be adopted by the Commission for consideration and implementation by the public at public hearings.

After discussion, by motion duly made and seconded, it was moved and unanimously carried, that the recommendation concerning the deletion of the provision requiring the council to have the recommendation of the County Attorney in order to employ a special counsel be adopted by the Commission for consideration, debate and implementation by the public at public hearings.

Mr. Mancini presented the propositions concerning the council auditor and county clerk as follows:

Council Auditor

To provide that the position of Council Auditor be mandatory and such position be given a program evaluation role.

- Pros: Need for manpower research
 monitoring/evaluation
 program/policy development

Co-equal branches of government.

- Cons: Cost implication
 Will council utilize manpower
 Is it needed

County Clerk: Office of Council Services

To reorganize the office of County Clerk to that of the Office of Council Services with broader legislative responsibilities.

- Pros: Assumes the need for manpower
 Integration of manpower results in costs savings (o/h spread over larger base)

- Cons: Clerk would get integrated into policy area--rather than having election area as sole role.

Mr. Souki suggested that these recommendations be deleted and be replaced by a position of office of council services. This would require a recasting of Section 3-7 to reflect the current position of manager of council services.

By motion duly made and seconded, it was moved and unanimously carried that the Commission not consider implementation of the recommendation concerning the council auditor and the reorganization of the office of the county clerk but rather consider a separate charter provision for an office or manager of council services and said recommendation should be presented to the public for consideration and debate at public hearings.

Mr. Mancini restated the proposition regarding the office of managing director, as follows:

Managing Director

To provide for a chartered middle management position with specific supervisory responsibilities over specific departments.

Pros: All organizations need accountable middle management: Mayor can't do it alone.

Clear identification for roles:

- 1) efficiency standards
- 2) coordination
- 3) implementation
- 4) evaluation/monitoring

Hybrid: Council/Manager form

1st step toward council/manager form

Status: responsibility if chartered

Cons: Restricts flexibility of Mayor

Mayor would control and change position regardless of chartered duties.

By motion duly made and seconded, it was moved and unanimously carried that the Commission consider implementation of a charter provision regarding an office of managing director and said recommendation be provided to the public for consideration, debate and implementation as part of the Commission's public hearings.

Mr. Mancini presented the recommendations concerning the office of the Mayor, as follows:

Office of the Mayor

To eliminate any age requirement as a condition of running for the office of Mayor.

Cons: Minimum standard regarding age is reasonable.

To limit the power of the Mayor to create and abolish positions within the executive branch of government.

To limit the Mayor's responsibility in recommending a pay plan for County employees to only employees within the executive branch of government.

Pros: Gives council greater authority over own affairs

Enhances co-equal status

Cons: Cost implications

No check on council action

May restrict impoundment

To amend the current provision with regard to succession as acting mayor during a temporary absence or disability of the Mayor from the Finance Director/Public Works Director succession, to the Planning Director/County Attorney succession, to the Managing Director.

To provide for a four-year term of office for the office of the Mayor with a two term or three term limitation.

Pros: Two years inadequate for program development and inadequate to measure performance of Mayor.

Cannot attract qualified personnel with two-year tenure

Always campaigning with two-year tenure: one eye on ballot box, one eye on issues

Cons: People should have hands on office holders

There should be no insulation to the electorate

Concentration of power enhanced

Disinterest in government by the public might result from a four-year term.

Mayor: Limitation of Terms

- Pros: Power corrupts and therefore should be limited and restricted
Loss of perspective after long tenure
Avoids freeze-in of incumbent syndrome
Power cannot be concentrated for extended period
New blood leads to new ideas and policy
Stress of position requires limited tenure
- Cons: Lame duck syndrome
People should decide on tenure
May lose an effective leader/administrator for no reason

After discussion by motion duly made and seconded, it was moved and unanimously carried that:

- a) the Charter Commission not consider adoption of the proposition concerning the limitation of the powers of the Mayor to create and abolish positions solely within the executive branch of government.
- b) the Charter Commission consider an amendment to the provision regarding succession to acting mayor but that the specific line of succession be deferred until a final resolution can be made concerning the managing director and the planning director.
- c) the Charter Commission consider adoption of the recommendation concerning deleting of age qualifications for the office of Mayor and the provision for a four-year term for the office of Mayor with a limitation of two or three terms and that said recommendations be provided to the public for consideration, debate, acceptance or rejection at public hearings called for said purpose.

Mr. Mancini presented the issue of charter provision for cost of government commission which would review critical aspects of the county's financial status on a periodic basis. He related the following arguments in favor of and against the proposition:

Salary Commission

Cost of Government Commission

- Pros: Disclosure is an effective tool
Pressure is off elected officials--independent analysis is better than internal analysis
- Cons: Many costs are fixed
Can qualified/independent citizens be obtained to do a competent job
Commission would have no executive powers and therefore be useless.

By motion duly made and seconded, it was moved and unanimously carried that the Charter Commission consider adoption of the provision for a cost of government commission and said consideration be provided to the public for debate, acceptance or rejection at public hearings called for said purpose.

Mr. Mancini presented the recommendations concerning the office of the County Attorney, as follows:

Office of the County Attorney

- To separate the office of the County Attorney into a Department of Corporation Counsel and an office of Prosecuting Attorney.
- Pros: No one person can specialize in two areas
Increased efficiency due to specialization
Prosecutor accountable to the Attorney General
Limits political influence over Prosecutor's role
Clearer accountability to each role
- Cons: Cost of government will increase
Maui may be too small to justify the separation
Work load not adequate for two offices
Merging of manpower leads to greater cost efficiency

To provide that the proposed Department of Prosecuting Attorney be an elective position, through a non-partisan election, rather than an appointive position.

Pros: Accountability to the people for administration of justice
Separation from chief executive pressure

Cons: One eye on the ballot box; one eye on justice
Administration of justice may tend to be what is politically best
Elected position may turn into a personality-name identification contest

Mayor should be accountable for the administration of justice

After discussion by motion duly made and seconded, it was unanimously carried that the Charter Commission adopt the recommendation concerning the separation of the office of County Attorney into a separate department of Corporation Counsel and an office of Prosecuting Attorney and adopt the provision that the County Prosecutor be an elective position and that said recommendations be presented to the public for debate, adoption or rejection at public hearings called for said purpose.

There being no further time for deliberation, by motion duly made and seconded, the meeting adjourned at 4:15 p.m.